COMPANY LAW.

NEW CANADIAN EDITIONS.

Odgers on Evidence.—Principles and Practice of the Law of Evidence. Ninth Edition, by W. BLAKE ODGERS, M.A., LL.D., K.C., Director of Legal Studies at the Inns of Court, Gresham Professor of Law, and Recorder of Plymouth. Canadian Notes by the Honourable Mr. Justice RUSSELL. Demy 8vo.

Grant's Bankers and Banking Companies.—The law relating to Bankers and Banking Companies, including Notes and Cases decided in the Canadian Courts, and an Appendix containing the important English and Canadian Statutes in force relating thereto. Sixth Edition, by A. M. LANGDON, M.A., B.C.L., K.C., and HERBERT JACOBS, B.A., Barrister-at-Law. Canadian Notes by A. C. FORSTER BOULTON, of the Inner Temple and Canadian Bar, Barrister-at Law. Ry. 8vo.

Ross on Discovery.—Being a comprehensive treatise on the Law and Practice relating to Discovery, by R. E. Ross, LL.B., Barrister-at-Law. Canadian Notes by A. C. FORSTER BOULTON, of the Inner Temple and Canadian Bar, Barrister-at-Law.

COMPANY LAW.

BY
WILLIAM FREDERICK HAMILTON, LL.D. (LOND.),
ONE OF HIS MAJESTY'S COUNSEL,
Joint Author of "The Law of Husband and Wife."

THIRD EDITION

BY
THE AUTHOR,
ASSISTED BY
PERCY TINDAL-ROBERTSON, B.A.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

CANADIAN EDITION

BY
W. R. PERCIVAL PARKER,
OF THE CANADIAN BAR.

CANADA LAW BOOK COMPANY, LIMITED, TORONTO, CANADA.
CROMARTY LAW BOOK COMPANY, 1112, CHESTNUT ST., PHILADELPHIA.
Law Publishers.

1911

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

PUBLISHERS' NOTE TO CANADIAN EDITION.

THE third edition of "Hamilton's Company Law" having proved to be a work of such great utility, it has been decided to issue a special Canadian Edition of the work for use of practitioners in all parts of the Dominion.

During the last few years the importance of Company Law has enormously increased, the primary cause being the great number of Companies and Corporations that have come into existence. Prosperity and vastly increased commerce in the Dominion of Canada are responsible for the birth of numerous Banking and Insurance Companies, and trading concerns, great and small. Legislation has been passed, and cases decided upon innumerable points. The Canadian Notes in the ensuing pages will be found to be comprehensive and down to date.

The plan adopted has been to follow the main chapters of the English text with relevant Canadian matter, so that the two may be conveniently read together. In the preliminary pages will be found Tables of Canadian Statutes and Cases.

It is hoped that the Canadian Edition, which has been prepared by an eminent authority, will prove of great value.

PREFACE

TO THE THIRD EDITION.

After the second Edition of this work was published in 1901 important alterations were made in the law relating to companies by the Companies Act, 1907. Among other things, in addition to affording further protection to subscribers for shares debentures and debenture stock, and conferring additional rights upon shareholders and holders of debentures and debenture stock, and permitting the creation of private companies, it was made lawful for companies in certain cases to pay interest out of share capital, and all doubts as to the validity of perpetual or irredeemable debentures or debenture stock were removed. Agreements to take debentures and debenture stock were made specifically enforceable, and power was given to the Court to relieve directors who were or might be liable in respect of negligence or breach of trust if they had acted honestly and reasonably and ought fairly to be excused.

Provision was also made whereby foreign companies having a place of business in the United Kingdom were compelled to file with the Registrar of Joint Stock Companies certified copies of their charters, statutes, or memoranda and articles of association, and to give other information with a view of protecting persons trading with them in this country. It was also made possible for a company to make arrangements with its creditors and members without the necessity of a winding up.

The passing of the Act of 1907 made the consolidation of the numerous statutes relating to companies imperative.

A Bill for this purpose was prepared with the aid of a small committee appointed by the Board of Trade (of whom the Author was one), and eventually it became law under the title of the Companies (Consolidation) Act, 1908, and came into operation on the 1st of April, 1909.

This Act hereinafter referred to as the Companies Act, 1908, repealed the whole of eighteen statutes together with parts of ten other statutes. Its passing made it necessary to bring out a third Edition of this book. The aim of the Author has been to comprise within a reasonable compass the whole of the law relating to companies. With a view to making it still more useful, a chapter has been added dealing with actions and legal proceedings by and against companies and the material sections of the Assurance Companies Act, 1909, have been incorporated. Wherever practicable the law has been stated in the form of general rules with examples from decided cases by way of illustration, and the Author hopes that by adopting this method the work will be not only useful to members of the legal profession, auditors, liquidators, and receivers, but also to holders of shares and securities, and to persons carrying on business with companies.

The Author desires to express his indebtedness to his friend, Mr. Percy Tindal-Robertson, for his valuable help, and to Mr. W. G. Carlton Hall, of Lincoln's Inn, for his assistance in preparing the Table of Cases.

The Author desires to thank the Committee of the London Stock Exchange for kindly permitting him to reprint in this book extracts from the rules and regulations of the Stock Exchange with reference to special settlements and quotations in the official list of shares, debentures, and debenture stock.

W. F. H.

4, Stone Buildings,
Lincoln's Inn,
January, 1910.

LIST OF CHAPTERS.

CHAPTER.		PAGE
I.	INTRODUCTORY	1
II.	INCORPORATION AND CONSTITUTION OF COMPANIES UNDER THE COMPANIES ACTS	10
	Name of Company	14
	Change of Name	16
	Registered Office	16
	Objects of Company	17
	Alteration of Powers	18
	Limited Liability	21
	Capital	23
	Articles of Association	24
	Alteration of Articles	25
	Invalid Articles	26
III.	ACTS AND DISPOSITIONS ULTRA VIRES OF THE COMPANY	28
IV.	CAPITAL	47
	Increase of Capital	48
	Reduction of Capital	49
	Conversion of Shares into Stock	54
	Consolidation and Subdivision of Shares	55
	Share Warrants	56
V.	PROMOTERS	58
VI.	UNDERWRITERS	69
VII.	DIRECTORS	75
VIII.	APPOINTMENT, RETIREMENT, AND REMOVAL OF DIRECTORS	84
IX.	POWERS OF DIRECTORS—NATURE AND EXTENT OF POWERS	94
X.	PROSPECTUSES	114

CHAPTER		PAGE
XI.	Agreements to take Shares	127
XII.	Issue of Shares	146
XIII.	Shareholders	155
XIV.	Payment for Shares	163
XV.	Calls and Liens on Shares	171
XVI.	Alienation and Transfer and Transmission of Shares	180
XVII.	Forfeiture and Surrender of Shares	200
XVIII.	Rectification	212
XIX.	Contracts of Companies	217
XX.	Borrowing and Mortgaging Powers	230
XXI.	Debentures and Debenture Stock	257
	Floating Securities	258
	Stamps	263
	Registration	264
	Issue	265
	Priorities	267
	Transfer	268
	Redemption	271
	Rights and Remedies	272
	Receivers	275
	Sale and Foreclosure	282
	Personal Judgment	284
	Costs	284
XXII.	Creditors	286
XXIII.	The Acquisition, Holding and Alienation of Property	297
XXIV.	Accounts, Auditors and Dividends	304
XXV.	Meetings of Shareholders	324
XXVI.	Liabilities of Directors and Promoters to the Company	341
	Breaches of Trust	341
	Negligence	359
	Statutory Liabilities	362
	Contractual Liabilities	362

	CHAPTER		PAGE
127	XXVII.	Liabilities of Directors and Promoters to Holders of Shares, Debentures and Debenture Stock	363
146		Misrepresentation at Common Law	363
155		Companies Act, 1908, s. 84	368
163		Companies Act, 1908, s. 81	389
171	XXVIII.	Liabilities of Directors to Persons other than Holders of Shares, Debentures, or Debenture Stock	392
180	XXIX.	Criminal Liability of Directors and Promoters	397
200		Fines and Penalties	401
212	XXX.	Legal Proceedings by and against Companies	408
217	XXXI.	Winding-up of Companies	413
230		Generally	413
257		What Companies may be Wound Up	415
258		Liquidators	418
263		Stay of Actions and Proceedings	422
264		Stay of Winding-up	427
265		Dissolution	428
267	XXXII.	Winding-up by the Court	430
268		Jurisdiction	430
271		Grounds for making Winding-up Orders	432
272		Who may be Petitioners	435
275		Petitions and Orders	439
282		Effect of Winding-up Order	446
284	XXXIII.	Winding-up, Collection and Distribution of Assets	451
284		Powers of the Court	451
286		Powers of Liquidator	464
		Settlement of List of Contributories	468
297		Rectification of List of Contributories	474
		Calls on Contributories	476
304		Proof of Debts	480
324		Distribution of Assets	497
	XXXIV.	Voluntary Winding-up	505
341		Voluntary Winding-up	505
341		Voluntary Winding-up under Supervision of the Court	510
359		Amalgamations, Reconstructions and Arrangements	512
362			
362	XXXV.	Dissolution of Companies	534

APPENDIX I.

PAGE

Statement in lieu of Prospectus 541

APPENDIX II.

Form of Prospectus of a New Company 544

APPENDIX III.

Extracts from the Rules and Regulations of the Stock Exchange 549

INDEX . . . . . [1]-[110]

TABLE OF CONTENTS

OF

CANADIAN NOTES.

	PAGE
INTRODUCTORY	9*a*
Extra Provincial Corporations	9*c*
Licences to Extra-Provincial Corporations	9*f*
Annual Returns	9*h*
Revocation and Forfeiture of Charter	9*h*
Supplementary Letters Patent	9*j*
Name of Company	9*k*
COMMENCEMENT OF BUSINESS	27*a*
"Commencing Business"	27*a*
Public Companies	27*b*
Official Certificate	27*b*
Moneys to be held in Trust	27*b*
POWERS OF THE COMPANY	46*a*
Examples of Implied Powers	46*a*
Assent of all Shareholders	46*c*
Ultra Vires Contract: Consent Judgment	46*d*
Illustrations of *Ultra Vires* Acts	46*d*
Bye-laws	46*e*
PROMOTERS	68*a*
Secret Profits of Promoters	68*b*
PROSPECTUSES	126*a*
Rescission of Contract	126*a*
Effect of Ontario Legislation Regarding Prospectuses	126*b*
DIRECTORS	113*a*
Directors' Sale to a Director	113*b*
Personal Interest: Votes	113*c*
Number of Directors	113*d*

PAGE

DIRECTORS—*continued.*

Quorum 113*e*
Provisional Directors 113*e*
Directors: Issue of New Shares to themselves . . . 113*g*
Penalties 113*h*
Loans to Shareholders 113*h*
Liability for Wages 113*h*
Qualification 113*i*
Resignation 113*i*
Election of Directors 113*i*
Remuneration 113*k*
Unauthorized Remuneration 113*k*
Commission 113*m*
Past Services 113*m*
Other Cases 113*m*
Implied Power of Managing Director 113*n*
Manager 113*n*
President and Secretary 113*o*

SHARES 216*a*
Subscription and Allotment 216*a*
Subscriber to Memorandum 216*b*
Application for Shares 216*c*
Conditional Application 216*d*
Allotment 216*d*
Notice of Allotment 216*e*
Constructive Allotment 216*e*
Liability on Shares 216*f*
Preference Stock 216*h*
Dividends 216*i*
Ascertainment of Profits 216*i*
Reserve Fund 216*j*
Calls 216*k*
Irregularities 216*l*
Regularity of Calls 216*m*
Payment of Calls 216*p*
Enforcing Payment of Calls 216*p*
Lien 216*q*
Mortgages of Shares 216*q*
Forfeiture 216*q*
Surrender of Shares 216*r*
Rectification of Register 216*t*
Transfers 216*u*
Restriction of Transfers 216*w*

	PAGE
CONTRACTS ON COMPANIES	229*a*
Authority of Agent	229*a*
Form of Contract	229*c*
Seal	229*c*
Necessity for Seal	229*c*
BORROWING AND DEBENTURES	285*a*
Necessity for Bye-law	285*a*
General Principles	285*b*
Irregular Borrowing	285*d*
Debentures	285*e*
Power to Create	285*e*
Negotiability	285*e*
Other Cases	285*e*
Debenture Stock	285*f*
Floating Charge	285*f*
Registration of Debentures	285*g*
Debenture Holders' Rights	285*h*
HOLDING LANDS	303*a*
Mortmain Dominion Licence	303*a*
MEETINGS	340*a*
Notice	340*a*
Proxies	340*b*
Quorum	340*b*
Ratification	340*b*
Chairman	340*c*
Resolutions	340*c*
Amendments	340*c*
Scrutineers	340*c*
Setting aside Election	340*c*
Votes and Majority	340*c*
LEGAL PROCEEDINGS BY AND AGAINST COMPANIES	412*a*
Internal Management	412*a*
Action by Shareholders in Name of Company	412*b*
Action against Shareholders.—Unsatisfied Judgment against Company	412*d*
WINDING-UP	533*a*
Who may Petition	533*f*
Evidence in Support of Petition	533*g*
Discretion of Court	533*g*
Costs of Petition	533*h*

PAGE

WINDING-UP—*continued.*
Second Petition 533*h*
Miscellaneous Cases 533*i*
Proceedings following a Winding-up Order 533*j*
Rent 533*q*
Taxes 533*q*
Bringing and Defending Actions 533*y*
Sale of the Assets 533*bb*
Contributories 533*gg*

AMALGAMATION 540*a*

APPENDICES.

APPENDIX I.—Procedure for Incorporation (Ontario) . . . 559

APPENDIX II.—Extra Provincial Licences (British Columbia) . 576

APPENDIX III.—Extra Provincial Licence (Ontario) . . . 581

TABLE OF CASES.

PAGE

A 1 Biscuit Co., Re, W. N. (1899), 115 79

Aaron's Reefs, Ltd. *v.* Twiss, [1896] A. C. 273; 65 L. J. P. C. 54; 74 L. T. 794 ... ... 140, 141, 381

Abercorn's, Marquis of, Case (National Assurance, &c., Association, Re), 4 De G. F. & J. 78; 31 L. J. Ch. 828; 7 L. T. 225; 10 W. R. 548 138

Aberdeen Rail. Co. *v.* Blaikie, 1 Macq. 461; 23 L. T. 315; 1 Pater. 119, 394 ... ... 77, 222, 223

Abrahams L. & Sons, Ltd., [1902] 1 Ch. 695; 71 L. J. Ch. 307; 86 L. T. 290, 50 W. R. 284 ... ... 238, 249

Abstainers and General Insurance Co., Re, [1891] 2 Ch. 124; 60 L. J. Ch. 510; 64 L. T. 256 ... ... 50, 53

Accident Insurance Co., Ltd. *v.* Accidental Disease and General Insurance Co., Ltd., 54 L. J. Ch. 104 15

Accidental Death Insurance Co., Re, 7 Ch. D. 568; 47 L. J. Ch. 396; 26 W. R. 473 480

Accidental Insurance Co., Re. *See* Bridger's and Neill's Case; Chappell's Case.

Accidental Insurance Corporation *v.* Davis, 15 L. T. 182 160

Accles, Ltd., Hodgson *v.* Accles, [1902] W. N. 164; 51 W. R. 57 284

Adair *v.* Old Bushmills Distillery Co., [1903] W. N. 24 322

Adam Eyton. *See* Eyton, Ex parte.

Adams' Case (United Ports Co., Re), 13 Eq. 474; 41 L. J. Ch. 270; 26 L. T. 124; 20 W. R. 356 ... ... 144, 211

Adamson's Case (Paraguassu Tramroad Co., Re), 18 Eq. 670; 44 L. J. Ch. 125; 22 W. R. 820 165

Addinell's Case (Leeds Banking Co., Re), L. R. 1 Eq. 225; 35 L. J. Ch. 75; 13 L. T. 456; 14 W. R. 72 131

Addison's Case (Patent Paper Manufacturing Co., Re), 5 Ch. 294; 22 L. T. 692; 18 W. R. 365 211

———————. *See* Brampton and Longtown Rail. Co., Re.

Addlestone Linoleum Co., Re (Benson's Claim), 37 Ch. Div. 191; 36 W. R. 57 ... ... 40, 41, 137, 142, 213, 364, 399, 441

Adelphi Hotel Co., Re, 34 L. J. Ch. 523; 3 De G. J. & S. 650 131

Adey *v.* Hill, 4 C. B. 38 329

Ador, Ex parte, Browne, Re, [1891] 2 Q. B. 574; 61 L. J. Q. B. 15; 65 L. T. 485; 40 W. R. 71 491

Aerators Ltd. *v.* Tollit, [1902] 2 Ch. 319; 71 L. J. Ch. 727; 86 L. T. 651; 50 W. R. 584 15

African Farms, Re, [1906] 1 Ch. 640 441

African Gold Concessions and Development Co. *See* Markham and Darter's Case.

Agar *v.* Athenæum Life Society, 3 C. B. N. S. 725; 27 L. J. C. P. 95; 4 Jur. N. S. 211 ... ... 102, 232

Agency Land, &c. Co. of Australia, 20 T. L. R. 41 201

Aggs *v.* Nicholson, 1 H. & N. 165; 25 L. J. Ex. 348; 4 W. R. 776 ... 392

PAGE

Agra and Masterman's Bank, Ex parte, 6 Ch. 206 420
———————————, 15 W. R. 544 599
———————————, Re, 12 Eq. 509, n. 467
Agriculturist Cattle Insurance Co., Re. *See* Baird's Case; Bellhaven's Case; Brotherhood's Case; Bush's Case; Hughes, Ex parte; Stanhope's Case; Stewart's Case.
Alabama, &c. Rail. Co., Re, [1891] 1 Ch. 213; 60 L. J. Ch. 221; 64 L. T. 127; 2 Meg. 377 ... ... 530, 531, 532
Albert Life Assurance Co., Re, 6 Ch. 381; 40 L. J. Ch. 505; 24 L. T. 768; 19 W. R. 670 ... ... 528, 532
Albert *v.* Ehrmann Bros., Ltd. *See* Ehrmann Bros., Ltd.
Albion Life Assurance, Re. *See* Winstone's Case.
Albion Steel Co. *v.* Martin, 1 Ch. D. 580; 45 L. J. Ch. 173; 33 L. T. 660; 24 W. R. 134 351
Aldborough Hotel Co., Re. *See* Simpson's Case.
Alexander *v.* Automatic Telephone Co., [1899] 2 Ch. 302; 68 L. J. Ch. 514; 80 L. T. 753 ... 135, 171
———————————, [1900] 2 Ch. 56; 69 L. J. Ch. 428; 82 L. T. 400; 48 W. R. 546 ... 33, 111, 160, 162 410, 411
——— *v.* Simpson, 43 Ch. Div. 139; 59 L. J. Ch. 133; 61 L. T. 708; 38 W. R. 161 ... ... 327, 339
Alexandra Palace Co., Re, 21 Ch. D. 149; 51 L. J. Ch. 655; 46 L. T. 730; 30 W. R. 771 ... ... 38, 313, 317, 353, 358
——————— 23 Ch. D. 297; 52 L. J. Ch. 428; 48 L. T. 424; 31 W. R. 808 ... ... 358, 359
Alexandra Park Co., Re. *See* Hart's Case.
Alfreton District, &c., Society, Re, 7 L. T. 817; 11 W. R. 301 417
Allen *v.* Gold Reefs of West Africa, Ltd., [1900] 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 48 W. R. 452 ... ... 25, 179, 182, 330
——— *v.* Londonderry and Enniskillen Rail. Co., 25 W. R. 524 323
Allen's Case. *See* Almada and Tirito Co., Re.
Alliance Marine Insurance Co., Re, [1892] 1 Ch. 300; 61 L. J. Ch. 176; 65 L. T. 554; 40 W. R. 329 20
Alma Spinning Co., Re. *See* Bottomley's Case.
Almada and Tirito Co., Re (Allen's Case), 38 Ch. Div. 415; 36 W. R. 593 ... ... 41, 131, 137, 213
Alman *v.* Oppert, [1901] 2 K. B. 576; 70 L. J. K. B. 745; 84 L. T. 828 ... ... 369, 386
Alpha Co. *See* Ward & Alpha Co.
Alsbury, Re, 45 Ch. D. 237; 60 L. J. Ch. 29; 63 L. T. 576; 39 W. R. 136 319
Amalgamated Syndicates, Ltd., Re, [1897] 2 Ch. 600; 66 L. J. Ch. 783; 77 L. T. 431; 46 W. R. 75; 4 Mans. 308 ... 45, 434, 507
———————————, [1901] 2 Ch. 181; 70 L. J. Ch. 726; 84 L. T. 864 ... ... 499, 507
Ambergate, &c., Rail. Co. *v.* Mitchell, 4 Exch. 540; 6 Rail. Cases, 235 ... ... 55, 94, 171
——————————— *v.* Norcliffe, 6 Exch. 629; 20 L. J. Ex. 234 174
Ambrose Lake Tin Co. *See* Clarke's Case.
———————————, Taylor, Ex parte, 14 Ch. Div. 390; 49 L. J. Ch. 457; 42 L. T. 604; 28 W. R. 783 351
American Exchange *v.* Gillig, 58 L. J. Ch. 706; 61 L. T. 502 454
American Pastoral Co., 62 L. Times 625 50

PAGE

Ames' Case, W. N. (1896), 79 167

Ames *v.* Birkenhead Docks, 20 Beav. 332; 24 L. J. Ch. 540; 1 Jur. N. S. 529 278

Amos *v.* Chadwick, 4 Ch. D. 869; 9 Ch. Div. 459; 39 L. T. 53; 26 W. R. 840 373

Anderson's Case (Bank of Hindustan, China and Japan, Re), 8 Eq. 509 196

——————— (Scottish Petroleum Co., Re), 17 Ch. D. 373; 50 L. J. Ch. 269; 43 L. T. 723; 29 W. R. 372 140, 209, 378

——————— (Wedgwood Coal Co., Re), 7 Ch. Div. 75; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442 167

Anderson *v.* Butler's Wharf Co., 48 L. J. Ch. 824 235

Andress' Case (Church, &c., Insurance Co., Re), 8 Ch. Div. 126; 47 L. J. Ch. 679; 38 L. T. 266; 26 W. R. 567 166

Andrew, Re. *See* Rippon, Ex parte.

Andrews' Case, 8 Eq. 176; 20 L. T. 943; 17 W. R. 784 ... ... 417, 419

Andrews *v.* Brown & Gregory, Ltd. *See* Brown & Gregory, Ltd.

Andrews *v.* Gas Meter Co., [1897] 1 Ch. 361; 66 L. J. Ch. 246; 76 L. T. 132; 45 W. R. 321 ... ... 26, 152

——— *v.* Mockford (No. I), [1896] 1 Q. B. 372; 65 L. J. Q. B. 302; 73 L. T. 726 ... ... 143, 367

Anglesea Colliery Co., Re, 1 Ch. 555; 35 L. J. Ch. 809; 12 Jur. N. S. 696; 14 W. R. 1004 ... ... 469, 479, 502, 503

Anglo-African Steamship Co., Re, 32 Ch. D. 348; 55 L. J. Ch. 579; 54 L. T. 807; 34 W. R. 554 462

Anglo-American Leather Cloth Co., 43 L. T. 43 262

Anglo-Austrian Printing and Publishing Union, Re, Brabourne *v.* Same, [1895] 2 Ch. 891; 65 L. J. Ch. 38; 73 L. T. 442; 44 W. R. 186; 2 Mans. 614 ... ... 262, 463

———————————————————————————, [1894] 2 Ch. 622; 63 L. J. Ch. 632; 71 L. T. 331; 42 W. R. 648; 1 Mans. 361 464

Anglo-Continental Corporation of Western Australia, Re, [1898] 1 Ch. 327; 67 L. J. Ch. 179; 78 L. T. 157; 46 W. R. 413; 5 Mans. 184 ... 503

Anglo-Danish Steam Nav. Co., Re. *See* Sahlgreen and Carrall's Case.

Anglo-French Co-operative Society, Re. *See* Pelly, Ex parte.

Anglo-French Exploration Co., [1902] 2 Ch. 845; 71 L. J. Ch. 800; 51 W. R. 8 50

Anglo-Greek Steam Co., Re, L. R. 2 Eq. 1; 14 L. T. 120; 12 Jur. 323 ... ... 67, 80, 435, 445

Anglo-Moravian Hungarian Junc. Rail. Co., Re. *See* Dents' Case.

———————————————————————————. *See* Forbes' Case.

———————————————————————————. *See* Watkin, Ex parte.

Anglo-Oriental Carpet Manufacturing Co., [1903] 1 Ch. 914; 72 L. J. Ch. 458; 88 L. T. 391; 51 W. R. 634 249

Anglo-Romano Water Co., Re. *See* Wright, Ex parte (Anglo-Romano Water Co., Re).

Anglo-Universal Bank *v.* Baragnon, 45 L. T. 362 110

Angus *v.* Clifford, [1891] 2 Ch. 449; 60 L. J. Ch. 443; 65 L. T. 274; 39 W. R. 498; 7 Times L. R. 123 ... ... 367, 380

Anning and Cobb's Claim (Taurine Co., Re), 38 L. T. 53 524

Appleton French and Scrafton, Ltd., [1905] 1 Ch. 749; 74 L. J. Ch. 471; 93 L. T. 8; 53 W. R. 601 453

Appleyard, Ex parte, 18 Ch. D. 587; 50 L. J. Ch. 554; 45 L. T. 552; 30 W. R. 147 142

PAGE

Arauco Co., Re, W. N. (1899), 134 449
———————, 79 L. T. 336 260
Archer's Case, [1892] 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 W. R. 212 ... ... 348, 352, 353
Archers' Case. *See* London and Northern Bank.
Archibald D. Dawnay, Ltd. *See* Dawnay, Ltd., Re.
Argus Life Assurance Co., Re, 39 Ch. D. 571; 58 L. J. Ch. 166; 59 L. T. 689; 37 W. R. 215 522
Arkwright *v.* Newbold, 17 Ch. Div. 301; 50 L. J. Ch. 372; 44 L. T. 393; 29 W. R. 455 ... ... 125, 381, 385
Armitage, Re, [1893] 3 Ch. 337; 63 L. J. Ch. 110; 69 L. T. 619 319
Army and Navy Hotel, Ltd., Re, 31 Ch. D. 644; 55 L. J. Ch. 370, 511; 34 W. R. 389 440
Arnison *v.* Smith, 41 Ch. D. 98 373
———————, 41 Ch. Div. 348; 61 L. T. 63; 37 W. R. 739; 1 Meg. 388 ... ... 366, 370, 373, 376, 379, 383
Arnot's Case (Barangah Oil Co., Re), 36 Ch. Div. 702; 57 L. T. 353 ... ... 131, 137, 145, 165, 212
Arnot *v.* United African Lands, Ltd., [1901] 1 Ch. 518; 70 L. J. Ch. 306; 84 L. Times 309; 49 W. R. 322 339
Arthur Average Association, Re, 10 Ch. 542; 44 L. J. Ch. 569; 32 L. T. 525; 23 W. R. 939 4
Artizans Land and Mortgage Corporation, [1904] 1 Ch. 796; 73 L. J. Ch. 581; 52 W. R. 330 323
Artistic Colour Printing Co., Re. *See* Fourdrinier, Ex. parte.
———————, 14 Ch. D. 502 427
Ashbury, Ex parte, Smith, Knight, & Co., Re, 5 Eq. 223; 37 L. J. Ch. 264; 18 L. T. 45; 16 W. R. 473 499
——— *v.* Watson, 28 Ch. D. 56; 30 Ch. Div. 376; 54 L. J. Ch. 12, 985; 51 L. T. 766; 33 W. R. 882 ... ... 26, 120, 153
Ashbury Rail. Carriage Co. *v.* Riche, L. R. 9 Ex. 224; L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 451 ... ... 17, 18, 27, 31, 45, 46, 202
Ashley's Case (Estates Investment Co., Re), 9 Eq. 263; 39 L. J. Ch. 354; 22 L. T. 83; 18 W. R. 395 142
Ashton Gas Co. *v.* Attorney-General, [1906] A. C. 10; 75 L. J. Ch 1; 93 L. T. 676 323
Ashton *v.* Corrigan, 13 Eq. 76; 41 L. J. Ch. 96 250
Ashurst *v.* Mason, 20 Eq. 225; 44 L. J. Ch. 337; 23 W. R. 506 ... 346, 357
Asiatic Banking Corporation. *See* Royal Bank of India, Re; Symon's Case.
Askew's Case (Ruby Consolidated Mining Co., Re), 22 W. R. 762; 43 L. J. Ch. 633; 9 Ch. 664 124
Association of Land Financiers, Re, 10 Ch. D. 269; 27 W. R. 224 ... 422
Astley *v.* New Tivoli, Ltd., [1899] 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. 541; 47 W. R. 326; 6 Mans. 64 91
Aston, Re, Mexican and South American Co., Re, 27 Beav. 474 455
Athenæum Life Assurance Society, Re, 4 K. & J. 549 ... ... 98, 101
——————————— *See* Richmond and Painter's Cases.
——————————— *v.* Pooley, 3 De G. & J. 294 233, 271
Atkins *v.* Wardle, 58 L. J. Q. B. 377; 61 L. T. 23 ... ... 227, 393
Attorney-General *v.* Brecon, Mayor of, 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52 34
——————————— *v.* Great Eastern Rail. Co., 5 App. Cas. 473; 49 L. J. Ch. 545; 42 L. T. 810; 28 W. R. 769 43

PAGE

Attorney-General *v.* Great Eastern Rail. Co., 11 Ch. D. 449; 48 L. J. Ch. 429; 40 L. T. 265; 27 W. R. 759 299
——— *v.* Great Northern Rail. Co., 1 Dr. & Sm. 154; 8 W. R. 556; 2 L. T. 653 31
——— *v.* London and North Western Rail. Co., 11 Ch. Div. 470 (cited) 299
——— *v.* Mersey Rail. Co., [1907] A. C. 415; 76 L. J. Ch. 568; 97 L. T. 524 31
——— *v.* Metropolitan Electric Supply Co., [1905] 1 Ch. 757; 74 L. J. Ch. 145, 384; 92 L. T. 544; 52 W. R. 418 17
——— *v.* West Gloucestershire Water Co., [1909] 1 Ch. 636 31
Attree *v.* Hawe, 9 Ch. D. 337; 47 L. J. Ch. 863; 26 W. R. 871 272
Attwood *v.* Small, 1 Man. & Ry. 246 392
Atwool *v.* Merryweather, 5 Eq. 464, n.; 37 L. J. Ch. 35 ... 59, 111, 410, 411
Audain, Ex parte (Licensed Victuallers' Trading Association, Re), 42 Ch. Div. 1; 58 L. J. Ch. 467; 60 L. T. 684; 37 W. R. 674; 1 Meg. 180 69
Auriferous Properties, Re (No. 1), [1898] 1 Ch. 691; 67 L. J. Ch. 367; 5 Mans. 260 489
——— ——— (No. 2), [1898] 2 Ch. 428; 67 L. J. Ch. 574; 79 L. T. 71; 47 W. R. 75 489
Austin's Case (Peninsula, &c., Bank, Re), 2 Eq. 435; 14 W. R. 1010 ... 137
——— (Phosphate of Lime Co., Re), 24 L. T. 932 ... ... 97, 172, 207
Australia, Bank of *v.* Harding. *See* Bank of Australia *v.* Harding.
Australian Direct Steam Navigation Co., Re, 20 Eq. 325; 44 L. J. Ch. 676 423
Australian Joint Stock Bank, Re, W. N. (1897), 48 ... ... 435, 436
Australian Steam Clipper Co. *v.* Mounsey, 4 K. & J. 733; 31 L. T. O. S. 246; 6 W. R. 734 231
Automatic Self-Cleansing Filter Co. *v.* Cunningham, [1906] 2 Ch. 34; 75 L. J. Ch. 437; 94 L. T. 651 ... ... 301, 411
Ayr Harbour Trustees *v.* Oswald, 8 App. Cas. 623 32

B.

Badcock *v.* Cumberland Gap Park Co., [1893] 1 Ch. 362; 62 L. J. Ch. 247; 68 L. T. 155; 41 W. R. 204 409
Baghott *v.* Norman, 41 L. T. 787 245
Baglan Hall Colliery Co., Re, 5 Ch. 346; 35 L. J. Ch. 591; 23 L. T. 60; 18 W. R. 499 ... ... 18, 136, 164
Bagnall *v.* Carlton, 6 Ch. Div. 371; 47 L. J. Ch. 30; 37 L. T. 481; 26 W. R. 243 ... ... 61, 348
Bagnalston and Wexford Rail. Co., Re, Ir. Rep. 4 Ex. 505 231
Bagot Tyre Co. *v.* Clipper Tyre Co., [1902] 1 Ch. 146 218
Bagshaw, Ex parte (Empire Assurance Corporation, Re), 4 Eq. 341; 36 L. J. Ch. 663; 16 L. T. 343; 15 W. R. 889 ... 300, 516
——— *v.* Eastern Union Rail. Co., 6 Rail. Cas. 152; 7 Hare, 114 ... 34
——— *v.* ——— 2 Mac. & G. 389 46
Bahia and San Francisco Rail. Co., Re, L. R. 3 Q. B. 584; 9 B. & S. 844; 37 L. J. Q. B. 176; 18 L. T. 467; 16 W. R. 862 ... ... 190, 213
Bailey's Case (Bowron & Co., Re), 3 Ch. 592; 16 W. R. 1093; 37 L. J. Ch. 670; 19 L. T. 58 135
Bailey *v.* Birkenhead Rail. Co., 12 Beav. 433; 6 Rail. Cas. 256; 19 L. J. Ch. 377; 14 Jur. 119 ... ... 110, 176

PAGE

Baillie's Case, [1898] 1 Ch. 110; 67 L. J Ch. 81; 77 L. T. 523; 46 W. R. 187; 4 Mans. 398 ... ... 137, 212
Baillie *v.* Edinburgh Oil Co., 3 Cl. & Fin. 639 ... ... 173, 175
Baily *v.* British Equitable Assurance Co., [1904] 1 Ch. 374; 73 L. J. Ch. 240; 90 L. T. 335; 52 W. R. 549 26
Bainbridge *v.* Smith, 41 Ch. Div. 462; 60 L. T. 879; 37 W. R. 594 83, 91, 93
Baines, Ex parte, National Wholemeal Bread Co., Re, [1892] 2 Ch. 457; 61 L. J. Ch. 712; 67 L. T. 293; 40 W. R. 591 493
Baird's Case (Agriculturist Cattle Insurance Co., Re), 5 Ch. 725; 23 L. T. 424; 18 W. R. 1094 ... ... 171, 477
——— (Bangor and North Wales Mutual Marine Protection Association), [1899] 2 Ch. 593; 68 L. J. Ch. 521; 80 L. T. 870; 47 W. R. 695 22
Baker's Case, 7 Ch. 115; 41 L. J. Ch. 275 213
Baker, Ex parte (National Steam Fuel Co., Re), 1 Dr. & Sm. 55 ... 81
——— *v.* Cave, 1 H. & N. 674 627
Balaghât Gold Mining Co., [1901] 2 K. B. 665; 70 L. J. K. B. 866; 85 L. T. 8; 49 W. R. 625 402
Balfour *v.* Ernest, 5 C. B. N. S. 601; 28 L. J. C. P. 170; 5 Jur. N. S. 439; 7 W. R. 207 106
Balgooley Distillery Co., Re (Weeke's Case), 17 L. R. Ir. 239 40
Balkis Consolidated Co. *v.* Tomkinson, [1893] A. C. 396; 63 L. J. Q. B. 134; 69 L. T. 598; 42 W. R. 204 ... ... 189, 190
Ballina Rail. Co., Re, 21 L. R. Ir. 497 138
Balmenach Glenlivet Distillery Co. *v.* Croall, 8 Fraser, 1135 51
Bangor and Portmadoc Slate and Slab Co., Re, 20 Eq. 59; 32 L. T. 389; 23 W. R. 785 502
Bank of Africa *v.* Salisbury Gold Mining Co., [1892] A. C. 281; 61 L. J. P. C. 34; 66 L. T. 237; 41 W. R. 47 ... ... 179, 196
Bank of Australasia *v.* Breillat, 6 Moore P. C. 152; 12 Jur. 189 231
Bank of Australia *v.* Harding, 9 C. B. 661 8
Bank of Gibraltar and Malta, Re, 1 Ch. 69; 35 L. J. Ch. 49; 11 Jur. N. S. 916; 13 L. T. 386; 14 W. R. 69 ... ... 439, 510
Bank of Hindustan, China and Japan, Re. *See* Anderson's Case; Campbell's Case; Fricker's Case; Harrison's Case; Higg's Case; Kintrea, Ex parte; Los's Case; Smith's Case; Swan's Case.
Bank of Hindustan, China and Japan *v.* Allinson, L. R. 6 C. P. 222; 40 L. J. C. P. 117; 23 L. T. 854; 19 W. R. 505 151
Bank of Hindustan, China and Japan *v.* Eastern Financial Association, L. R. 2 P. C. 489; 20 L. T. 889; 17 W. R. 554 480
Bank of Ireland, Ex parte. *See* Old Bushmills Distillery.
Bank of London and National and Provincial Insurance Association, Re, 6 Ch. 421; 40 L. J. Ch. 562; 19 W. R. 484 417
Bank of London Assurance Association, Re. *See* Part's Case.
Bank of Montreal *v.* Sweeny, 12 App. Cas. 617; 56 L. J. P. C. 79; 56 L. T. 897 191
Bank of South Australia, Re, 2 Mans. 148; 13 R. 343 419
———————, Union Bank, Ex parte, [1895] 1 Ch. 578; 64 L. J. Ch. 397; 72 L. T. 273; 43 W. R. 359; 2 Mans. 129 436, 467, 516
Bank of South Australia *v.* Abrahams, L. R. 6 P. C. 265; 32 L. T. 277; 23 W. R. 668 234
Bank of Syria, Re, [1900] 2 Ch. 272; 69 L. J. Ch. 412; 83 L. T. 165; [1901] 1 Ch. 115 ... ... 100, 232
Bank of Turkey *v.* Ottoman Co., 2 Eq. 366; 14 L. T. 545, 884; 14 W. R. 819 ... ... 66, 110

PAGE

Bannatyne *v.* Spanish Direct Telegraph Co., 34 Ch. Div. 287; 56 L. J. Ch. 107; 55 L. T. 716; 35 W. R. 125 50
Bansha Woollen Mills Co., Re, 21 L. R. Ir. 181 253
Barangah Oil Refining Co., Re. *See* Arnot's Case.
Barber's Case (East Norfolk Tramways Co., Re), 5 Ch. D. 963; 26 W. R. 3 85
Barber, Re (Oxford and Worcester Rail. Co., Re), 15 Jur. 51 131
Barcelona Tramways Co., unreported 292
Bardwell *v.* Sheffield Waterworks Co., 14 Eq. 517; 41 L. J. Ch. 700; 20 W. R. 939 317
Bargate *v.* Shortridge, 5 H. L. Cas. 297; 24 L. J. Ch. 547; 3 W. R. 423 102
Barge's Case, 5 Eq. 420; 18 L. T. 227 448
Baring-Gould *v.* Sharpington Combined Pick and Shovel Syndicate, [1899] 2 Ch. 80; 68 L. J. Ch. 429; 80 L. T. 739; 47 W. R. 564 ... 519
Barnard, Ex parte, Great Kruger Gold Mining Co., Re, [1892] 3 Ch. 307; 62 L. J. Ch. 22; 40 W. R. 625 459
Barned's Bank, Re. *See* Contract Corporation, Ex parte; Helbert *v.* Banner (Barned's Bank, Re).
Barned's Banking Co., Re, 36 L. J. Ch. 215 476
——— 14 L. T. 451; 14 W. R. 722 437
——— Contract Corporation, Ex parte, 3 Ch. 105; 37 L. J. Ch. 81; 17 L. T. 269; 16 W. R. 193 12, 18, 299
——— Coupland's Claim, 8 Eq. 472; 38 L. J. Ch. 575; 21 L. T. 286; 17 W. R. 1055 497
——— Kellock's Case, 3 Ch. 769; 39 L. J. Ch. 112; 18 L. T. 671; 16 W. R. 919 497
Barnes, Ex parte, [1896] A. C. 146; 65 L. J. Ch. 394; 74 L. T. 153; 44 W. R. 433; 3 Mans. 63 456
Barnett's Case (Essex Brewery Co., Re), 18 Eq. 507; 30 L. T. 862; 22 W. R. 891 ... ... 41, 144
——— (Stranton Iron and Steel Co., Re), 19 Eq. 449; 44 L. J. Ch. 233; 23 W. R. 378 488
Barnett, Hoares & Co. *v.* South London Tramways Co., 18 Q. B. D. 815; 56 L. J. Q. B. 452; 57 L. T. 436; 35 W. R. 640 229
Barney *v.* Stubbs, [1891] 1 Ch. 475; 60 L. J. Ch. 190; 64 L. T. 306; 39 W. R. 200 426
Barrett's Case (Leeds Banking Co., Re), 3 De G. J. & S. 30; 34 L. J. Ch. 558; 12 L. T. 514; 13 W. R. 826 367
——— (Moseley Green Coal and Coke Co., Re), 4 De G. J. & S. 756; 34 L. J. Bk. 41; 12 L. T. 193, 756; 13 W. R. 559 493
Barrett, Ex parte, 2 Dr. & Sm. 415 131
Barrow's Case, 49 L. J. Ch. 253; 42 L. T. 12; 28 W. R. 341 347
——— (Overend, Gurney & Co., Re), 3 Ch. 784; 38 L. J. Ch. 15; 19 L. T. 271; 16 W. R. 1160 ... ... 177, 479
——— (Stapleford Colliery Co., Re), 14 Ch. Div. 432; 49 L. J. Ch. 498; 28 W. R. 341 166
Barrow Hæmatite Steel Co., Re, 39 Ch. D. 582; 58 L. J. Ch. 148; 59 L. T. 500; 37 W. R. 249 50
Barrow Hæmatite Steel Co., Re, [1900] 2 Ch. 846; 69 L. J. Ch. 869; 83 L. T. 397; 17 Times L. R. 569 ... ... 50, 51
Barrow Mutual Ship Insurance Co. *v.* Ashburner, 54 L. J. Q. B. 377; 54 L. T. 58 194
Barrow *v.* Paringa Mines, [1909] 2 Ch. 658 517
Barrow-in-Furness Land Co., Re, 14 Ch. Div. 400; 42 L. T. 888 ... 165
Barry *v.* Croskey, 2 J. & H. 1 367

PAGE

Bartlett *v.* Holmes, 13 C. B. 630 258
——— *v.* Mayfair Property Co., [1898] 2 Ch. 28; 67 L. J. Ch. 337; 78 L. T. 302; 46 W. R. 465; 5 Mans. 126 ... ... 163, 235
——— *v.* Northumberland Avenue Hotel Co., 53 L. T. 611 278
——— *v.* West Metropolitan Tramways, [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560 277
——— *v.* ———, [1894] 2 Ch. 286; 63 L. J. Ch. 519; 70 L. T. 491; 42 W. R. 500; 1 Mans. 272 272
Barton's Case (National Patent Fuel Co., Re), 4 De G. & J. 46; 28 L. J. Ch. 637 201
Barton *v.* London and North Western Rail. Co., 24 Q. B. Div. 77 180, 187, 189, 199
——— *v.* ——— 38 Ch. Div. 144 213, 270
——— *v.* North Staffordshire Rail. Co., 38 Ch. D. 458; 57 L. J. Ch. 800; 58 L. T. 549; 36 W. R. 754 ... ... 187, 213
Barton-upon-Humber and District Waterworks Co., Re, 42 Ch. D. 585; 58 L. J. Ch. 613; 38 W. R. 8 ... ... 272, 417
Barwick *v.* English Joint Stock Bank, L. R. 2 Ex. 259; 36 L. J. Ex. 147 109
Basingstoke Canal Co., 14 W. R. 956 417
Bassett, Re, Lewis, Ex parte, 2 Mans. 177; 43 W. R. 427 461
Bastow & Co., Ex parte, 37 L. J. Ch. 51 446
———, Re, 4 Eq. 681; 36 L. J. Ch. 899; 16 L. T. 788; 15 W. R. 1033 424
Batard *v.* Hawes, 2 E. & B. 287; 22 L. J. Q. B. 443; 17 Jur. 1154 ... 63
Bateman, Ex parte, Contract Corporation, Re, 15 W. R. 118, 245; 15 L. T. 495 426
——— *v.* Ball, 56 L. J. Q. B. 291 467
——— *v.* Mid Wales Rail. Co., 1 C. P. 499; 35 L. J. C. P. 205; 14 W. R. 672; 12 Jur. N. S. 453 225
Bates, Ex parte, Progress Assurance Co., Re, 39 L. J. Ch. 496; 22 L. T. 430; 18 W. R. 722 493
Batey, Re, Emanuel, Ex parte. *See* Emanuel, Ex parte, Batey, Re.
Bath's Case (Norwich Provident Insurance Society, Re), 8 Ch. D. 334; 47 L. J. Ch. 601; 38 L. T. 267; 26 W. R. 441 ... ... 95, 209
Batten *v.* Wedgwood Coal Co., 28 Ch. D. 317; 54 L. J. Ch. 686; 52 L. T. 212; 33 W. R. 303 284
Battie's Case, 39 L. J. Ch. 391; 22 L. T. 464; 18 W. R. 620 197
Baty *v.* Keswick, [1901] W. N. 167; 85 L. T. 18; 50 W. R. 14 390
Baum, Re. *See* Cooper, Ex parte.
Baxters, Ltd., Re, W. N. (1898), 60 428
Bayley's Case. *See* London Celluloid Co., Re.
Bayliss, Ex parte. *See* Hill's Waterfall Estate and Gold Mining Co., Re (Bayliss, Ex parte).
Beattie *v.* Ebury, Lord, L. R. 7 H. L. 102; 7 Ch. 777; 44 L. J. Ch. 20; 30 L. T. 581; 22 W. R. 897 ... ... 377, 393, 395
Beaujolais Wine Co., Re, 3 Ch. 15; 16 W. R. 177 ... ... 439, 510
Bechuana Land Exploration Co. *v.* London Trading Bank, [1898] 2 Q. B. 658; 67 L. J. Q. B. 986; 79 L. T. 270 268
Beck's Case (United Ports, &c., Insurance Co., Re), 9 Ch. 392; 43 L. J. Ch. 531; 30 L. T. 346; 22 W. R. 460 131
Beck *v.* Kantorowicz, 3 K. & J. 230 ... ... 60, 62, 348
Beckett *v.* Tower Assets Co., [1891] 1 Q. B. 638; 60 L. J. Q. B. 493; 64 L. T. 497; 39 W. R. 438 240
Beckwith, Ex parte, New British Iron Co., Re, [1898] 1 Ch. 324; 67 L. J. Ch. 164; 78 L. T. 155; 46 W. R. 376; 5 Mans. 168 79

PAGE

Bedford *v.* Bagshaw, 4 H. & N. 538; 29 L. J. Ex. 59 367
Beer *v.* London and Paris Hotel Co., 20 Eq. 412; 32 L. T. 715 226
Beeston Pneumatic Tyre Co., Re, 14 Times L. R. 338 ... ... 502, 517
Belfast and Ulster Brewery Co. *v.* Trumble, 9 Scotch Sess. Cas. (3rd Series) 604 105
Belfast Shipowners' Co., Re, [1894] 1 I. R. 321 427
Belhaven's Case (Agriculturist Cattle Insurance Co., Re), 3 De G. J. & S. 41; 34 L. J. Ch. 503; 12 L. T. 595; 13 W. R. 849 203
Bell's Case (City of Glasgow Bank, Re), 4 A. C. 547 473
Bell Brothers, Re, 65 L. T. 245 195
Bellairs *v.* Tucker (1884), 13 Q. B. D. 562 377
Bellerby *v.* Rowland and Marwood's S. S. Co., [1902] 2 Ch. 14; 71 L. J. Ch. 541; 60 L. T. 671; 50 W. R. 566 ... ... 210, 213
Beman *v.* Rufford, 1 Sim. N. S. 550 34
Bennett's Case (Cameron's Coalbrook Coal Co., Re), 5 De G. M. & G. 284; 2 W. R. 448 195
Bennett *v.* Bury, Lord, 5 C. P. D. 339 373
Benson's Claim. *See* Addlestone Linoleum Co., Re.
Benson *v.* Heathorn, 1 Y. & C. (Ch.) 326 ... ... 348, 350, 354
Bentham Mills Co., Re, 11 Ch. Div. 900; 48 L. J. Ch. 671; 41 L. T. 10 28 W. R. 26 196
Bentinck, Ex parte (No. 1), 1 Meg. 12 ... ... 166, 193, 447, 488
——— *v.* Fenn. *See* Cape Breton Co., Re.
Bentley & Co., In re. *See* Harrison, Ex parte.
———, Ex parte (Regent United, &c., Stores, Re), 12 Ch. D. 850; 49 L. J. Ch. 240; 41 L. T. 500; 28 W. R. 165 165
Bentley's Yorkshire Breweries, [1909] 2 Ch. 609 273
Berkeley *v.* Standard Investment Co., 13 C. D. 97; 49 L. J. Ch. 1; 41 L. J. 388; 28 W. R. 125 412
Bessemer Steel Co., Re, 1 Ch. D. 251; 33 L. T. 631; 24 W. R. 94 ... 531
Bethell *v.* Trench Tubeless Tyre Co., Re. *See* Trench Tubeless Tyre Co., Re.
Betts *v.* De Vitre, 3 Ch. 429; 37 L. J. Ch. 325; 18 L. T. 165; 16 W. R. 529 396
—— *v.* Great Eastern Rail. Co., 3 Ex. Div. 182; 47 L. J. Ex. 461 298
Beville's Case, Baron de (South of France Co., Re), 7 Eq. 11; 38 L. J. Ch. 18; 17 W. R. 19 136
Bidwell Brothers, Re, [1893] 1 Ch. 603; 62 L. J. Ch. 549; 68 L. T. 342; 41 W. R. 363 ... ... 334, 336
Biederman *v.* Stone, 2 C. P. 504; 36 L. J. C. P. 198; 16 L. T. 415; 15 W. R. 811 448
Biggerstaff *v.* Rowatt's Wharf, Ltd., [1896] 2 Ch. 93; 65 L. J. Ch. 536 74 L. T. 473; 44 W. R. 536 ... ... 96, 102, 259, 261
Bigg's Case (East Konsberg Co., Re), L. R. 1 Eq. 309; 35 L. J. Ch. 216; 13 L. T. 627; 14 W. R. 244 204
Bignold, Ex parte (Norwich Yarn Co., Re), 22 Beav. 143 81
Bill *v.* Darenth Valley Rail. Co., 1 H. & N. 305; 26 L. J. Ex. 81; 4 W. R. 684 102
—— *v.* Sierra Nevada Co., 6 Jur. N. S. 184; 29 L. J. Ch. 176; 8 W. R. 205 153
Binney *v.* Ince Hall Coal Co., 35 L. J. Ch. 363; 14 L. T. 392 311
Birch *v.* Cropper. *See* Bridgewater Navigation Co., Re.
Bird, Ex parte, 4 De G. J. & S. 200; 33 L. J. Bk. 49; 9 L. T. 669; 12 W. R. 321; 10 Jur. N. S. 138 129

PAGE

Bird *v.* Bird's Sewage Co., 9 Ch. 358; 43 L. J. Ch. 399; 30 L. T. 281 ... 517, 518

—— *v.* Eggleton, 29 Ch. D. 1012; 54 L. J. Ch. 819; 53 L. T. 87; 33 W. R. 774 298

Birkenhead and Cheshire Rail. Co. *v.* Webster, 6 Ex. 277; 20 L. J. Ex. 234 174

Birmingham Banking Co., Ex parte. *See* Patent File Co., Re.

——————————, 3 Ch. 651; 37 L. J. Ch. 905; 19 L. T. 193; 16 W. R. 1003 420

——————————, Re, Brinsley, Ex parte, 36 L. J. Ch. 150; 15 L. T. 103 450

Biron's Case (Elham Valley Rail. Co., Re), 26 W. R. 606; 38 L. T. 401 85, 138

Bisgood *v.* Henderson's Transvaal Estates, [1908] 1 Ch. 743; 77 L. J. Ch. 486; 98 L. T. 809 ... ... 17, 26, 46, 300, 514

—— *v.* Nile Valley Co., Ltd., [1906] 1 Ch. 747; 75 L. J. Ch. 379; 94 L. T. 304; 54 W. R. 397 514

Bishop's Case, Financial Insurance Company, Re, 7 Ch. 396, n. 475

Bishop (E.) & Sons, Re, [1900] 2 Ch. 254; 69 L. J. Ch. 513; 82 L. T. 756; 7 Mans. 342 437

—— *v.* Balkis Co., 25 Q. B. Div. 512; 59 L. J. Q. B. 565; 39 W. R. 99; 2 Meg. 292 190

—— *v.* Smyrna and Cassaba Rail. Co. (No. 1), [1895] 2 Ch. 265; 64 L. J. Ch. 617; 72 L. T. 773; 43 W. R. 647; 2 Mans. 429 503

—— *v.* Smyrna and Cassaba Rail. Co. (No. 2), [1895] 2 Ch. 596; 64 L. J. Ch. 806; 73 L. T. 337; 2 Mans. 575 ... ... 311, 321, 504

Bissill *v.* Bradford Tramways Co., W. N. (1891), 51 276

Black's Case (Paraguassu Tramroad Co., Re), 8 Ch. 254; 42 L. J. Ch. 404; 28 L. T. 50; 21 W. R. 249 ... ... 161, 176, 488

Blackburn & Co., Re, [1899] 2 Ch. 725; 68 L. J. Ch. 764; 81 L. T. 520 449

Blackburn Building Society *v.* Cunliffe, Brooks & Co., 9 App. Cas. 857; 22 Ch. Div. 61 254, 255

—————————— *v.* ——————————, 29 Ch. Div. 902; 54 L. J. Ch. 1091; 53 L. T. 741 254

Blackpool Motor Car Co. (Hamilton *v.* Co.), [1901] 1 Ch. 77; 70 L. J. Ch. 61; 49 W. R. 124 448

Blackpool *v.* Hampson. *See* Imperial Hydropathic Hotel Co., Re.

Blaiberg, Ex parte, Toomer, Re, 23 Ch. D. 254; 52 L. J. Ch. 461; 49 L. T. 16; 31 W. R. 906 247

Blake, Ex parte (Life Association of England, Re), 34 Beav. 639 ... 209, 378

—— *v.* Mowatt, 21 Beav. 603 131

Blakeley's Case (Northern Coal Mining Co., Re), 3 Mac. & G. 726; 16 Jur. 299 478

Blakeley Ordnance Co., Re (Metropolitan and Provincial Bank, Ex parte), 8 Eq. 244: 21 L. T. 12; 17 W. R. 869 ... 497

——————————. *See* Brett's Case; Creyke's Case; Lumsden's Case; Stocken's Case.

——————————(New Zealand Bank, Ex parte), 3 Ch. 154; 37 L. J. Ch. 418; 18 L. T. 132; 16 W. R. 533 ... ... 233, 270

Blakemore, Re, Blakemore, Ex parte, 5 Ch. D. 372; 46 L. J. Ch. 118; 36 L. T. 783; 25 W. R. 488 486

Blaker *v.* Herts, &c., Waterworks Co., 41 Ch. D. 399; 58 L. J. Ch. 497; 60 L. T. 776; 37 W. R. 601; 1 Meg. 217 ... ... 258, 272, 277

Blaksley's Trusts, 23 Ch. D. 549; 48 L. T. 776 184

Bland's Case, [1893] 2 Ch. 612; 62 L. J. Ch. 975; 69 L. T. 700 ... 343, 348

PAGE

Blazer Fire Lighter Co., Re, [1895] 1 Ch. 402; 64 L. J. Ch. 161; 71 L. T. 665; 43 W. R. 364 426
Bloomenthal's Case (Bloomenthal *v.* Ford), [1897] A. C. 156; 66 L. J. Ch. 253; 76 L. T. 205; 45 W. R. 449; 4 Mans. 156 168
Bloomer *v.* Union Coal and Iron Co., 16 Eq. 383; 43 L. J. Ch. 96; 29 L. T. 130; 21 W. R. 821 235
Bloxam's Case, 33 Beav. 529; 33 L. J. Ch. 574; 4 De G. J. & S. 447; 10 L. T. 772; 12 W. R. 995 129
Bloxam *v.* Metropolitan Rail. Co., 3 Ch. 337; 17 L. T. 637; 18 L. T. 41; 16 W. R. 490 ... ... 37, 307, 317
Bloxwich Steel Co., Re, 1 Mans. 350; 8 R. 442 419
Bluck *v.* Mallalue, 27 Beav. 398 ... ... 92, 144
Bluett *v.* Stutchbury's, Ltd., [1908] 24 T. L. R. 469 90
Blyth's Case (Heaton Steel and Iron Co., Re), 4 Ch. D. 140; 36 L. T. 124; 25 W. R. 200 151
Bodega Co., [1904] 1 Ch. 276; 73 L. J. Ch. 198; 89 L. T. 694; 52 W. R. 249 78, 79, 80, 91, 92, 178, 196
Bolognesi's Case (London and Mediterranean Bank, Re), 5 Ch. 567; 40 L. J. Ch. 26; 18 W. R. 970 113
Bolton & Co., Re (Salisbury-Jones and Dale's Case), [1894] 3 Ch. 356; 64 L. J. Ch. 27; 71 L. T. 284; 1 Mans. 431 ... ... 86, 138
Bolton & Co., Re (Salisbury-Jones and Dale's Case), [1895] 1 Ch. 333; 64 L. J. Ch. 285; 72 L. T. 171; 2 Mans. 221 466
Bolton Benefit Loan Society, Re, 12 Ch. D. 679; 49 L. J. Ch. 39; 28 W. R. 164 416
——— Partners *v.* Lambert, 41 Ch. D. 295; 58 L. J. Ch. 425; 60 L. T. 687; 37 W. R. 434 104
——— *v.* Natal Land Co., [1892] 2 Ch. 124; 61 L. J. Ch. 128; 65 L. T. 786 ... ... 311, 316
Bombay Burmah Trading Co. *v.* Shroff, [1905] A. C. 214; 74 L. J. P. C. 41; 91 L. T. 812 336
Bomore Road, Re, [1906] 1 Ch. 359 540
Bond *v.* Barrow Hæmatite Steel Co., [1902] 1 Ch. 353; 71 L. J. Ch. 246; 86 L. T. 10; 50 W. R. 295 ... ... 312, 315, 316, 318, 321, 322
Bonelli's Electric Telegraph Co., Re. *See* Collie's Claim.
Booker, Ex parte. *See* West of England Bank, Re.
Booth *v.* New Africander Gold Mining Co., Ltd., [1903] 1 Ch. 295; 72 L. J. Ch. 125; 87 L. T. 509; 51 W. R. 193 ... ... 70, 300
Booth *v.* Walkden Spinning Co., [1909] W. N. 112 531
Borax Co., Re, 70 L. J. Ch. 162, [1901] 1 Ch. 326 ... ... 259, 261
Borland's Trustees *v.* Steel Bros., [1901] 1 Ch. 279; 70 L. J. Ch. 51; 49 W. R. 120 181
Borough Commercial and Building Society, Re, [1893] 2 Ch. 242; 62 L. J. Ch. 456; 69 L. T. 96; 41 W. R. 313 ... ... 26, 209
Bosanquet *v.* St. John D'el Rey Mining Co., 77 L. T. 206 321
Boschoeck Proprietary Co., Ltd. *v.* Fuke, [1906] 1 Ch. 148; 75 L. J. Ch. 261; 94 L. T. 398; 54 W. R. 359 ... ... 79, 81, 85, 103, 107, 328
Bostock *v.* North Staffordshire Rail. Co., 5 De G. & Sm. 584; 25 L. J. Ch. 235; 2 Jur. N. S. 248; 4 W. R. 336 31
Boston Deep Sea Fishing & Ice Co. *v.* Ansell, 39 C. D. 339; 59 L. T. 345 348
Bosworthen, &c., Mining Co., Re. *See* Jones's Case.
Bottomley's Case (Alma Spinning Co., Re), 16 Ch. D. 681; 50 L. J. Ch. 167; 43 L. T. 620; 29 W. R. 133 ... ... 100, 172, 205, 213
Bottomley *v.* Brougham, [1908] 1 K. B. 584; 77 L. J. K. B. 311; 99 L. T. 111 459

PAGE

Bouch *v.* Sproule, 12 A. C. 385; 56 L. J. Ch. 1037; 57 L. T. 345; 36 W. R. 193 319
Bound & Co., Ltd., Re, W. N. (1893), 1 418
Bowen, Ex parte (Staffordshire and Shropshire Rail. Co., Re), 22 L. J. Ch. 856 157
Bowen *v.* N. Defries & Co., [1904] 1 Ch. 37; 73 L. J. Ch. 1; 52 W. R. 253 248
Bowes *v.* Hope Insurance and Guarantee Society, 11 H. L. C. 389; 35 L. J. Ch. 574; 11 Jur. N. S. 643 415
Bowlby *v.* Bell, 3 C. B. 284; 4 Rail. Cas. 692; 16 L. J. C. P. 18; 10 Jur. 180
Bowling and Welby's Contract, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 216 416
Bowron & Co., Re. *See* Baily's Case.
Boyle's Case (Land, &c., Co. of South Africa, Re), 54 L. J. Ch. 550; 52 L. T. 501; 33 W. R. 40; W. N. (1885), p. 59 135
Bradford Banking Co. *v.* Briggs, 12 App. Cas. 29; 56 L. J. Ch. 364; 56 L. T. 62; 35 W. R. 521 ... ... 178, 182, 183, 191
Bradford Navigation Co., Re, 10 Eq. 331; 18 W. R. 592 417
———————, 5 Ch. 600; 39 L. J. Ch. 733; 23 L. T. 487 444
Bradlaugh *v.* Newdigate, 11 Q. B. D. 15; 52 L. J. Q. B. 454; 31 W. R. 752 388
Bradley *v.* Holdsworth, 3 M. & W. 422; 7 L. J. Ex. 153 180
Bradshaw's Case (Colonial Trusts Corporation, Re), 15 Ch. D. 465 ... 234, 415
Bramah *v.* Roberts, 6 L. J. C. P. 346; 3 Bing. N. C. 963; 5 Scott, 172 ... 225, 393
Brampton *v.* and Longtown Rail. Co. (Addison Case), 20 Eq. 620; 44 L. J. Ch. 537; 32 L. T. 592; 24 W. R. 113 68
———————— (Shaw's Case), 10 Ch. 177; 33 L. T. 5; 23 W. R. 813 68
Brandy Distilleries, [1901] W. N. 37 441
Branksea Island Co., Re. *See* Bentinck, Ex parte (No. 1).
Brantom *v.* Griffiths, 1 C. P. D. 349 242
Branwhite, Ex parte (West of England Bank, Re), 48 L. J. Ch.; 463; 40 L. T. 652; 27 W. R. 646 488
Brasnett's Case (Norwich Equitable Fire Insurance Co., Re), 53 L. T. 569; 34 W. R. 206; 32 W. R. 1010 ... ... 81, 177
Breech Loading Armoury Co., Re (Merchant's Co., Re), 4 Eq. 453 ... 454
Brentford, &c., Tramways Co., Re, 26 Ch. D. 527; 53 L. J. Ch. 624; 50 L. T. 580; 32 W. R. 895 417
Brett, Ex parte. *See* Old Bushmills Distillery.
Brett's Case (Blakely Ordnance Co., Re), 8 Ch. 800; 43 L. J. Ch. 47; 29 L. T. 256; 22 W. R. 22 469
Brewery Assets Co., Re. *See* Truman's Case.
Brick and Stone Co., Re, W. N. (1878), p. 140 331
Bridger's Case (General Provident Association, Re), 5 Ch. 305; 39 L. J. Ch. 478; 22 L. T. 737; 18 W. R. 412 132
Bridger's and Niell's Case (Accidental and Insurance Co., Re), 4 Ch. 266; 38 L. J. Ch. 201; 19 L. T. 624; 17 W. R. 216 ... ... 208, 469
Bridges, Re. *See* Hill *v.* Bridges.
Bridgewater Engineering Co., Re, 12 Ch. D. 181; 48 L. J. Ch. 389 425, 426, 483
Bridgewater Navigation Co., Re, [1891] 2 Ch. 317; 60 L. J. Ch. 415; 64 L. T. 576 504

PAGE

Bridgewater Navigation Co., Re (Birch *v.* Cropper), 39 Ch. D. 1; 57 L. J. Ch. 809; 58 L. T. 866; 36 W. R. 769; 1 Meg. 1; 14 App. Cas. 525; 59 L. J. Ch. 122; 61 L. T. 621; 38 W. R. 401; 1 Meg. 372; W. N. (1890), p. 215 ... ... 152, 153, 312, 504

Bridport Old Brewery Co., Re, 2 Ch. 191; 15 L. T. 643; 15 W. R. 291 ... 340

Briggs, Ex parte (Hop and Malt Exchange Co., Re), L. R. 1 Eq. 483; 35 Beav. 273; 14 L. T. 39; 35 L. J. Ch. 320 ... ... 142, 382

Brighton and Dyke Rail. Co., Re, 44 Ch. Div. 28; 59 L. J. Ch. 329; 62 L. T. 353; 38 W. R. 321 525

Brighton Arcade Co. *v.* Dowling, 3 C. P. 175; 37 L. J. C. P. 125; 18 L. T. 543; 16 W. R. 427 488

Brighton Brewery Co., Re, 37 L. J. Ch. 278 352

Brighton Club and Norfolk Hotel Co., Re, 35 Beav. 204; 11 Jur. N. S. 436; 12 L. T. 884; 13 W. R. 733 436

Brighton Hotel Co., Re, 6 Eq. 339; 37 L. J. Ch. 915; 18 L. T. 741 ... 444

Brignall *v.* Cohen, 21 W. R. 25 247

Brinsley, Ex parte. *See* Birmingham Banking Co., Re, Brinsley, Ex parte.

Brin's Oxygen Co., Re, W. N. (1899), 44 21

Brinsmead (Thomas Edward) & Sons, Ltd., Re, [1897] 1 Ch. 406; 66 L. J. Ch. 290; 76 L. T. 100 434

Bristol and North Somerset Rail. Co., Re, 6 Eq. 448; 37 L. J. Ch. 851; 16 W. R. 1112 527

Bristol Athenæum, Re, 43 Ch. D. 236; 59 L. J. Ch. 46; 61 L. T. 795; 38 W. R. 396 416

Bristol Joint Stock Bank, Re, 44 Ch. D. 703; 59 L. J. Ch. 722; 62 L. T. 745; 38 W. R. 574 435

Bristol United Breweries, Ltd. *v.* Abbott, [1908] 1 Ch. 279; 77 L. J. Ch. 136; 98 L. T. 22 239

Bristol Victoria Potteries Co., Re, 20 W. R. 569 428

British and American Telegraph Co. *v.* Colson, L. R. 6 Ex. 108; 40 L. J. Ex. 97; 23 L. T. 868 133

British and American Trustee and Finance Corporation *v.* Couper, [1894] A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652; 1 Mans. 256 ... ... 26, 39, 50, 51, 211

British Asbestos Co. *v.* Bond, [1903] 2 Ch. 439; 73 L. J. Ch. 31; 88 L. T. 763; 51 W. R. 667 ... ... 100, 103

British Building Stone Co., [1908] 2 Ch. 450; 77 L. J. Ch. 752; 99 L. T. 608 519

British and Foreign Cork Co. *See* Leifchild's Case.

British and Foreign Plant Co. *v.* Ashbury Carriage Co. *See* Smith *v.* Ashbury Carriage Co.

British Burmah Land Co., Re, 4 Times L. R. 631 380

British Burmah Lead Co. *See* Vickers, Ex parte.

British Electric Street Tramways, [1903] 1 Ch. 725; 72 L. J. Ch. 386 ... 442, 443

British Empire Match Co., Re (Ross, Ex parte), 59 L. T. 291 172

British Finance Corporation *v.* Couper, [1894] A. C. 399 39

British Flax, &c., Co., Re, 60 L. T. 215; 1 Meg. 133 334

British Goldfields of West Africa, Re, [1899] 2 Ch. 7; 68 L. J. Ch. 412; 80 L. T. 638; 47 W. R. 552; 6 Mans. 334 ... ... 143, 482

British Guardian Life Assurance Co., Re, 14 Ch. D. 335; 49 L. J. Ch. 446; 28 W. R. 945 ... ... 344, 353, 462

British Guardian Life Assurance Society, Re, 24 W. R. 637 443

British India, &c. *v.* Inland Revenue Commissioners, 7 Q. B. D. 165; 50 L. J. Q. B. 517; 44 L. T. 378 ... ... 257, 263

PAGE

British Life Association, Re. *See* De Ruvigne's Case.
British Linen Co. *v.* South American and Mexico Co., [1894] 1 Ch. 108 278
British Mutual Banking Co. *v.* Charnwood Forest Rail. Co., 18 Q. B. Div. 714; 55 L. J. Q. B. 399; 56 *ib.* 449; 35 W. R. 490 110
British National Life Assurance Association, Re, 8 Ch. Div. 679; 27 W. R. 88; 39 L. T. 136; 48 L. J. Ch. 118 ... ... 131, 299
British Power Traction, &c., Co., In re, Halifax J. S. Banking Co. *v.* The Co., (No. 2), [1907] 1 Ch. 528; 76 L. J. Ch. 423; 97 L. T. 198 ... 279
British Provident Assurance Society, Re. *See* Lane's Case; Stanley's Case.
British Seamless Paper Box Co., Re, 17 Ch. Div. 467; 50 L. J. Ch. 497; 44 L. T. 498; 29 W. R. 690 344
British, &c., Steam Navigation Co., Re. *See* Ward's Cases.
British Sugar Co., Re, 3 K. & J. 408; 26 L. J. Ch. 369; 5 W. R. 379 ... 174, 328
British Vacuum Cleaner Co. *v.* New Vacuum Cleaner Co., [1907] 2 Ch. 312; 76 L. J. Ch. 511; 97 L. T. 201 15
British Wagon Co. *v.* Lea & Co., 5 Q. B. D. 149; 49 L. J. Q. B. 321; 42 L. T. 437; 28 W. R. 349 463
Briton General Medical and Life Association *v.* Jones, 61 L. T. 384 ... 173
Briton Medical General Life Association, Re, 39 Ch. D. 61; 57 L. J. Ch. 874; 59 L. T. 134; 37 W. R. 52 ... ... 156, 288
Briton Medical General Life Association, Re, 32 Ch. D. 503; 55 L. J. Ch. 416; 54 L. T. 152; 34 W. R. 390 423
Brocklebank *v.* East London Rail. Co., 48 L. J. Ch. 729 279
——— ——— *v.* King's Lynn S. S. Co., 3 C. P. D. 365 446
Brooke, Re, Brooke *v.* Brooke, [1894] 2 Ch. 600; 64 L. J. Ch. 21; 71 L. T. 398 241
Broome *v.* Speak, [1904] A. C. 342, [1903] 1 Ch. 586; 73 L. J. Ch. 608; 72 L. J. Ch. 251 ... ... 125, 383, 390
Brotherhood's Case (Agriculturist Insurance Co., Re), 31 Beav. 365; 4 De G. F. & J. 566; 31 L. J. Ch. 861; 7 L. T. 56, 142; 10 W. R. 705, 852 202
Broughton *v.* Manchester Waterworks Co., 3 B. & Ald. 1 225
Brown's Case (Metropolitan Carriage Co., Re), 9 Ch. 102; 43 L. J. Ch. 153; 29 L. T. 562; 22 W. R. 171 ... ... 128, 138, 144
Brown & Co. *v.* Brown, 36 L. T. 272 318
Brown and Gregory, Ltd., [1904] 2 Ch. 448; 73 L. J. Ch. 770; 52 W. R. 412 269
Brown and Tucker's Case (United Ports Insurance Co., Re), 41 L. J. Ch. 157; 25 L. T. 651; 20 W. R. 88 135
Brown, Bailey and Dixon, Re, Roberts and Wright, Ex parte, 18 Ch. D. 49; 50 L. J. Ch. 738; 45 L. T. 347; 30 W. R. 5 425
Brown, Ex parte (Newcastle-upon-Tyne Co., Re), 19 Beav. 97 ... 192, 346
——— ——— (Owen's Patent Wheel Co., Re). *See* Owen's Patent Wheel Co., Re.
——— ——— (West of England Bank Co., Re), 12 Ch. D. 823; 48 L. J. Ch. 604; 41 L. T. 27; 27 W. R. 869 489
Browne, Re, Ador, Ex parte, [1891] 2 Q. B. 574; 61 L. J. Q. B. 15; 65 L. T. 485; 40 W. R. 71 491
——— *v.* La Trinidad, 37 Ch. Div. 1; 57 L. J. Ch. 292; 36 W. R. 289 92, 220, 330
——— ——— *v.* Monmouthshire Rail. Co., 13 Beav. 32; 20 L. J. Ch. 497 ... 111
Brownfields Pottery Society, Re, W. N. (1898), 80 ... ...
Browning *v.* Great Central Mining Co., Re, 5 H. & N. 856 220

PAGE

Brownlie *v.* Campbell, 5 App. Cas. 950 385
Brunton's Case, 19 Eq. 302; 44 L. J. Ch. 450; 31 L. T. 747; 23 W. R. 286 271
Brunton *v.* Electrical Engineering Corporation, [1892] 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745 261
Brussells Palace of Varieties Co. *v.* Prockter, 10 Times L. R. 72 74
Brutton and Burney, Ltd., Re, W. N., [1901] 1 Ch. 637; 70 L. J. Ch. 309; 49 W. R. 360; 84 L. T. 130 ... ... 169, 472
Brydon, Ex parte. *See* Old Bushmills Distillery.
Brydon, Ex parte, and Bank of Ireland, [1896] 1 Ir. Rep. 301 ... 260, 261
Bryon *v.* Metropolitan Saloon Omnibus Co., 3 De G. & J. 123; 27 L. J. Ch. 685; 4 Jur. N. S. 1262; 6 W. R. 817 231
Bryson *v.* Warwick Canal Co., 4 De G. M. & G. 711 344
Buchan's Case (Glasgow Bank, Re), 4 App. Cas. 549, 583 ... 161, 172, 473
Buck *v.* Robson, 10 Eq. 629; 39 L. J. Ch. 821; 23 L. T. 391 477
Budden and Roberts, Ex parte, West of England Bank, Re, 12 Ch. D. 288; 48 L. J. Ch. 764; 41 L. T. 179; 27 W. R. 906 473
Building Societies Trust, Re, 44 Ch. D. 140; 59 L. J. Ch. 638; 62 L. T. 360; 38 W. R. 458; 2 Meg. 81 443
Bulkeley *v.* Schultz, L. R. 3 P. C. 764; 8 Moore, P. C. (N.S.), 170 ... 8
Bulmer, Ex parte, Herefordshire Banking Co., Re, 33 Beav. 435; 33 L. J. Ch. 609; 10 Jur. N. S. 462; 10 L. T. 151; 12 W. R. 564 478
Bult *v.* Morrell, 12 Ad. & E. 745 225
Bultfontein Sun Diamond Mines Co., Ltd., Re, 13 T. L. R. 157; 75 L. T. 669 74
Buluwayo Market and Offices Co., [1907] 2 Ch. 458; 76 L. J. Ch. 673; 97 L. T. 752 76
Burdett, Re. *See* Byrne, Ex parte.
——— *v.* Standard Exploration Co., 16 Times L. R. 112 ... 151, 549
Burdett-Coutts *v.* True Blue (Hannan's) Gold Mine Co., [1899] 2 Ch. 616; 68 L. J. Ch. 692; 81 L. T. 29; 48 W. R. 1 520
Burge's and Stock's Case. *See* Phœnix Life Assurance Co., Re.
Burgess's Case (Hull and County Bank, Re), 15 Ch. D. 507; 49 L. J. Ch. 541; 43 L. T. 45; 28 W. R. 792 ... ... 142, 364
Burke *v.* Lechmere, L. R. 6 Q. B. 297; 40 L. J. Q. B. 98; 19 W. R. 565 157
Burkinshaw *v.* Nicholl's, 3 App. Cas. 1004; 48 L. J. Ch. 179; 39 L. T. 308; 26 W. R. 819 168
Burland *v.* Earle, [1902] A. C. 83; 71 L. J. P. C. 1; 85 L. T. 553; 50 W. R. 241 ... ... 111, 410
Burlinson's Case, 3 De G. & Sm. 18; 18 L. J. Ch. 250; 13 Jur. 849 ... 471
Burmester *v.* Norris, 6 Ex. 796; 21 L. J. Ex. 43 231
Burn *v.* London and South Wales Coal Co., 7 Times L. R. 118 83
Burnes *v.* Pennell, 2 H. L. C. 497; 13 Jur. 897 ... ... 194, 397
Burrows *v.* Matabele Gold Reefs, Ltd., Times Newspaper, Feb. 27th, [1901] 2 Ch. 23; 70 L. J. Ch. 434 ... ... 70, 115, 140
Burry Port and Gwendreath Valley Rail. Co., Re, 54 L. J. Ch. 710; 52 L. T. 842; 33 W. R. 741 268
Burt *v.* Bull, [1895] 1 Q. B. 276; 64 L. J. Q. B. 232; 71 L. T. 810; 43 W. R. 180; 2 Mans. 94 ... ... 280, 281
Burton *v.* Bevan, [1908] 2 Ch. 240; 77 L. J. Ch. 591; 99 L. T. 342 ... 147
Bury *v.* Famatina Development Co., Ltd., [1909] 1 Ch. 754 41
Bush's Case (Agriculturist Cattle Insurance Co., Re), 6 Ch. 246; 40 L. J. Ch. 205; 24 L. T. 1; 19 W. R. 393; L. R. 6 H. L. 37; 42 L. J. Ch. 586; 29 L. T. 217 ... ... 102, 198

PAGE

Bush's Case (Imperial Rubber Co., Re), 9 Ch. 554; 43 L. J. Ch. 772; 30 L. T. 737; 22 W. R. 699 181
Bushmills Distillery, Re, [1897] 1 I. R. 489 ... ... 259, 260
Butler *v.* Northern Territories Mines of Australia, 96 L. T. 41 18
Buxton Lime Co. *See* Duke's Case.
Bwlch-y-Plwm Mining Co., Re, 17 L. T. 235 435
——— *v.* Baynes, L. R. 2 Ex. 324; 36 L. J. Ex. 183; 16 L. T. 597; 15 W. R. 1108 140
Byrne, Ex parte, Burdett, In re, 20 Q. B. D. 310; 57 L. J. Q. B. 263; 58 L. T. 708; 36 W. R. 345 242

C.

Cachar Co. *See* Lawrance's Case.
Cackett *v.* Keswick, [1902] 2 Ch. 456; 71 L. J. Ch. 641; 87 L. T. 11; 51 W. R. 69 390
Cadiz Waterworks *v.* Barnett, 19 Eq. 182; 44 L. J. Ch. 529; 31 L. T. 640; 23 W. R. 208 442
Caementium (Parent), Co., Ltd., [1908] W. N. 257 432
Caerphilly Colliery Co., Re. *See* Ormerod's Case; Pearson's Case.
———, Dolling, Ex parte, 32 L. T. 15 437
Cairney *v.* Back, [1906] 2 K. B. 746; 75 L. J. K. B. 1014; 96 L. T. 111 261, 499
Caledonian Heritable Security Co. *v.* Carron's Trustees, 9 Scotch Sess. Cas. (4th series) 1115 ... ... 343, 346
Caledonian Rail. Co. *v.* Carmichael, L. R. 2 H. L. Sc. 56 491
——— *v.* Halensburgh, 2 Macq. 391; 1 Pater. 642 218
——— *v.* Solway Rail. Co., 49 L. T. 526; 32 W. R. 164 ... 34
Calgary Land Co., [1906] 1 Ch. 141; 75 L. J. Ch. 138 50
Calgary and Medicine Hat Land Co., In re Pigeon *v.* The Co., [1908] 2 Ch. 652 274
Callan, Ex parte. *See* Whitley Partners, Re.
Callao Bis Co., Re, 42 Ch. Div. 169; 58 L. J. Ch. 826; 61 L. T. 534; 38 W. R. 21; 1 Meg. 261 520
Caloric Engine Co., Re, 52 L. T. 846 ... ... 334, 336
Cama, Ex parte, London, Bombay, and Mediterranean Bank, Re, 9 Ch. 686; 43 L. J. Ch. 683; 31 L. T. 234; 22 W. R. 809 496
Cambrian Mining Co., Re, 20 Ch. D. 376; 51 L. J. Ch. 221; 30 W. R. 283 454
Cambrian Peat and Fuel Co., W. N. (1875), 6 313
Cambrian Rail. Co., Re, 3 Ch. 278; 37 L. J. Ch. 409; 18 L. T. 522; 16 W. R. 346 527
Cameron Coalbrook Coal Co., Re. *See* Bennett's Case.
Cammell, Ex parte, [1894] 2 Ch. 392; 63 L. J. Ch. 536; 70 L. T. 705; 1 Mans. 274 ... ... 138, 155
Campbell's Case (Bank of Hindustan, China and Japan, Re), 9 Ch. 1; 43 L. J. Ch. 1; 29 L. T. 519; 22 W. R. 113 ... 48, 92, 139, 151, 213
——— (Compagnie Générale de Bellegarde, Re), 4 Ch. D. 470; 35 L. T. 900; 25 W. R. 299 ... ... 250, 251, 493
Campbell *v.* Australian Mutual Provident Society (1908), 77 L. J. P. C. 117; 99 L. T. 3; 24 T. L. R. 623 ... ... 35, 410
——— *v.* Compagnie Générale de Bellegarde, 2 Ch. D. 181; 45 L. J. Ch. 386; 34 L. T. 54; 24 W. R. 573 278
——— *v.* London Pressed Hinge Co. *See* London Pressed Hinge Co.
——— *v.* Maund, 5 A. & E. 865 334

PAGE

Canada (Western of) Oil Co., Re. *See* Carling's Case.
Canadian Direct Meat Co., Re, W. N. (1892), 146 141
Canadian Land Co., Re. *See* Coventry and Dixon's Case.
Canadian Oilworks Corporation. *See* Eastwick's Case; Hay's Case; Fox's Case.
Canning Jarrah Timber Co., Re, [1900] 1 Ch. 708; 69 L. J. Ch. 416; 82 L. T. 409; 7 Mans. 439 ... ... 517, 520
Cannock, &c., Colliery Co. *See* Harrison, Ex parte.
Cannon, Ex parte (Leicester Club and Racecourse Co., Re), 30 Ch. D. 629; 34 W. R. 14; 53 L. T. 340 79
——— *v.* Trask, 20 Eq. 669; 44 L. J. Ch. 772 ... ... 111, 329
Cape Breton Co., Re, 29 Ch. D. 808; 54 L. J. Ch. 822; 53 L. T. 181; 33 W. R. 788 ... ... 351, 364
———————, 19 Ch. D. 77; 51 L. J. Ch. 202; 45 L. T. 395 ... 473
———————, Bentinck *v.* Fenn, 12 App. Cas. 652 ... 350, 351, 462
——————— *v.* Fenn, 17 Ch. D. 198; 50 L. J. Ch. 321; 44 L. T. 445; 29 W. R. 386 498
Capel *v.* Sims' Ship's Composition Co., 57 L. J. Ch. 713 ... ... 124, 380
Capital Fire Insurance Association, Re, 21 Ch. D. 209; 52 L. J. Ch. 20; 47 L. T. 123; 30 W. R. 941 432
Capper's Case (China Steamship and Labuan Coal Co., Re), 3 Ch. 458 ... 475
Capper, Ex parte, 1 Sim. N. S. 178 131
Caratal New Mines, Ltd., [1902] 2 Ch. 498; 71 L. J. Ch. 883; 87 L. T. 437; 50 W. R. 572 339
Carden *v.* Albert Palace Association, 56 L. J. Ch. 166; 55 L. T. 831 ... 447
——— *v.* General Cemetery Co., 5 Bing. N. C. 253 67
Cardiff Iron Co., Re. *See* Gledhill's Case.
Cardiff Savings Bank Co., Re (Davies' Case), 45 Ch. D. 537; 49 L. J. Ch. 450; 62 L. T. 628; 38 W. R. 571 ... ... 342, 417, 462
Cardiff Workmen's Cottage Co., [1906] 2 Ch. 627; 75 L. J. Ch. 769; 95 L. T. 669 249
Carew's Claim. *See* Romford Canal Co., Re.
——— Estate Act (No. 2), Re, 31 Beav. 39, 46 99
Cargill *v.* Bower, 10 Ch. D. 502; 47 L. J. Ch. 649; 38 L. T. 779; 26 W. R. 716 ... ... 142, 346, 366, 374, 383, 384
Caribbean Co., Re. *See* Crickmer's Case.
Caridad Copper Mining Co. *v.* Swallow, [1902] 2 K. B. 44; 71 L. J. K. B. 601; 86 L. T. 699; 50 W. R. 565 80
Carington, Lord *v.* Wycombe Rail. Co., 3 Ch. 377; 37 L. J. Ch. 213; 18 L. T. 96; 16 W. R. 494 297
Carling's Case (Canada Western Oil Co., Re), 1 Ch. Div. 115; 45 L. J. Ch. 5; 33 L. T. 645; 24 W. R. 165 ... ... 138, 167, 353, 476
Carling *v.* London and Leeds Bank, 56 L. J. Ch. 321; 35 W. R. 345 141, 142, 377
Carmarthenshire Anthracite Co., Re, 45 L. J. Ch. 200 445
Carmichael and Hewett's Case (Electric and Magnetic Co., Re), 30 W. R. 742; 46 L. T. 653 128
Carmichael, Ex parte (Hannan's Empress Gold Mining and Development, Re), [1896] 2 Ch. 643; 65 L. J. Ch. 902; 73 L. T. 45 73
Carnelly, Ex parte (Lancashire Cotton Co., Re), 35 Ch. D. 656; 56 L. J. Ch. 761; 57 L. T. 511; 36 W. R. 305 ... ... 422, 425
Carnforth, Ex parte. *See* Phœnix Bessemer Steel Co., Re.
Carpenter's Patent Davit Co., Re, 1 Meg. 26 539
Carralli and Haggard's Claim (Anglo-Greek Steam Navigation Co., Re), 4 Ch. 174; 19 L. T. 706; 17 W. R. 244 489

PAGE

Carriage Co-operative Supply Association. *See* Clemence, Ex parte.
———————————, Re, 27 Ch. D. 322; 53 L. J. Ch. 1154; 51 L. T. 286; 33 W. R. 411 353
Carrick *v.* Wigan Tramways Co., W. N. (1893), 98 248
Carritt *v.* Bradley, [1903] A. C. 253; 72 L. J. K. B. 471; 88 L. T. 633; 51 W. R. 636 184
Carshalton Park Estate, In re, Graham *v.* Co., Turnell *v.* Same, [1908] 2 Ch. 62; 77 L. J. Ch. 550; 99 L. T. 12 ... ... 261, 276
Carta Para Gold Mining Co., Re, 19 Ch. D. 457; 51 L. J. Ch. 191; 46 L. T. 406; 30 W. R. 117 446
Carter's Case. *See* Great Western Coal Consumers' Co., Re.
Carter, Ex parte, Contract Corporation, Re, 40 L. J. Ch. 15; 23 L. T. 446; 19 W. R. 55 455
Cartmell's Case (County Palatine Loan Co., Re), 9 Ch. 691; 43 L. J. Ch. 588; 31 L. T. 52; 22 W. R. 697 104
Castello's Case, Continental Bank Corporation, Re, 8 Eq. 504 475
Castell & Brown, Ltd., Re, [1898] 1 Ch. 315; 67 L. J. Ch. 169; 78 L. T. 109; 46 W. R. 248 261
Castle Crag Steamship Co. *See* Raine's Case.
Catholic Publishing and Bookselling Co., Re., 2 De G. J. & S. 116; 33 L. J. Ch. 325; 10 L. T. 79; 12 W. R. 539 433
Cavanagh, George Whitechurch, Ltd. *v.*, [1902] A. C. 117; 71 L. J. K. B. 400; 85 L. T. 349; 50 W. R. 218 190
Cawley & Co., Re, 42 Ch. Div. 209; 58 L. J. Ch. 633; 61 L. T. 601; 37 W. R. 692; 1 Meg. 251 ... ... 174, 175, 197, 198, 334
Cefn Mining Co., Re, 7 Eq. 88; 38 L. J. Ch. 78; 19 L. T. 593 254
Celluloid, Co., Re, 39 Ch. Div. 190 168
Central Darjeeling Tea Co., Re, 15 L. T. 234; W. N. (1866), 361 467
Central De Kaap Gold Mines, Re, 69 L. J. Ch. 18; 7 Mans. 82 80
Central Klondyke Gold Mining and Trading Co., Savigny's Case, 5 Mans. 336; W. N. (1899), 1 475
Central Railway Co. of Venezuela *v.* Kisch, L. R. 2 H. L. 113; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 321 ... ... 114, 377, 379, 382
Central Sugar Factories of Brazil, Re, Flack's Case, [1894] 1 Ch. 369; 63 L. J. Ch. 410; 70 L. T. 645; 42 W. R. 345 ... ... 423, 427
Cercle Restaurant Castiglione Co. *v.* Lavery, 18 Ch. D. 555; 50 L. J. Ch. 837; 30 W. R. 283 442
Chalk & Co. *v.* Tennent, 57 L. T. 598; 36 W. R. 263 477
Chambers *v.* Manchester and Milford Rail. Co., 5 B. & S. 588; 33 L. J. Q. B. 268; 10 L. T. 715; 12 W. R. 980 ... ... 253, 254, 256
Chapel House Colliery Co., Re, 24 Ch. D. 259; 52 L. J. Ch. 924; 49 L. T. 575; 31 W. R. 933 444
Chapleo *v.* Brunswick Building Society, 6 Q. B. Div. 696; 50 L. J. Q. B. 372; 29 W. R. 529; 44 D. T. 449 ... ... 254, 395
Chapman's Case (General International Agency Co., Re), L. R. 2 Eq. 567; 14 L. T. 752 ... ... 128, 134
———————— (General Rolling Stock Co., Re), L. R. 1 Eq. 346; 35 Beav. 207 ... ... 447, 489
———————— (Theatrical Trust, Re), [1895] 1 Ch. 771; 64 L. J. Ch. 488; 72 L. T. 461; 43 W. R. 553; 2 Mans. 304 ... 167
Chapman and Barker's Case (Imperial Mercantile Credit Association, Re), L. R. 3 Eq. 361; 15 W. R. 334; 15 L. T. 528 ... 81, 137, 212, 213
Chapman *v.* Great Central Mines, [1905] 22 T. L. R. 90 70
———— *v.* Shepherd, 2 P. C. 228; 36 L. J. C. P. 113; 15 L. T. 477; 15 W. R. 314 448

PAGE

Chapman *v.* Smethurst, [1908] W. N. 224, [1909] 1 K. B. 927 393
Chappel's Case (Accidental Death Insurance Co., Re), 6 Ch. 902; 25 L. T. 438; 20 W. R. 9 197
Charitable Corporation *v.* Sutton, 2 Atkyns, 400 ... ... 75, 343, 361
Charlesworth *v.* Mills, [1892] A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129 240
Charlton *v.* Hay, 31 L. T. 437; 23 W. R. 129 124
——— *v.* Newcastle and Carlisle Rail. Co., 5 Jur. N. S. 1096 ... 32, 513
Charterland Stores and Trading Co., Re, [1900] 2 Ch. 870; 69 L. J. Ch. 861; 49 W. R. 75 441
Chatre's Case (North of England Joint Stock Banking Co., Re), 1 De G. & S. 581 471
Chatenay *v.* Brazilian Submarine Telegraph Co., 6 Times L. R. 408 ... 188
Chatham Co-operative Industrial Society, Re, 33 L. J. Ch. 737; 10 Jur. N. S. 983; 10 L. T. 842; 12 W. R. 1053 430
Cheale *v.* Kenward, 3 De G. & J. 27; 27 L. J. Ch. 784; 4 Jur. N. S. 981; 6 W. R. 810 182
Cheltenham Carriage Co., Re, 8 Eq. 583 439
Chepstow Bobbin Mills Co., Re, 36 Ch. D. 563; 57 L. J. Ch. 168; 36 Ch. D. 563; 57 L. T. 752; 36 W. R. 180 ... ... 438, 442, 445
Cherry *v.* Colonial Bank of Australasia, 3 P. C. 24 395
Cheshire Banking Co., Re. *See* Duff's Executors' Case.
Chesterfield and Boythorpe Colliery Co. *v.* Black, 37 L. T. 740; 26 W. R. 207 349
Chesterfield Brewery Co. *v.* Inland Revenue Commissioners, [1899] 2 Q. B. 7; 79 L. T. 559; 68 L. J. Q. B. 204; 47 W. R. 320 517
Chic, Ltd., [1905] 2 Ch. 345; 74 L. J. Ch. 597; 93 L. T. 301; 53 W. R. 659 443
Chicago and North West Granaries, Re, [1898] 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677 272
Chida Mines *v.* Anderson, [1905] 22 T. L. R. 27 229
Chillington Iron Co., Re, 29 Ch. D. 159; 54 L. J. Ch. 624; 52 L. T. 504; 33 W. R. 442 334
China Steamship Co., Re, Capper's Case. *See* Dawes's Case; Drummond's Case; Pagin and Gill's Case; Mackenzie, Ex parte.
Chorley, Ex parte (South Essex Estuary Co.), 11 Eq. 157; 40 L. J. Ch. 153; 19 W. R. 430 271
Christchurch Gas Co. *v.* Keily, 3 Times L. R. 634 370
Christie *v.* Taunton & Co., [1893] 2 Ch. 175; 62 L. J. Ch. 385; 68 L. T. 638; 41 W. R. 475 ... ... 233, 269, 271, 279
Chubwa Tea Co. *v.* Barry, 15 L. T. 449 174
Church, &c., Insurance Co. *See* Andress's Case.
Church *v.* Sage, 67 L. T. 800; 41 W. R. 175 245
Citizens Life Assurance Co. *v.* Brown, [1904] A. C. 423; 73 L. J. P. C. 102; 90 L. T. 739; 53 W. R. 176 109
City and County Bank, Re, 10 Ch. 470; 44 L. J. Ch. 716; 33 L. T. 344; 23 W. R. 936 ... ... 439, 440, 442
City and County Investment Co., Re, 13 Ch. D. 475; 42 L. T. 303; 28 W. R. 933 ... ... 467, 515, 516, 518
City of Glasgow Bank, Re, 14 Ch. D. 628; 43 L. T. 279 477
——————————— (Bell's Case), 4 A. C. 547 473
——————————— (Ker's Case), 4 A. C. 549 473
——————————— (Lang's Case), 4 A. C. 547 471
——— ——————— *v.* Mitchell, 4 App. Cas. 548, 624 ... ... 197, 214
City of London Brewery *v.* Inland Revenue Commissioners, [1899] 1 Q. B. 121; 68 L. J. Q. B. 62; 79 L. T. 648; 47 W. R. 216 264

PAGE

City of Moscow Gas Co. *v.* International Financial Society, 7 Ch. 225; 41 L. J. Ch. 350; 26 L. T. 377; 20 W. R. 294 466
Civil, Naval and Military Outfitters, Re, [1899] 1 Ch. 215; 68 L. J. Ch. 164; 80 L. T. 241; 47 W. R. 233; 6 Mans. 100 459
Civil Service and General Stores, Re, 57 L. J. Ch. 119; 58 L. T. 220 ... 447
Clark's Case (London and Colonial Co., Re), 7 Eq. 550; 38 L. J. Ch. 562; 20 L. T. 774 ... ... 176, 490
Clark *v.* Balm Hill & Co., [1908] 1 K. B. 667; 77 L. J. K. B. 369 ... 237
—— *v.* Hart, 6 H. L. Cas. 633 201
Clarke's Case (New Qaebrada Co., Re), 27 L. T. 843 206
Clarke, Ex parte (Leeds Banking Co., Re), 14 W. R. 856; 12 Jur. N. S. 780 467
Clarke and Helden's Case, 37 L. T. 222 352
Clarke *v.* Dickson, 6 C. B. N. S. 453; 28 L. J. C. P. 225; 5 Jur. N. S. 1027; 7 W. R. 443 382
Clayton and Hartas, Ex parte. *See* Oriental Bank Corporation, Re.
Clayton Engineering, &c., Co., Boddington *v.* Co., [1904] W. N. 28; 90 L. T. 283 285
Clayton, Mill & Co., Re, 3 Times L. R. 798 343
Clerk *v.* West Calder Oil Co., 9 Rettie, 1017 262
Clemence, Ex parte, Carriage Co-operative Supply Association, Re, 23 Ch. D. 154; 52 L. J. Ch. 472; 48 L. T. 308; 31 W. R. 397 ... 425
Clement, Ex parte, 18 L. T. 596; 16 W. R. 559 456
Cleve *v.* Financial Corporation, 16 Eq. 363; 43 L. J. Ch. 54; 29 L. T. 89; 26 W. R. 839 ... ... 415, 506
Climpson *v.* Coles, 23 Q. B. D. 465; 58 L. J. Q. B. 346; 61 L. T. 116; 38 W. R. 110 245
Clinch *v.* Financial Corporation, 5 Eq. 450; 4 Ch. 117; 38 L. J. Ch. 1; 19 L. T. 334; 17 W. R. 84 ... ... 515, 518
Clyne Tin Plate Co., Re, 47 L. T. 439 251
Coal Consumers' Association, Re, 4 Ch. D. 625; 46 L. J. Ch. 501; 34 L. T. 729; 25 W. R. 360 ... ... 425, 426, 483
Coal Economising Gas Co., Re. *See* Gover's Case.
Coalport China Co., Re, [1895] 2 Ch. 404; 64 L. J. Ch. 710; 73 L. T. 46; 44 W. R. 38 194
Coates' Case (Limehouse Works Co., Re), 17 Eq. 169; 43 L. J. Ch. 538; 29 L. T. 636 165
Cobre Copper Mining Co., Re, 9 Eq. 107; 39 L. J. Ch. 231; 18 W. R. 371 206
——————————, Weston's Case, 5 Ch. 614; 39 L. J. Ch. 753; 23 L. T. 287; 18 W. R. 937 475
Cochrane *v.* Matthews, 10 Ch. D. 80, n. 244
Cohen *v.* Wilkinson, 1 Mac. & G. 481 ... ... 34, 35
Colborne and Strawbridge, Ex parte. *See* Imperial Land Co. of Marseilles.
Colley *v.* Smith, 2 Moo. & Rob. 696 393
Collie's Claim (Bonellis Electric Telegraph Co., Re), 12 Eq. 246; 40 L. J. Ch. 567; 25 L. T. 526; 19 W. R. 1022 ... ... 98, 103
Collingham *v.* Sloper, [1893] 2 Ch. 96; 62 L. J. Ch. 416; 69 L. T. 39; 41 W. R. 550 282
——————————, [1894] 3 Ch. 716; 64 L. J. Ch. 149; 71 L. T. 456; [1904] A. C. 159 ... ... 275, 276
Collins *v.* Birmingham Breweries Co., 15 Times L. R. 180... 26
Collum Ex parte (Asiatic Banking Corporation, Re), 9 Eq. 236 39 L. J. Ch. 59; 21 L. T. 350; 18 W. R. 245 ... ... 158, 207

PAGE

Colman *v.* Eastern Counties Rail. Co., 10 Beav. 1; 16 L. J. Ch. 73; 8 L. T. O. S. 530; 11 Jur. 74; 4 Rail. Cas. 513... 31

Colmer (James), Limited, Re, [1897] 1 Ch. 524; 66 L. J. Ch. 326; 76 L. T. 323; 45 W. R. 343... ... ... 26, 53

Colombia Factory Works, Re. *See* Hewitt's Case.

Colonial Bank *v.* Hepworth, 36 Ch. D. 36; 56 L. J. Ch. 1089; 57 L. T. 148; 36 W. R. 259 183

——— *v.* Cady and Williams, 15 A. C. 267; 69 L. J. Ch. 131; 63 L. T. 27; 39 W. R. 17 183

——— *v.* Whinney, 11 A. C. 426; 56 L. J. Ch. 43; 55 L. T. 362; 34 W. R. 705 180

——— of Australasia *v.* Willan, L. R. 5 P. C. 417, 447 102

Colonial Trusts Corporation. *See* Bradshaw's Case.

Colonial Life Assurance Co. *v.* Home and Colonial Assurance Co., 33 Beav. 548; 33 L. J. Ch. 741; 10 L. T. 448; 12 W. R. 783... ... 15

Coltman *v.* Coltman, 19 Ch. Div. 64 302

Colville's Case (St. James' Bank, Re), 48 L. J. Ch. 633; W. N. (1879), p. 146; 41 L. T. 177 208

Combined Weighing and Advertising Machine Co., Re, 43 Ch. D. 99; 59 L. J. Ch. 26; 61 L. T. 582; 38 W. R. 67; 1 Meg. 398 437

Commercial Bank of Canada *v.* Great Western Rail. Co. of Canada, 13 L. T. 105 ... ... 233, 251

Commercial Bank of South Australia, 33 Ch. D. 174; 55 L. T. 609; 55 L. J. Ch. 670 ... ... 417, 443

Commercial Bank of India, Re, 6 Eq. 517; 16 W. R. 1104 417

Commercial Bank Corporation of India, Re. *See* Smith, Fleming & Co.'s Case.

Commercial Life Assurance, Re (Johnson, Ex parte), 27 L. J. Ch. 803 ... 79

Commercial Marine Insurance Co. *v.* Union Mutual Insurance Co., 19 Howard, 318 107

Common Petroleum Co., Re. *See* Elsner and McArthur's Case.

Compagnie Générale de Bellegarde, Re. *See* Campbell's Case.

Company, A., Re, [1894] 2 Ch. 349 442

Components Tube Co. *v.* Naylor, [1900] 2 I. R. 1 141

Concessions Trust, Ltd., Re. *See* McKay's Case.

Consett Iron Co., [1901] 1 Ch. 236; 70 L. J. Ch. 198 504

Consolidated Copper Co. *v.* Peddie, 5 Rettie, 393 127

Consolidated Land Co., 20 W. R. 855 235

Consolidated Mines Co., W. N. (1876), 234 440

Consolidated South Rand Mines Deep, Ltd., [1909] 1 Ch. 491, [1909] W. N. 35, 66 ... ... 446, 520

Consort Deep Level Gold Mines, Re. *See* Stark, Ex parte.

Constantinople, &c., Hotels Co., Re. *See* Finucane's Case: Reidpath's Case.

Continental Oxygen Co., Re, [1897] 1 Ch. 511; 66 L. J. Ch. 273; 76 L. T. 229; 45 W. R. 313 283

Contract and Agency Corporation, Re, 57 L. J. Ch. 5 446

Contract Corporation, Ex parte (Barned Banking Co., Re), 3 Ch. 105; 37 L. J. Ch. 81; 17 L. T. 269; 16 W. R. 193 ... ... 12, 18, 299

Contract Corporation, Re. *See* Carter, Ex parte; Druitt's Case; Weston's Case; Hudson's Case; Gooch's Case; Ebbw. Vale Co., Ex parte.

Contract Corporation, Re, 8 Eq. 14; 20 L. T. 964 226

Contract Corporation, Re, Bateman, Ex parte. *See* Bateman, Ex parte, Contract Corporation, Re.

PAGE

Contract Corporation, Re, 2 Ch. 95; 36 L. J. Ch. 69; 12 Jur. N. S. 931; 15 L. T. 201; 15 W. R. 49 476

Coolgardie Consolidated Gold Mines, Ltd., Re, 76 L. T. 269; 14 T. L. R. 277 ... ... 45, 167

Cooper, Ex parte, Baum, Re, 10 Ch. D. 313; 48 L. J. Bk. 40; 30 L. T. 521; 27 W. R. 298 240

Cooper, Cooper & Johnson, [1902] W. N. 199; 51 W. R. 314 532

Cooper *v.* Griffin, [1892] 1 Q. B. 740; 61 L. J. Q. B. 563; 66 L. T. 660; 40 W. R. 420 86

Cooper v. Shropshire Rail. Co., 6 Rail. Cas. 136; 13 Jur. 443 110

Copeland *v.* North Eastern Rail. Co., 6 E. & B. 277... 193

Copiapo Mining Co., Re, W. N. (1899), 25 (1); 6 Mans. 320 21

Cordova Union Gold Co., Re, [1891] 2 Ch. 580; 60 L. J. Ch. 701; 64 L. T. 772; 39 W. R. 536 ... ... 163, 173, 479

Cork and Bandon Rail. Co. *v.* Cazenove, 10 Q. B. 935; 11 Jur. 802 130

——— ——— ——— *v.* Goode, 13 C. B. 827; 22 L. J. C. P. 198; 17 Jur. 555; 1 W. R. 410 172

Cork and Youghal Rail. Co., Re, 14 L. T. 750 439

——— ——— ——— 4 Ch. 748; 39 L. J. Ch. 277; 21 L. T. 735 256

——— ——— ——— *v.* Paterson, 18 C. B. 414 157

Cornbrook Brewery Co. *v.* Law Debenture Corporation, [1904] 1 Ch. 103; 73 L. J. Ch. 121; 89 L. T. 680; 52 W. R. 242 239

Cornell *v.* Hay, 8 C. P. 328; 21 W. R. 580; 28 L. T. 475 ... ... 65, 369

Cornwall Minerals Rail. Co., Re, 48 L. T. 41 298

——— ——— ———, [1897] 2 Ch. 74; 66 L. J. Ch. 561; 46 W. R. 5; 76 L. T. 832 274

Cory's Case. *See* National Bank of Wales, Re.

Costa Rica Rail. Co. *v.* Forwood, [1900] 1 Ch. 756; 69 L. J. Ch. 408; 83 L. T. 19; 48 W. R. 553; [1901] 1 Ch. 746 ... ... 222, 224

Cottam *v.* Eastern Counties Rail. Co., 1 J. & H. 243 270

Cotterell's Case (National Life Association, Re), 32 L. J. Ch. 66; 7 L. T. 241; 11 W. R. 13 127

Cotton *v.* Imperial Investment Co., [1892] 3 Ch. 454; 61 L. J. Ch. 684; 67 L. T. 342 ... ... 300, 513

County Life Assurance Co., Re, 5 Ch. 288; 39 L. J. Ch. 471; 22 L. T. 537; 18 W. R. 390 103

County Marine Insurance Co. *See* Rance's Case.

County of Gloucester Bank *v.* Rudry Merthyr Steam Colliery Co., [1895] 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486; 2 Mans. 223; 12 R. 183 ... ... 102, 103, 232

County Palatine Loan Co., Re. *See* Cartmell's Case.

Coupland, Ex parte (Barned's Banking Co., Re), 8 Eq. 472; 38 L. J. Ch. 575; 21 L. T. 286; 17 W. B. 1055 497

Court Bureau, Ltd., W. N. (1891), 15 430

Court Grange Silver-Lead Co. *See* Sedgwick, Ex parte.

Courtauld *v.* Saunders, 16 L. T. 562 393

Coventry and Dixon's Case (Canadian Land Co., Re), 14 Ch. Div. 660; 42 L. T. 559; 28 W. R. 775 ... ... 461, 462

Cowan *v.* O'Connor, 20 Q. B. D. 640; 57 L. J. Q. B. 401; 58 L. T. 857; 36 W. R. 895 133

Cox *v.* Dublin City Distillery Co., [1906], 1 I. R. 446 261

Cox Moore *v.* Peruvian Corporation, [1908] 1 Ch. 604; 77 L. J. Ch. 387; 98 L. T. 611; 15 Mans. 191 ... ... 259, 260

PAGE

Coxon *v.* Gorst, [1891] 2 Ch. 73; 60 L. J. Ch. 502; 64 L. T. 444; 39 W. R. 600 ... ... 357, 428

Craig's Claim, Midland Coal, Coke and Iron Co., Re, [1895] 1 Ch. 267; 64 L. J. Ch. 279; 71 L. T. 705; 74 L. T. 744; 43 W. R. 244; 2 Mans. 75 ... ... 486, 529

Cramer *v.* Bird, 6 Eq. 143; 37 L. J. Ch. 835; 18 L. T. 315; 16 W. R. 781 342

Crampton *v.* Varna Rail. Co., 7 Ch. 562; 41 L. J. Ch. 817; 20 W. R. 713 226

Crawcour, Ex parte, Robertson, Re, 9 Ch. D. 419; 47 L. J. Bk. 94; 39 L. T. 2; 26 W. R. 733 240

Crawley's Case (Peruvian Rail. Co., Re), 4 Ch. 322; 20 L. T. 96; 17 W. R. 454 ... ... 135, 299

Crawshay, Re, 60 L. Times 357... 524

Crawshay and Carter's Case (Great Western Forest of Dean, Re), 54 L. J. Ch. 506; 33 W. R. 444 454

Credit Assurance and Guarantee Corporation, [1902] 2 Ch. 601; 71 L. J. Ch. 775; 87 L. T. 216; 51 W. R. 20. 51

Credit Co., Re, 11 Ch. D. 256; 48 L. J. Ch. 221; 27 W. R. 380 237

——— *v.* Webster, 53 L. T. 419 452

Credit Foncier, Ex parte. *See* Marseilles Extension Co., Re.

Credit Foncier of England, Re, 11 Eq. 356; 40 L. J. Ch. 187; 23 L. T. 801; 19 W. R. 405 52

Cree *v.* Somervail, 4 App. Cas. 648; 41 L. T. 353; 28 W. R. 34 ... 344, 473

Crenver, &c., Co., Re. *See* Wilson, Ex parte.

Creyke's Case (Blakely Ordnance Co., Re), 5 Ch. 63; 39 L. J. Ch. 124; 21 L. T. 572; 18 W. R. 103 ... ... 208, 470

Crichton's Oil Co., [1902] 2 Ch. 86; 71 L. J. Ch. 531; 86 L. T. 787 ... 504

Crickmer's Case (Carribean Co., Re), 10 Ch. 614; 46 L. J. Ch. 870; 24 W. R. 219 ... ... 167, 219

Crigglestone Coal Co. (Stewart *v.* Co.), [1906] 1 Ch. 523; 75 L. J. Ch. 307; 94 L. T. 471; 54 W. R. 298 283

——— In re, [1906] 2 Ch. 327; 75 L. J. Ch. 662; 95 L. T. 81 443

Criterion Gold Mining Co., Re, 41 Ch. D. 146; 58 L. J. Ch. 277; 60 L. T. 218; 37 W. R. 348; 1 Meg. 166 ... ... 443, 445

Crook & Co., Re. *See* Gilman's Case.

Crook's Case. *See* Denham & Co., Re.

Crookhaven Mining Co., Re, 36 L. J. Ch. 226; 3 Eq. 69; 12 Jur. N. S. 872; 15 L. T. 169; 15 W. R. 28 428

Croshaw *v.* Lyndhurst Ship Co., [1897] 2 Ch. 154; 66 L. J. Ch. 576; 76 L. T. 553; 45 W. R. 570 ... ... 423, 424, 494

Croskey *v.* Bank of Wales, 4 Giff. 314; 8 L. T. 301; 9 Jur. N. S. 595 67, 175, 373

Crosley, Re, Munns *v.* Burn, 34 Ch. D. 664; 56 L. J. Ch. 509; 56 L. T. 103; 35 W. R. 294 446

Crossley & Sons, Ltd., Re. *See* John Crossley & Sons, Ltd.

Cross's Case (General Provident Assurance Co., Re), 38 L. J. Ch. 583; 17 W. R. 1006 39

Crouch *v.* Credit Foncier of England, L. R. 8 Q. B. 374; 42 L. J. Q. B. 183; 29 L. T. 259; 21 W. R. 946 270

Crowe, Ex parte, European Life Assurance Society, Re. *See* European Life Assurance Society, Re.

Crown Bank, Re, 44 Ch. D. 634; 62 L. T. 823; 38 W. R. 666 ... 15, 17, 435

Crown Lease Proprietary Co., Re, 14 Times L. R. 47 73

Croydon *v.* Prudential Loan Co., 2 Times L. R. 535 379

PAGE

Crumlin Viaduct Co., Re, 11 Ch. D. 755; 48 L. J. Ch. 537; 27 W. R. 722 483
Crystal Gold Mining Co., Re, [1892] 1 Ch. 408; 61 L. J. Ch. 208; 66 L. T. 111; 40 W. R. 235 439
Cullen *v.* Thomson, 4 Macq. H. L. 441; 2 Pater. 1143 367
Cullerne *v.* London, &c., Building Society, 25 Q. B. Div. 485; 59 L. J. Q. B. 525; 63 L. T. 511; 39 W. R. 88 ... ... 302, 342, 343, 347
Cumming *v.* Metcalfe's London Hydro, 2 Mans. 418 284
——— *v.* Prescott, 2 Y & C. Ex. 488 ... ... 86, 91
Cunard Steamship Co. *v.* Hopwood, [1908] 2 Ch. 564; 77 L. J. Ch. 785; 99 L. T. 549; 24 T. L. R. 865 ... ... 239, 247, 248
Cunliffe Brooks & Co. *v.* Blackburn Building Society, 9 App. Cas. 857; 22 Ch. Div. 61; 54 L. J. Ch. 376; 52 L. T. 225 ... ... 252, 254
Cunningham *v.* City of Glasgow Bank, 4 A. C. 607 473
——— & Co., Re, 36 Ch. D. 532; 57 L. J. Ch. 169; 58 L. T. 16 ... 225
Currie *v.* Consolidated Kent Collieries Corporation, [1906] 1 K. B. 134; 75 L. J. K. B. 199; 94 L. T. 148 424
Currie *v.* Misa, L. R. 10 Ex. 162 167
Currie, Ex parte (Great Northern Coal Co., Re), 3 De G. & Sm. 367; 32 L. J. Ch. 57; 7 L. T. 486; 8 L. T. 472; 11 W. R. 46, 675 136, 165, 353
Curtis's Case, 6 Eq. 455; 37 L. J. Ch. 629 475
Cyclemakers Co-operative Supply Co. *v.* Sims, [1903] 1 K. B. 477 ... 479
Cyclists Touring Club, In re, [1907] 1 Ch. 269; 76 L. J. Ch. 172 19

D.

Dadson's Case, 12 Times L. R. 482 74
Dale *v.* Martin, 11 L. R. Ir. 371 ... ... 43, 177
—— and Plant Co., Re, 61 L. T. 206; 1 Megone, 338; W. N. (1889), p. 131 ... ... 218, 220
———, Re (Plant's Case), 43 Ch. D. 255; 59 L. J. Ch. 180; 62 L. T. 215; 38 W. R. 409; 2 Meg. 25 ... ... 79, 488
Dalton Time Lock Co. *v.* Dalton, 66 L. T. 704 ... ... 136, 162, 168
Daly, John, & Co., Re, 19 L. R. Ir. 83 447
—— *v.* Thompson, 10 M. & W. 309 158
D'Arcy *v.* Tamar Rail. Co., L. R. 2 Exch. 158; 36 L. J. Exch. 37; 4 H. & C. 463 98
Dartmouth College *v.* Woodward, 4 Wheaton, 636 2
Dashwood *v.* Cornish, 13 Times L. R. 337 82
Davey & Co. *v.* Williamson & Son, Ltd., [1898] 2 Q. B. 194; 67 L. J. Q. B. 699; 78 L. T. 755; 46 W. R. 571 261
David Lloyd & Co., Re, 6 Ch. D. 339; 37 L. T. 83; 25 W. R. 872 ... 426
Davidson's Case (North Shields Quay Co., Re), 4 K. & J. 688 157
Davidson *v.* Myrtle. *See* Smith, Re.
Davidson *v.* Tulloch, 3 Macq. 790; 1 Paterson, 930 383
Davies' Case, 33 L. T. 834 ... ... 183, 193
Davies' Case (Cardiff Savings Bank Co.), 45 Ch. D. 537; 49 L. J. Ch. 450; 62 L. T. 628; 38 W. R. 571 ... ... 342, 462
Davies' Case (Valparaiso Waterworks Co., Re), 41 L. J. Ch. 659 ... 134, 144
Davies *v.* Gas Light and Coke Co., [1909] 1 Ch. 708; 100 L. T. 553 160, 402
Davies *v.* R. Bolton & Co., [1894] 3 Ch. 678; 63 L. J. Ch. 743; 71 L. T. 336; 43 W. R. 171; 1 Mans. 445 ... ... 102, 103, 232
Davis, Re. *See* Rawlings, Ex parte.

PAGE

Davis *v.* Martin. *See* Queensland Land and Coal Co., Re.
Davis and Wilson's Case. *See* Durham Building Society, Re.
Davison *v.* Gillies, 16 Ch. D. 347, n.; 50 L. J. Ch. 192, n.; 44 L. T. 92, n. 38, 46, 313, 315
Dawes's Case (China Steamship Co., Re), 6 Eq. 232; 37 L. J. Ch. 901; 16 W. R. 995 ... ... 205, 415, 506, 507
Dawnay, Ltd., Re, 83 L. T. 47; 48 W. R. 600 169
Dawson *v.* African Consolidated Land and Trading Co., [1898] 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132 ... ... 91, 100, 103, 173
Dawson *v.* Braime's Tadcaster Breweries, Ltd., [1907] 2 Ch. 359 ... 273
Day *v.* Sykes, Walker & Co., Ltd., 55 L. T. 763 276
De Beers Consolidated Mines *v.* Howe, [1906] A. C. 455; 75 L. J. K. B. 858; 95 L. T. 221 409
De La Mott's Case (Cambrian Peat Co., Re), 23 W. R. 405 332
De Pass's Case, 4 De G. & J. 544; 28 L. J. Ch. 769; 5 Jur. N. S. 1191; 7 W. R. 681 197
D'Epineuil, Re, 20 Ch. D. 217; 51 L. J. Ch. 491; 46 L. T. 409; 30 W. R. 423 ... ... 482, 483
De Rosaz, Ex parte (Laffitte & Co., Re), 21 L. T. 10 134
De Rosaz *v.* Anglo-Italian Bank, L. R. 4 Q. B. 462; 38 L. J. Q. B. 161; 17 W. R. 724 519
De Ruvigne's Case (British Life Association, Re), 5 Ch. Div. 306; 46 L. J. Ch. 360; 36 L. T. 329; 25 W. R. 476 ... ... 352, 353
De Verges *v.* Sandeman and Co., [1901] 1 Ch. 70, [1902] 1 Ch. 579; 71 L. J. Ch. 328; 86 L. T. 269; 50 W. R. 404 185
Deakin *v.* Lakin. *See* Shakespear, Re.
Dearle *v.* Hall, 3 Russ. 1 183
Debenture Corporation *v.* Murietta, 8 Times L. R. 496 276
Deep Sea Fishery Co., Ltd., Claim. *See* Fenwick Stobart & Co., Ltd.
Deering *v.* Hibernian Bank, 16 W. R. 578 178
Defries (N.) and Co., Bowen *v.* Co., [1904] 1 Ch. 37; 73 L. J. Ch. 1; 52 W. R. 253 248
Delmar, Ex parte, Herepath and Delmar, Re, 38 W. R. 752 497
Delta Syndicate Co. *See* Forde, Ex parte.
Denham & Co., Re (Crook's Case), 25 Ch. D. 752; 50 L. T. 523; 32 W. R. 487 ... ... 39, 343, 346, 354, 365
Denham, Charles, & Co., 53 L. J. Ch. 1113 ... ... 400, 401
Dent's Case (Anglo-Moravian, &c., Rail. Co.), 8 Ch. 768 27
Dent *v.* London Tramways Co., 16 Ch. D. 344; 50 L. J. Ch. 190; 44 L. T. 91 ... ... 46, 314, 315, 316
Denton *v.* Macneil, 35 Beav. 652; 2 Eq. 352; 14 L. T. 721; 14 W. R. 813 377, 382
Denver Hotel Co., Re, [1893] 1 Ch. 495; 62 L. J. Ch. 450; 68 L. T. 8; 41 W. R. 339 ... . 26, 50
Derry *v.* Peek, 14 App. Cas. 337; 58 L. J. Ch. 864; 61 L. T. 265; 38 W. R. 33; 1 Megone, 292 .. .. 366, 367, 368
Descours Parry and Co., [1909] W. N. 50 440
Development Co. of Central and West Africa, [1902] 1 Ch. 547; 71 L. J. Ch. 310; 50 W. R. 456; 86 L. T. 323 51
Devon and Somerset Rail. Co., Re, 6 Eq. 610; 37 L. J. Ch. 914; 18 L. T. 631; 17 W. R. 133 526
Dexine Patent Packing and Rubber Co., [1903] W. N. 82; 88 L. T. 791 51
Diamond Fuel Co. *See* Mitcalfe's Case.
———, Re, 13 Ch. D. 400; 49 L. J. Ch. 301; 41 L. T. 573; 28 W. R. 309 ... ... 435, 438, 439, 442, 446

PAGE

Diamond Rock Boring Co., Re, 2 Q. B. D. 463; 46 L. J. Q. B. 394; 36 L. T. 573; 25 W. R. 569 215
Dicido Pier Co., Ltd., Re, [1891] 2 Ch. 354; 64 L. T. 695; 39 W. R. 486 40, 53
Dickinson v. Valpy, 10 B. & C. 128; 5 Man. & R. 126 225
Dickson v. Swansea Vale Co., L. R. 4 Q. B. 44; 38 L. J. Q. B. 17; 19 L. T. 346; 17 W. R. 51 233
Dillon's Claim. *See* Munster Bank, Ex parte.
Dimson's Estate Fire Clay Co., 19 Eq. 202; 23 W. R. 435 424
Discoverers Finance Corporation, Ltd., In Re, Cooper's Case, [1908] 1 Ch. 141; 77 L. J. Ch. 36; 97 L. T. 757 475
District Bank of London, Re, 35 Ch. D. 576; 56 L. J. Ch. 774; 57 L. T. 475; 35 W. R. 664 443
Dixon v. Evans, L. R. 5 H. L. 606; 42 L. J. Ch. 139 203
——— v. Kennaway & Co., [1900] 1 Ch. 833; 69 L. J. Ch. 501; 82 L. T. 527 189
Dobson's Case, 1 Ch. 231; 35 L. J. Ch. 307; 12 Jur. N. S. 60; 13 L. T. 694; 14 W. R. 255 161
Dodge v. Woolsey, 18 Howard, 331 106
Doman's Case (European Assurance Co., Re), 3 Ch. Div. 21; 45 L. J. Ch. 801; 34 L. T. 929 522
Dominion of Canada, &c., Co., Re, 55 L. T. 347 274
——— ——— Plumbago Co., Re, 27 Ch. D. 33; 53 L. J. Ch. 702; 50 L. T. 518; 33 W. R. 9 498
Dougan's Case (Empire Assurance Corporation, Re), 8 Ch. 540; 42 L. J. Ch. 460; 28 L. T. 649; 21 W. R. 495 300
Doughty v. Lomagunda Reef, Ltd., [1902] 2 Ch. 827; [1903] 1 Ch. 673; 72 L. J. Ch. 331; 88 L. T. 337; 51 W. R. 564 ... ... 300, 513
Dover Coalfield Extension, In Re, [1907] 2 Ch. 76; [1908] 1 Ch. 65; 77 L. J. Ch. 94; 98 L. T. 31 ... ... 79, 351
Dover, Warden, &c., of, v. South Eastern Rail. Co., 21 L. J. Ch. 886; 9 Hare, 489 298
Dovey v. Cory, [1901] A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 50 W. R. 65 ... ... 316, 322, 344
Drew's Case (London, Bombay, &c., Bank, Re), 36 L. J. Ch. 785; 16 L. T. 657; 15 W. R. 1059 516
Driffield Gas Light Co., Re, [1898] 1 Ch. 451; 67 L. J. Ch. 247; 78 L. T. 162; 46 W. R. 411; 5 Mans. 253 504
Drinegbier v. Wood, [1899] 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T. 548; 47 W. R. 252; 6 Mans. 76 ... ... 373, 381, 384
Driver v. Broad, [1893] 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169; 41 W. R. 483 265
Dronfield Silkstone Coal Co., Re (Ward, Ex parte), 17 Ch. Div. 76; 50 L. J. Ch. 387; 44 L. T. 361; 29 W. R. 768 ... ... 39, 108, 200, 208
Druitt's Case (Contract Corporation, Re), 14 Eq. 6 455
Drum Salt Co., Re. *See* McLean's Case.
Drummond's Case (China Steamship Co., Re), 4 Ch. 772; 21 L. T. 317 ... ... 136, 164
Dry Docks Corporation, Re, 39 Ch. D. 306; 58 L. J. Ch. 33; 59 L. T. 763; 37 W. R. 18; 1 Meg. 86 ... ... 423, 424, 426
Dublin Drapery Co., Re, 13 L. R. Ir. 174 ... ... 236, 237
Duck v. Tower Galvanizing Co., [1901] 2 K. B. 314; 70 L. J. K. B. 625; 84 L. T. 847 ... ... 102, 232, 261
Duckett v. Gover, 6 Ch. D. 82; 46 L. J. Ch. 407; 25 W. R. 554 ... 111, 410
Duckworth, Re, 2 Ch. 578; 36 L. J. Bk. 28; 16 L. T. 580; 15 W. R. 858 162, 482, 489

PAGE

Duff's Executors' Case (Cheshire Banking Co., Re), 32 Ch. Div. 301; 54 L. T. 558 ... ... 144, 473
Duke's Case (Buxton Lime Co., Re), 1 Ch. D. 620; 45 L. J. Ch. 389; 33 L. T. 776; 24 W. R. 341 136
Dumbell's Bank, Case of 308
Duncan (W. W.) & Co., [1905] 1 Ch. 307 491
Duncuft *v.* Albrecht, 12 Sim. 189 182
Dunderland Iron Ore Co., [1909] 1 Ch. 446; 78 L. J. Ch. 237; 100 L. T. 224 436
Dunlop *v.* Dunlop, 21 Ch. Div. 583 178
——— *v.* Higgins, 1 H. L. Cas. 381; 12 Jur. 295 133
Dunlop Pneumatic Co. *v.* Actien Gesellschaft, [1902] 1 K. B. 342; 71 L. J. Q. B. 284; 86 L. T. 472; 50 W. R. 226 409
Dunlop-Truffault Cycle and Tube Manufacturing Co., Re. *See* Shearman, Ex parte.
Dunnett *v.* Mitchell, 12 Rettie, 40 366
Dunster's Case, Glory Paper Mills Co., Re, [1894] 3 Ch. 473; 63 L. J. Ch. 885; 71 L. T. 528; 43 W. R. 164; 1 Mans. 438 ... ... 86, 136
Dunston *v.* Imperial Gas Light and Coke Co., 3 B. & Ad. 125 78
Durham Building Society, Re (Davis and Wilson's Case), 12 Eq. 516 ... 250
Durlacher *v.* Hotchkiss Ordnance Co., 3 Times L. R. 807 ... ... 320, 321
Dutton *v.* Marsh, L. R. 6 Q. B. 361 393
Dynevor, &c., Collieries Co., Re, 11 Ch. Div. 605; 48 L. J. Ch. 314; 40 L. T. 409; 27 W. R. 670 531

E.

Eaglesfield *v.* Londonderry, Marquis of, 4 Ch. Div. 693; 35 L. T. 822; 25 W. R. 190 ... ... 377, 395
Eales *v.* Cumberland Blacklead Mining Co., 6 H. & N. 481; 30 L. J. Ex. 141; 3 L. T. 861 96
Earles Shipbuilding Co., Barclay *v.* Co., [1901] W. N. 78 499
East Anglican Rail. Co. *v.* Eastern Counties Rail. Co., 11 C. B. 775 ... 46
East Gloucestershire Rail. Co. *v.* Bartholomew, L. R. 3 Ex. 15; 37 L. J. Ex. 17; 17 L. T. 256 ... ... 155, 156
East Kent Shipping Co., Re, 18 L. T. 748 427
East Konsberg Co., Re. *See* Bigg's Case.
East Norfolk Tramways Co. *See* Barber's Case.
East of England Banking Co. *See* Feltham's Case.
——— Re, 4 Ch. 14; 38 L. J. Ch. 121; 19 L. T. 299; 17 W. R. 18 ... ... 491, 492
East of London Banking Co., Re. *See* Pearson's Case.
East Pant Du, &c., Co. *v.* Merryweather, 2 H. & M. 254; 13 W. R. 216; 10 Jur. N. S. 1231 223
East Wheal Mining Co., Re, 33 Beav. 119 188
East & West India Docks Co., Re, 44 Ch. Div. 38; 38 Ch. D. 576; 62 L. T. 239; 38 W. R. 516 ... ... 526, 527
East and West Junction Rail. Co., 8 Eq. 87; 38 L. J. Ch. 522; 21 L. T. 86 527
Eastern and Midland Rail. Co., Re, 45 Ch. D. 367; 63 L. T. 604 ... 279
Eastern Archipelago Co. *v.* The Queen, 2 El. & Bl. 856; 23 L. J. Q. B. 82; 18 Jur. 481; 2 W. R. 77 413
Eastern Counties Rail. Co. *v.* Broom, 6 Ex. 314 109
Eastern Investment Co., Ltd., [1905] 1 Ch. 352; 74 L. J. Ch. 281; 92 L. T. 359; 53 W. R. 186 538
Eastwick's Case (Canadian Oilworks Corporation, Re), 34 L. T. 84 136, 352

PAGE

Ebbett's Case, 5 Ch. 302; 39 L. J. Ch. 679; 22 L. T. 424; 18 W. R. 394 130
Ebbw Vale Co., Ex parte Contract Corporation, Re, 8 Eq. 14; 20 L. T. 964 489
Ebbw Vale Co., Ex parte Contract Corporation, Re, 5 Ch. 112; 39 L. J. Ch. 363; 18 W. R. 222 491
Ebenezer Timmins & Sons, Re, [1902] 1 Ch. 238 169
Eberle's Hotel Co. *v.* Jonas (1887), 18 Q. B. Div. 459; 56 L. J. Q. B. 278; 35 W. R. 467 493
Eclipse Gold Mining Co., Re, 17 Eq. 490; 43 L. J. Ch. 637 503
Eddystone Marine Insurance Co., [1893] 3 Ch. 9; 62 L. J. Ch. 742; 69 L. T. 363; 41 W. R. 642 167
Eden *v.* Ridsdale's Lamp Co., 23 Q. B. Div. 368; 58 L. J. Q. B. 579; 61 L. T. 444; 38 W. R. 55 ... ... 64, 352, 353
Edgington *v.* Fitzmaurice, 29 Ch. Div. 459; 53 L. T. 369; 55 L. J. Ch. 650; 33 W. R. 911 379
Edmonds *v.* Blaina Furnaces Co., 36 Ch. D. 215; 56 L. J. Ch. 815; 57 L. T. 139; 35 W. R. 798 257
Edwards, Ex parte, 64 L. T. 561 142
——— *v.* Edwards, 2 Ch. D. 291; 45 L. J. Ch. 391; 34 L. T. 472; 24 W. R. 713 ... ... 245, 247
——— *v.* Midland Rail. Co., 6 Q. B. D. 287; 50 L. J. Q. B. 281; 43 L. T. 694; 29 W. R. 609; 45 J. P. 374 109
——— *v.* Standard Rolling Stock Syndicate, [1893] 1 Ch. 574; 62 L. J. Ch. 605; 68 L. T. 194, 633; 41 W. R. 343 276
Ehrmann Bros., Ltd., In re, Albert *v.* the Co., [1906] 2 Ch. 697; 75 L. J. Ch. 817; 95 L. T. 664 249
Eichbaum *v.* City of Chicago Grain Elevators, [1891] 3 Ch. 459; 61 L. J. Ch. 28; 65 L. T. 704; 40 W. R. 153 210
Elborough *v.* Ayres, 10 Eq. 367; 39 L. J. Ch. 601; 23 L. T. 68; 18 W. R. 913 95
Elder *v.* New Zealand Co., 30 L. T. 285; W. N. (1874), p. 85 ... 105, 173
Electric and Magnetic Co., Re, 50 L J. Ch. 491; 44 L. T. 604; 29 W. R. 714 438
——— Re. *See* Carmichael and Hewitt's Case.
Electric Telegraph Co. of Ireland, Re, 22 Beav. 471; 7 Jur. N. S. 901; 9 W. R. 878 417
———. *See* Troup's Case.
Electrical Engineering Co., Re, 64 L. T. 658 437
Electromobile Co. *v.* British Electromobile Co., 98 L. T. 258 15
Eley Positive Life Assurance Co., 1 Ex. Div. 20, 88; 45 L. J. Ex. 451; 34 L. T. 190; 24 W. R. 338 220
Elham Valley Rail. Co. *See* Biron's Case.
Elkington's Case (Richmond Hill Hotel Co., Re), 2 Ch. 511; 36 L. J. Ch. 593; 16 L. T. 301; 15 W. R. 665 132
Elkington *v.* Hürter, [1892] 2 Ch. 452; 61 L. J. Ch. 514; 66 L. T. 764 ... 395
Elliot, Ex parte. *See* Freen & Co., Re.
Ellis *v.* Colman, 25 Beav. 662 32
—— *v.* Dodson & Co., 60 L. J. Ch. 353 506
Elphinstone (Lord) *v.* Monkland Iron Co., 11 A. C. 332 487
Elsner and McArthur's Case, [1895] 2 Ch. 759; 65 L. J. Ch. 76; 73 L. T. 338; 2 Mans. 598 ... ... 167, 168
Emanuel, Ex parte (Batey, Re), 17 Ch. D. 35; 50 L. J. Ch, 305; 44 L. T. 832; 29 W. R. 526 467
Emma Silver Mining Co. *v.* Grant, 11 Ch. Div. 918; 40 L. T. 804 61, 66, 348

PAGE

Emma Silver Mining Co. *v.* Grant, 17 Ch. Div. 122; 50 L. J. Ch. 449; 29 W. R. 481 357

——— ——— *v.* Lewis, 4 C. P. D. 396; 48 L. J. C. P. 257; 40 L. T. 168; 27 W. R. 836 ... ... 58, 59, 61, 348

Emmerson, Ex parte (London, Hamburgh, and Continental Exchange Bank, Re), 1 Ch. 433; 36 L. J. Ch. 177; 12 Jur. N. S. 592; 14 L. T. 746; 14 W. R. 905 448

Emperor Life Assurance Society, Re, 31 Ch. D. 78; 55 L. J. Ch. 3; 53 L. T. 591; 34 W. R. 118 415

Empire Assurance Corporation, Re. *See* Bagshaw's Case; Dougon's Case.

Empire Mining Co., Re, 44 Ch. D. 402; 59 L. J. Ch. 345; 62 L. T. 493; 38 W. R. 747; 2 Meg. 191 ... ... 529, 530

Empress Engineering Co., Re, 16 Ch. Div. 125; 43 L. T. 742; 29 W. R. 342; 42 W. R. 155 218

Engel *v.* South Metropolitan Brewing and Bottling Co., [1892] 1 Ch. 442; 61 L. J. Ch. 369; 66 L. T. 155; 40 W. R. 282 251

Englefield Colliery Co., Re, 8 Ch. Div. 388; 38 L. T, 112 343

English Bank of the River Plate, Re, [1892] 1 Ch. 391; 61 L. J. Ch. 205; 66 L. T. 177; 40 W. R. 325 468

English Channel Steamship Co. *v.* Rolt, 17 Ch. D. 715; 44 L. T. 135 ... ... 235, 255

English Electro-Metallurgical *v.* Glasdir Copper Works, Ltd. *See* Glasdir Copper Works, Ltd.

English, Irish, and Foreign Rolling Stock Co., Re. *See* Lyon's Case.

English and Colonial Produce Co., In re, [1906] 2 Ch. 435; 75 L. J. Ch. 831; 95 L. T. 580 66

English and Scottish Marine Insurance Co., Re (McClure, Ex parte). *See* McClure, Ex parte (English and Scottish, &c., Co., Re).

English and Scottish Mercantile Investment Co. v. Brunton, [1892] 2 Q. B. 700; 62 L. J. Q. B. 136; 67 L. T. 406; 41 W. R. 133 ... 261

English, Scottish, and Australian Chartered Bank, Re, [1893] 3 Ch. 385; 62 L. J. Ch. 825; 69 L. T. 268; 42 W. R. 4 ... ... 531, 532

Ennis and West Clare Rail. Co., 3 L. R. Ir 94 416

Equestrian and Public Buildings Co., Re, 1 Meg. 115 445

Era Insurance Co., Re, 30 L. J. Ch. 137; 2 J. & H. 400; 6 Jur. N. S. 1334; 3 L. T. 314; 9 W. R. 67 522

Erlanger *v.* New Sombrero Phosphate Co., 3 App. Cas. 1218; 5 Ch. Div. 73; 48 L. J. Ch. 73; 46 L. J. Ch. 425; 39 L T. 269; 36 L. T. 222; 25 W. R. 436; 27 W. R. 65 ... ... 59, 60, 64, 65, 350, 369

Ernest *v.* Croysdill, 29 L. J. Ch. 580; 6 Jur. N. S. 740 ... ... 252, 302

——— *v.* Loma Gold Mines Co., [1897] 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86 ... ... 334, 336

——— *v.* Nicholls, 6 H. L. Cas. 401; 3 Jur. N. S. 919 ... 78, 102, 223, 522

Esparto Trading Co., Re (Finch and Goddard's Case), 12 Ch. D. 191; 48 L. J. Ch. 573; 28 W. R. 146 ... ... 144, 204

Espuela Land and Cattle Co., Re, [1900] W. N. 139; [1909] 2 Ch. 187 327, 504

Essex Brewery Co., Re. *See* Barnett's Case.

Essex and Suffolk Equitable Insurance Co., [1909] W. N. 102 21

Estates Investment Co., Re. *See* Ashley's Case; Powle's Case.

Etna Insurance Co., Ex parte. *See* United Ports and General Insurance Co., Re.

Euphrates and Tigris Steam Navigation Co., [1904] 1 Ch. 360; 73 L. J. Ch. 175; 90 L. T. 56 21

PAGE

European Arbitration (Manisty's Case), 17 Sol. J. 745 204
European Assurance Society. *See* Doman's Case; Ramsay's Case.
European Bank, Re (Master's Case), 7 Ch. 292; 41 L. J. Ch. 501; 26 L. T. 269; 20 W. R. 499 475
——————, Ex parte. *See* Oriental Commercial Bank, Re.
European Central Rail Co., Re, 4 Ch. D. 33; 46 L. J. Ch. 57; 35 L. T. 583; 25 W. R. 92 ... ... 274, 492
—————————— *See* Gustard's Case; Parson's Case; Syke's Case; Walford's Case.
European Life Assurance Society, Re, 9 Eq. 122; 39 L. J. Ch. 324; 22 L. T. 785; 18 W. R. 9 ... 434
—————————— (Crowe, Ex parte), 10 Eq. 403; 40 L. J. Ch. 87; 22 L. T. 785; 18 W. R. 913 439
Eustace *v.* Dublin Trunk Rail. Co., 6 Eq. 182; 18 L. T. 679; 16 W. R. 1110 158
Evans' Case (London, Hamburg, &c., Bank, Re), 2 Ch. 427; 36 L. J. Ch. 501; 16 L. T. 252; 15 W. R. 543 136
Evans *v.* Chapman, [1902] W. N. 78; 86 L. T. 381 26
——— *v.* Coventry, 8 De G. M. & G. 835; 26 L. J. Ch. 400; 29 L. T. O. S. 118; 5 W. R. 436 ... ... 36, 342, 353, 358
——— *v.* Smallcombe, L. R. 3 H. L. 249; 37 L. J. Ch. 793; 19 L. T. 207 202
Eve, Ex parte (Imperial Land Credit Co., Re), 37 L. J. Ch. 844; 16 W. R. 1191 ... ... 135, 137
Everitt *v.* Automatic Weighing Machine Co., [1892] 3 Ch. 506; 62 L. J. Ch. 241; 67 L. T. 349 178
Exchange Banking Co., Re. *See* Flitcroft's Case.
—————————— (Ramwell's Case), 50 L. J. Ch. 827 ... 175, 207
Exchange Drapery Co., Re, 38 Ch. D. 171; 57 L. J. Ch. 914; 58 L. T. 544; 36 W. R. 444 503
Exchange Trust, Ltd. (Larkworthy's Case), [1903] 1 Ch. 711; 72 L. J. Ch. 387; 88 L. T. 56 205
Exeter and Crediton Rail. Co. *v.* Buller, 16 L. J. Ch. 449; 5 Rail. Cas. 211; 11 Jur. 527 ... ... 106, 111
Exhall Coal Mining Co., Re. *See* Miles, Ex parte.
Exhall Coal Mining Co., Re, 4 De G. J. & S. 377; 11 L. T. 526; 13 W. R. 219 ... ... 422, 423
Exmouth Docks, Re, 17 Eq. 181; 43 L. J. Ch. 110; 29 L. T. 573; 22 W. R. 104 ... ... 416, 417, 436
Eyre's Case (Mitre Assurance Co., Re), 31 Beav. 177 195
Eyton (Adam), Ex parte, 36 Ch. D. 299; 57 L. J. Ch. 127; 57 L. T. 899; 36 W. R. 275 422

F.

Fairbairn Engineering Co., Re, Ladd, Ex parte, [1893] 3 Ch. 450; 63 L. J. Ch. 8; 69 L. T. 415 ... ... 113, 205, 507
Fairfield Shipbuilding and Engineering Co. *v.* London and East Coast Steamship Co., W. N. (1895), 64 276
Fancy Dress Balls Co., Re, W. N. (1899), 109 436
Farmer *v.* Goy & Co., Ltd. *See* Goy & Co., Re.
Farquhar, Ex parte (Land Securities Co., Re), [1896] 2 Ch. 320; 65 L. J. Ch. 587; 74 L. T. 400; 44 W. R. 514 529
Faure Electric Accumulator Co., Re, 40 Ch. D. 141; 58 L. J. Ch. 48; 59 L. T. 918 ... ... 35, 66, 77, 195, 343, 353, 354, 361

PAGE

Faure Electric Accumulator Co. *v.* Phillipart, 58 L. T. 525 172, 173, 177
Faversham *v.* Cameron's Co., 3 De G. J. & S. 296 223
Fawcett *v.* Laurie, 1 Dr. & Sm. 192 36
Fearnside's Case (Leeds Banking Co., Re), 1 Ch. 231; 35 L. J. Ch. 307; 12 Jur. N. S. 60; 13 L. T. 694; 14 W. R. 255 478
Featherstone *v.* Cook, 16 Eq. 298; 21 W. R. 835 111
Featherstonehaugh *v.* Lee Moor Clay Co., L. R. 1 Eq. 318; 35 L. J. Ch. 84; 11 Jur. N. S. 994; 13 L. T. 460; 14 W. R. 97 300
Federal Bank of Australia, Re, W. N. (1893), 46 414
Feiling and Rimington's Case, 2 Ch. 714 187
Felgate, Ex parte (United Kingdom Shipowners' Co., Re), 11 L. T. 613; 13 W. R. 4, 305; 11 Jur. N. S. 52 143
Feltom's Case (East of England Banking Co., Re), L. R. 1 Eq. 219; 35 L. J. Ch. 196; 13 L. T. 741; 14 W. R. 247 462
Fenwick Stobart & Co., Ltd. (Deep Sea Fishery Co.'s Claim), [1902] 1 Ch. 507; 71 L. J. Ch. 321; 86 L. T. 193 99
Ferguson *v.* Wilson, 2 Ch. 77; 15 W. R. 27 393
Ferndale Industrial Co-operative Society, Re, [1894] 1 Q. B. 828; 70 L. T. 448; 42 W. R. 430; 1 Mans. 303 462
Ferrao's Case (Paraguassu Tramroad Co., Re), 9 Ch. 355; 43 L. J. Ch. 482; 30 L. T. 211; 22 W. R. 386 165
Finance and Issue, Ltd. *v.* Canadian Produce Corporation, Ltd., [1905] 1 Ch. 37; 73 L. J. Ch. 751; 91 L. T. 685; 53 W. R. 170 ... 147, 148
Financial Corporation, Re, 28 W. R. 760 ... ... 18, 299
———————. *See* Feiling and Rimington's Case; King's Case.
Financial Insurance Co., Re, Bishop's Case, 7 Ch. 296, n. 475
Fine Cotton Spinners, &c., Association *v.* Harwood, Cash & Co., [1907] 2 Ch. 184; 76 L. J. Ch. 670; 97 L. T. 45 15
Finch and Goddard's Case (Esparto Trading Co., Re), 48 L. J. Ch. 573; 12 Ch. D. 191; 28 W. R. 196 204
Finucane, Ex parte (Constantinople, &c., Hotel Co., Re), 17 W. R. 813; 20 L. T. 729 133
Firbank's Executors *v.* Humphreys, 18 Q. B. Div. 54; 56 L. J. Q. B. Div. 57; 56 L. T. 36; 35 W. R. 92 395
Fire Annihilator Co., Re, 32 Beav. 561 437
Fisher's Case (Southport, &c., Banking Co., Re), 31 Ch. Div. 120; 55 L. J. Ch. 497, 597; 53 L. T. 832; 34 W. R. 49, 335 132
Fisher *v.* Black and White Publishing Co., [1901] 1 Ch. 174; 70 L. J. Ch. 175; 84 L. T. 305; 49 W. R. 310; 8 Mans. 184 323
Fitzgeorge, Re (Ex parte, Robson), [1905] 1 K. B. 462; 74 L. J. K. B. 384; 92 L. T. 206; 53 W. R. 384; 12 Mans. 14 540
Fitzgerald *v.* Persse, Ltd., [1908] 1 Ir. R. 279 263
Flack's Case. *See* Central Sugar Factories of Brazil, Re.
Flagstaff Silver Mining Co. of Utah, Re, 20 Eq. 268; 45 L. J. Ch. 136; 23 W. R. 611 434
Flanagan *v.* Great Western Rail. Co., 7 Eq. 116; 38 L. J. Ch. 117; 19 L. T. 345 ... ... 222, 223
Fleetwood Estate Co., Re, W. N. (1897), 20 20
Fleming *v.* Bank of New Zealand, [1900] A. C. 577; 69 L. J. P. C. 120; 83 L. T. 1 ... ... 104, 167
Fletcher's Case (Saloon Steam Packet Co., Re), 37 L. J. Ch. 49; 17 L. T. 136; 16 W. R. 75 135
Flint Coal Co., Re, 56 L. J. Ch. 232; 56 L. T. 16 423
Flitcroft's Case (Exchange Banking Co., Re), 21 Ch. Div. 519; 52 L. J. Ch. 217; 48 L. T. 86; 31 W. R. 174 38, 75, 343, 353, 356, 357, 462, 493

PAGE

Floating Dock of St. Thomas, Ltd., Re, [1895] 1 Ch. 691; 64 L. J. Ch. 361; 43 W. R. 344; 13 R. 491 50
Florence Land, &c., Co., Re (Ex parte Moor), 10 Ch. Div. 530; 18 L. J. Ch. 137; 39 L. T. 589; 27 W. R. 236 ... 235, 259
———————. *See* Nicol's Case; Tufnell & Ponsonby's Case.
Follett's Case, 9 Times L. R. 499 40
Follit *v.* Eddystone Granite Quarries, [1892] 3 Ch. 75; 61 L. J. Ch. 567; 40 W. R. 667 274
Forbes' Case (Anglo-Moravian Hungarian Junction Railway, Re), 8 Ch. 768; 42 L. J. Ch. 857 476
——— (Teme Valley Rail. Co., Re), 19 Eq. 353; 44 L. J. Ch. 356; 23 W. R. 402 ... ... 85, 127
Forbes and Judd's Case (Heyford Ironworks Co., Re), 5 Ch. 270; 30 L. J. Ch. 422; 22 L. T. 187; 18 W. R. 302 136
Forde, Ex parte (Delta Syndicate, Re), 30 Ch. D. 153; 54 L. J. Ch. 724; 53 L. T. 559; 33 W. R. 839 168
Foreign and Colonial Government Trust Co., Re, [1891] 2 Ch. 395; 65 L. T. 78; 39 W. R. 669 20
Fore Street Warehouse, Re, 59 L. T. 214; 1 Meg. 67 53
Forest of Dean Coal Co., Re, 10 Ch. D. 450; 40 L. T. 287; 27 W. R. 594 75, 347
Forrest *v.* Manchester, &c., Rail. Co., 30 Beav. 40; 7 Jur. N. S. 887; 4 L. T. 666; 9 W. R. 818 44
Forster & Co., Re. *See* Schumann, Ex parte.
Foss *v.* Harbottle, 2 Hare, 431 ... ... 29, 110, 176, 410
Foster *v.* Borax Co. *See* Borax Co., Re.
——— *v.* Greenwich Ferry Co., 5 Times L. R. 16 82
——— *v.* New Trinidad Lake Asphalte Co., [1901] 1 Ch. 208; 70 L. J. Ch. 123; 49 W. R. 119 ... ... 311, 316
——— *v.* Oxford Rail. Co., 13 C. B. 200; 22 L. J. C. P. 99; 17 Jur. 167; 1 W. R. 151 223
——— *v.* Tyne Pontoon Co., 63 L. J. Q. B. 50 189
Fothergill's Case (Penallt Silver Lead Mining Co., Re), 8 Ch. 270; 42 L. J. Ch. 481; 27 L. T. 124; 21 W. R. 301 165
Foulkes *v.* Quartz Hill Co., Cab. & E. 156 142
Fountaine *v.* Carmarthen Rail. Co., 5 Eq. 316; 37 L. J. Ch. 429; 16 W. R. 476 ... ... 232, 254, 255
Fountain's Case 4 De G. J. & S. 699; 34 L. J. Ch. 539; 11 Jur. N. S. 553; 12 L. T. 335; 13 W. R. 667 13
Fourdrinier, Ex parte (Artistic Colour Printing Co., Re), 21 Ch. D. 510; 48 L. T. 46; 31 W. R. 149 ... ... 423, 424
Fowler and Broad's Patent Night Light Co., Re, [1893] 1 Ch. 724; 62 L. J. Ch. 373; 68 L. T. 576; 41 W. R. 247 ... ... 235, 279, 450, 479
Fox's Case (Canadian Oil Co., Re), 5 Eq. 118 209
Fox, Ex parte (Irrigation Co. of France, Re), 6 Ch. 176; 40 L. J. Ch. 433; 24 L. T. 336 ... ... 46, 300, 517, 520
—— *v.* Martin, 64 L. J. Ch. 473 183
Frames *v.* Bultfontein Mining Co., [1891] 1 Ch. 140; 60 L. J. Ch. 99; 64 L. T. 12; 2 Meg. 374; 39 W. R. 134 80
France *v.* Clark, 26 Ch. Div. 257; 53 L. J. Ch. 585; 50 L. T. 1; 32 W. R. 466 ... ... 183, 190, 192, 193
Frankenburg *v.* Great Horseless Carriage Co., [1900] 1 Q. B. 504; 69 L. J. Q. B. 147; 81 L. T. 684 ... ... 364, 373
Fraser (D. & D. H.) Ltd., [1903] W. N. 73 19
——— *v.* Brescia Steam Tramways Co., 56 L. T. 771 466

PAGE

Fraser *v.* Cooper, Hall & Co., 21 Ch. D. 718; 51 L. J. Ch. 575; 46 L. T. 371; 30 W. R. 654 276
——— *v.* Whalley, 2 H. & M. 10; 11 L. T. 175 ... ... 106, 111, 150
Free Fisherman of Faversham, Re, 36 Ch. D. 329; 57 L. J. Ch. 187; 57 L. T. 577 444
Freehold Investment Co., Re. *See* Green's Case.
Freeman *v.* General Publishing Co., [1894] 2 Q. B. 380; 70 L. T. 845; 42 W. R. 539; 1 Mans. 366 427
Freen & Co., Re (Elliot, Ex parte), 15 L. T. 406; 15 W. R. 166 136
Fricker's Case (Bank of Hindustan, China and Japan, Re), 13 Eq. 178; 41 L. J. Ch. 278 455
Frost & Co., Re, [1899] 2 Ch. 207; 68 L. J. Ch. 544; 80 L. T. 849; 48 W. R. 39 ... ... 165, 167
Fryer *v.* Ewart, [1902] A. C. 187; 71 L. J. Ch. 433; 86 L. T. 242 ... 512
Fuller *v.* McMahon. *See* MacMahon, Re.
Fuller *v.* White Feather Reward, Ltd., [1906] 1 Ch. 823; 75 L. J. Ch. 393; 95 L. T. 404 ... ... 300, 513
Furness *v.* Caterham Rail. Co., 27 B. 358 268
Fyfe's Case, 4 Ch. 768; 21 L. T. 151; 17 W. R. 978 215

G.

Gale *v.* Lewis, 9 Q. B. 730; L. J. Q. B. 119 99
Gapp *v.* Bond, 19 Q. B. D. 200; 56 L. J. Q. B. 438; 57 L. T. 437; 35 W. R. 683 242
Garden Gully Mining Co. *v.* McLister, 1 App. Cas. 39; 33 L. T. 408; 24 W. R. 744 ... ... 88, 90, 173, 205
Gardner *v.* London C. & D. Rail. Co., 2 Ch. 201; 36 L. J. Ch. 323; 15 L. T. 552; 15 W. R. 325 ... ... 236, 272, 275, 277
Garrud, Re. *See* Newitt, Ex parte.
Gartside *v.* Silkstone and Dodworth Coal and Iron Co., 21 Ch. D. 762; 51 L. J. Ch. 828; 47 L. T. 76; 31 W. R. 36 268
Gaskell *v.* Chambers (No. 3), 26 Beav. 360; 28 L. J. Ch. 385; 32 L. T. O. S. 188 347
Gaslight Improvement Co. *v.* Terrell, 10 Eq. 168; 39 L. J. Ch. 725; 23 L. T. 386 ... ... 106, 449
Gatling Gun Co., Re, Ch. D. 628; 53 L. J. Ch. 279; 62 L. T. 312; 38 W. R. 317 50
Gelley Deg Colliery Co., Re, 38 L. T. 440 318
General Accident Assurance Corporation, [1904] 1 Ch. 147; 73 L. J. Ch. 84; 89 L. T. 699; 52 W. R. 332 540
General Auction Estate and Monetary Co. *v.* Smith, [1891] 3 Ch. 432; 60 L. J. Ch. 723; 65 L. T. 188; 40 W. R. 106 231
General Co. for Promotion of Land Credit, Re, 5 Ch. 363; 39 L. J. Ch. 737; 22 L. T. 454; 18 W. R. 505; L. R. 5 H. L. 176 193
General Credit and Discount Co., Ex parte. *See* Hamilton's Windsor Ironworks, Re.
General Exchange Bank, Re, Ch. 818; 40 L. J. Ch. 429; 24 L. T. 787; 19 W. R. 791 178
——————————— 4 Eq. 138 445
——————————— 15 W. R. 477 516
——————————— *See* Preston, Ex parte.
——————————— *v.* Horner, 9. Eq. 480; 39 L. J. Ch. 393; 22 L. T. 693; 18 W. R. 414 ... ... 343, 347

PAGE

General Financial Bank, Re, 20 Ch. D. 276; 51 L. J. Ch. 490; 47 L. T. 1; 30 W. R. 417 443
General International Agency Co. *See* Chapman's Case.
General Property Investment Co. *v.* Matheson's Trustees, 16 Court of Sess. Cas. 282 (Rettie) 40
General Provident Ass. Co., Re. *See* Bridger's Case; Cross's Case; National Bank, Ex parte.
General Railway Rolling Stock Co. (Chapman's Case). *See* Chapman's Case.
General Reversionary and Investment Co. *v.* General Reversionary Co., 1 Meg. 65 15
General Rolling Stock Co., Re (Joint Stock Discount Co., Ex parte), 7 Ch. 646; 41 L. J. Ch. 732; 27 L. T. 88; 20 W. R. 762 497
General Service Co-operative Stores, Re, 64 L. T. 228 419
———————————, [1891] 1 Ch. 496; 60 L. J. Ch. 586; 64 L. T. 272 427
General Share and Trust Co. *v.* Wetley Brick Co., 20 Ch. D. 260; 30 W. R. 445 425
General South American Co., Re, 2 Ch. Div. 337; 34 L. T. 706; 24 W. R. 891 ... ... 235, 262
General Works Co., Re. *See* Gill's Case.
George Newman & Co., Re. *See* Newman (G.) & Co.
Gerhard *v.* Bates, 2 Ell. & Bl. 476; 1 W. R. 383; 22 L. J. Q. B. 364 367, 383
German Date Coffee Co., Re, 20 Ch. Div. 169; 51 L. J. Ch. 564; 46 L. T. 327; 30 W. R. 717 ... ... 45, 435
German Mining Co., Re (Chippendale, Ex parte), 4 De G. M. & G. 19; 23 L. T. O. S. 300; 2 W. R. 543 231
Gerson *v.* Simpson, [1903] 2 K. B. 197; 72 L. J. K. B. 603; 89 L. T. 117; 51 W. R. 610 388
Getynog Llantwit Colliery Co., Re. *See* Gray *v.* Seckham.
Gibbs *v.* Guild, 8 Q. B. D. 296; 9 Q. R. Div. 59; 51 L. J. Q. B. Div. 313; 46 L. T. 248; 30 W. R. 591 387
Gibbs and West's Case (International Life Ass. Soc., Re), 10 Eq. 312; 39 L. J. Ch. 667; 18 W. R. 970; 23 L. T. 350 ... ... 81, 234, 447, 488
Gibson *v.* Barton, L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 23 W. R. 858 ... ... 104, 288, 324, 401
Gifford *v.* Willoughby's Mashonaland Co., 16 Times L. R. 24 58
Gilbert's Case (National Provincial Ass. Co., Re), 5 Ch. 559; 39 L. J. Ch. 837; 23 L. T. 341; 18 W. R. 938 ... ... 175, 197, 198
Giles, Re, 61 L. T. 82; 37 W. R. 767 384
—— *v.* Hutt, 3 Ex. 18; 18 L. J. Ex. 53; 5 Rail. Cas. 535 206
Gill's Case (General Works Co., Re), 12 Ch. D. 755; 48 L. J. Ch. 774; 41 L. T. 21; 27 W. R. 934 ... ... 482, 488
Gill *v.* Arizona Copper Co. (1900), 2 Fraser 843 ... ... 40, 153
Gillespie *v.* City of Glasgow Bank, 4 A. C. 632 473
Gilman's Case (Crook & Co., Re), 31 Ch. D. 420; 55 L. J. Ch. 509; 54 L. T. 205; 34 W. R. 362 136
Gilman *v.* Gülcher Electric Light Co., 3 Times L. R. 133 80
Glamorganshire Banking Co., Re. *See* Morgan's Case, Glamorganshire Banking Co., Re.
Glasdir Copper Works, Ltd., In re, [1904] 1 Ch. 819; [1906] 1 Ch. 365; 75 L. J. Ch. 109; 94 L. T. 8 279
Glasgow Bank, Re. *See* Buchan's Case.
———————— *v.* Mackinnon, 9 Rettie, 535 ... ... 39, 319

PAGE

Glasier *v.* Rolls, 42 Ch. Div. 436; 59 L. J. Ch. 63; 62 L. T. 305; 38 W. R. 113 ... ... 62, 366, 367, 368, 375, 379, 383
Gleadow *v.* Hull Glass Co., 19 L. J. Ch. 44; 13 Jur. 1020 81
Gledhill's Case (Cardiff Iron Co., Re), 3 De G. F. & J. 713; 30 L. J. Ch. 861 133
Glendower Steamship Co., Re, W. N. (1899), 114 442
Globe Blocks Gold Mining Co., Re, 12 Times L. R. 92 74
Globe New Patent Iron and Steel Co., Re, 20 Eq. 337; 44 L. J. Ch. 580; 23 W. R. 823 434
Glory Paper Mills Co., Re. *See* Dunster's Case.
Glossop *v.* Glossop, [1907] 2 Ch. 370; 76 L. J. Ch. 610; 97 L. T. 372 ... 91
Gluckstein *v.* Barnes, [1900] A. C. 240; 69 L. J. Ch. 385; 82 L. T. 393 60, 61, 64, 65, 348, 351, 354, 355
Godwin *v.* Francis, 5 C. P. 295; 39 L. J. C. P. 121; 22 L. T. 338 ... 133
Goff *v.* Great Northern Rail. Co., 3 E. & E. 672 109
Gold Co., Re, 12 Ch. Div. 77; 48 L. J. Ch. 281; 40 L. T. 5; 27 W. R. 341 453
——— ———, 11 Ch. Div. 701; 48 L. J. Ch. 650; 40 L. T. 865; 27 W. R. 757 ... ... 397, 414, 435, 439, 510
Gold Hill Mines, Re, 23 Ch. D. 210; 49 L. T. 66; 31 W. R. 853... ... 442
Gold Reefs of West Australia *v.* Dawson, [1897] 1 Ch. 115 411
Goldsmid, Re, Taylor, Ex parte. *See* Taylor, Ex parte, Goldsmid, Re.
Gooch *v.* London Banking Association, 32 Ch. D. 41 487
Gooch's Case (Contract Corporation, Re), 8 Ch. 266; 42 L. J. Ch. 381; 28 L. T. 148; 21 W. R. 181 475
Goodson's Claim. *See* Financial Corporation, Re.
Goodwin *v.* Robarts, 1 A. C. 476; 45 L. J. Ex. 748; 35 L. T. 179; 24 W. R. 987 268
Gore and Durant's Case (Patent Carriage Co., Re), L. R. 2 Eq. 349 ... 166
Gorrissen's Case (Monarch Insurance Co., Re), 8 Ch. 507; 42 L. J. Ch. 864; 28 L. T. 611; 21 W. R. 536 ... ... 72, 132, 476
Gorringe *v.* Irwell India Rubber and Gutta Percha Works, 34 Ch. D. 128; 56 L. J. Ch. 85; 55 L. T. 572; 35 W. R. 86 483
Gosling *v.* Gaskell, [1897] A. C. 575; 77 L. T. 314; 66 L. J. Q. B. 848; 45 W. R. 208 281
Gouthwaite, Ex parte, 3 Mac. & G. 187; 20 L. J. Ch. 188; 15 Jur. 137... 478
Government Security Fire Insurance Co. *See* Mudford's Claim.
Government Stock Investment Co., Re, [1891] 1 Ch. 649; 60 L. J. Ch. 477; 65 L. T. 339; 39 W. R. 365 19
——— ——— ——— ——— (No. 2), [1892] 1 Ch. 597; 61 L. J. Ch. 381; 78 L. T. 608; 40 W. R. 387 20
——— ——— ——— ——— *v.* Manila Rail. Co., [1897] A. C. 81; 66 L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353 ... 259, 260
Gover's Case (Coal Economising Gas Co., Re), 1 Ch. Div. 182; 45 L. J. Ch. 83; 33 L. T. 619; 24 W. R. 125 ... ... 65, 123, 369
Gower's Case (London and Provincial Starch Co.), 6 Eq. 77; 18 L. T. 283, 317; 16 W. R. 751 204
Goy & Co., Re, [1900] 2 Ch. 149; 69 L. J. Ch. 481; 48 W. R. 425 269, 270
Graham *v.* Birkenhead, &c., Rail. Co., 2 Mac. & G. 146 ... ... 34, 35
——— *v.* Edge, 20 Q. B. D. 683; 57 L. J. Q. B. 406; 58 L. T. 913; 36 W. R. 529 425
——— ——— *v.* Van Diemen's Land Co., 1 H. & N. 541; 26 L. J. Ex. 73; 28 L. T. O. S. 219; 5 W. R. 149 206

PAGE

Grand Junction Canal Co. *v.* Petty, 21 Q. B. D. 273; 57 L. J. Q. B. 572; 59 L. T. 767; 36 W. R. 795 298
Grant *v.* Gold Exploration and Development Syndicate, [1900] 1 Q. B. 233; 69 L. J. Q. B. 150; 82 L. T. 5; 48 W. R. 280 349
Grant *v.* United Kingdom Switchback Co., 40 Ch. Div. 135; 58 L. J. Ch. 211; 50 L. T. 856; 37 W. R. 312 ... ... 107, 222, 226, 253, 255
Gray's Case (West Hartlepool Iron Co., Re), 1 Ch. D. 664; 45 L. J. Ch. 342; 34 L. T. 164; 24 W. R. 508 ... ... 213, 344
Gray *v.* Lewis, 8 Ch. 1035; 43 L. J. Ch. 281; 29 L. T. 12; 21 W. R. 923; 8 Eq. 526; 20 L. T. 282; 17 W. R. 431 ... ... 111, 345, 410
—— *v.* Seckham (Getynog Llantwit Colliery Co., Re), 7 Ch. 680; 27 L. T. 290; 20 W. R. 920 81
—— *v.* Stone, 69 L. T. 282; 3 R. 692 179
Great Australian Gold Mining Co., Re. *See* Appleyard's Case.
Great Britain Mutual Life Assurance Society, Re, 16 Ch. D. 246; 43 L. T. 648; 29 W. R. 202 417
Great Cambrian Mining Co., Re. *See* Hawkins' Case.
Great Eastern Rail. Co. *v.* East London Rail. Co., 44 L. T. 903 279
Great Kruger Gold Mining Co., Re. *See* Barnard, Ex parte, Great Kruger Gold Mining Co., Re.
Great North of England Rail. Co. *v.* Biddulph, 7 M. & W. 243; 2 Rail. Cas. 401 174
Great Northern Copper Mining Co. of Australia, Re, 20 L. T. 264; 17 W. R. 462 ... ... 434, 435
Great Northern Rail. Co. *v.* Coal-Co-operative Society, [1896] 1 Ch. 187; 65 L. J. Ch. 214; 73 L. T. 443; 44 W. R. 252; 2 Mans. 621 249
———————— *v.* Eastern Counties Rail. Co., 9 Hare, 306 ... 299, 513
Great Northern Salt Works (Kennedy, Ex parte), 44 Ch. D. 472; 59 L. J. Ch. 388; 62 L. T. 231; 2 Meg. 26 88
Great North-West Central Rail. Co. *v.* Charlebois, [1899] A. C. 114; 68 L. J. P. C. 25; 79 L. T. 35 32
Great Oceanic Telegraph Co. *See* Harward's Case.
Great Ship Co., Re (Parry's Case), 4 De G. J. & S. 63; 33 L. J. Ch. 245; 9 L. T. 432; 12 W. R. 139; 3 N. R. 181 ... ... 423, 424
Great Western Coal Consumers' Co., Re (Carter's Case), 31 Ch. D. 496; 55 L. J. Ch. 494; 54 L. T. 531; 34 W. R. 516; 21 C. D. 769 ... 445, 462
Great Western Forest of Dean. *See* Crawshay and Carter's Case.
Great Western Forest of Dean Coal Consumers' Co., Re, 21 Ch. D. 769; 51 L. J. Ch. 743; 46 L. T. 875; 30 W. R. 885 445
Great Western Rail. Co. *v.* Metropolitan Rail. Co., 32 L. J. Ch. 382; 1 N. R. 551; 2 N. R. 209; 8 L. T. 556; 11 W. R. 481, 706; 9 Jur. N. S. 562 ... 31, 131, 299
———————— *v.* Rushout, 16 Jur. 228; 5 De G. & Sm. 290 ... 34, 111
Great Wheal Busy Mining Co. (King's Case), 6 Ch. 196; 40 L. J. Ch. 361; 24 L. T. 599; 19 W. R. 549 475
Great Wheal Polgooth Co., Re, 53 L. J. Ch. 42; 49 L. T. 20; 32 W. R. 107 ... ... 59, 61, 62, 375, 462
Green's Case (Freehold Investment Co., Re), 18 Eq. 428; 43 L. J. Ch. 629; 30 L. T. 672; 22 W. R. 791 138
Green *v.* London General Omnibus Co., 7 C. B. N. S. 290; 29 L. J. C. P. 13 109

PAGE

Green *v.* Marsh, [1892] 2 Q. B. 330; 61 L. J. Q. B. 442; 66 L. T. 480; 40 W. R. 449 241
——— *v.* Nixon, 5 W. R. 433; 29 L. T. 207 107
Greenwell *v.* Porter, [1902] 1 Ch. 530; 71 L. J. Ch. 243; 86 L. T. 220 ... 335
Greenwood & Co., Re, [1900] 2 Q. B. 306; 69 L. J. Q. B. 751; 82 L. T. 843; 48 W. R. 607; 7 Mans. 456 444
Greenwood, Ex parte, Liverpool Civil Service Association, Re, 9 Ch. 511; 43 L. J. Ch. 609; 30 L. T. 451; 22 W. R. 636 447
——— *v.* Algeciras Rail. Co., [1894] 2 Ch. 205; 63 L. J. Ch. 670; 71 L. T. 133; 1 Mans. 455 280
——— *v.* Leather Shod Wheel Co., [1900] 1 Ch. 434; 69 L. J. Ch. 131; 81 L. T. 595 ... ... 368, 380, 381, 382, 385
Gregg, Ex parte (Littlehampton Steamship Co., Re), 15 W. R. 82 ... 158
Gregory *v.* Patchett, 33 Beav. 595; 10 Jur. N. S. 1118; 11 L. T. 357; 13 W. R. 34 ... ... 46, 300
Gresham Life Assurance Society. *See* Penney, Ex parte.
Grey's Brewery Co., Re, 25 Ch. D. 400; 53 L. J. Ch. 262; 50 L. T. 14; 32 W. R. 381 454
Greymouth Point Elizabeth Rail. and Coal Co.; Yuill & Co., [1904] 1 Ch. 32; 73 L. J. Ch. 92 98
Griffith *v.* Paget, 6 Ch. Div. 511 517
——— ——— ———, 5 Ch. D. 894; 46 L. J. Ch. 493; 37 L. T. 141; 39 L. T. 141; 25 W. R. 523 ... ... 502, 517
Grigg *v.* National Guardian Assurance Co., [1891] 3 Ch. 206; 61 L. J. Ch. 11; 64 L. T. 787; 39 W. R. 684 240
Grimes *v.* Harrison, 26 Beav. 435 ... ... 31, 112
Grimwade, Ex parte, Tennant, Re, 17 Q. B. D. 357; 55 L. J. Q. B. 495; 3 Morrell, 166 477
——— *v.* Mutual Society, 52 L. T. 409 361
Grissell's Case, 1 Ch. 528; 35 L. J. Ch. 752; 14 L. T. 843; 14 W. R. 1015 ... ... 161, 488, 489
Grissell, Ex parte. *See* Regent's Canal Ironworks Co., Re.
Groves *v.* Wimborne (Lord), [1898] 2 Q. B. 402; 67 L. J. Q. B. 862; 79 L. T. 284; 47 W. R. 87 390
Guardian Fire and Life Assurance Co. *v.* Guardian and General Insurance Co., 50 L. J. Ch. 253; 43 L. T. 791 15
Guillemin, Ex parte. *See* Oriental Bank Corporation, Re, Guillemin, Ex parte.
Guinness *v.* Land Corporation of Ireland, 22 Ch. Div. 349; 52 L. J. Ch. 177; 47 L. T. 517; 31 W. R. 341 ... ... 18, 31, 39, 152
Gull, Ex parte (Land Shipping Colliery Co., Re), 20 L. T. 736 133
Gunn's Case (Universal Banking Co., Re), 3 Ch. 40; 37 L. J. Ch. 40; 17 L. T. 365; 16 W. R. 97 133
Gustard's Case (European Central Rail. Co., Re), 8 Eq. 438; 38 L. J. Ch. 610; 21 L. T. 196; 17 W. R. 875 ... ... 131, 215
Gutta Percha Co., Re, [1900] 2 Ch. 665 414
Gutta Percha Corporation, Re, 15 Times L. R. 183 74
———————————, [1900] W. N. 164; [1900] 2 Ch. 665 ... 439

H.

Habershon's Case (Mason's Hall Tavern Co., Re), 5 Eq. 286 ... 166, 177
Haddock's Case. *See* London and Northern Bank.

PAGE

Hadleigh Castle Gold Mines, Re, [1900] 2 Ch. 419; 69 L. J. Ch. 631; 83 L. T. 400 ... ... 333, 339
Hadley and Co. *v.* Hadley, 77 L. T. 131 344
——— *v.* Beedom, [1895] 1 Q. B. 646; 64 L. J. Q. B. 240; 72 L. T. 493; 43 W. R. 218 242
Haggin *v.* Comptoir d'Escompt de Paris, 23 Q. B. D. 519 409
Hakim's Case, 7 Ch. 296, n. 475
Hale, Ex parte, 55 L. T. 670 142
Halifax Sugar Refining Co., Re, W. N. (1891), 29 168
——— *v.* Francklyn, 59 L. J. Ch. 591; 62 L. T. 563; 2 Meg. 129 99
Hall's Case (United Service Co., Re), 5 Ch. 707; 39 L. J. Ch. 730; 23 L. T. 331; 18 W. R. 1058 210
Hall, A. W., and Co.'s Case, 37 Ch. D. 712; 57 L. J. Ch. 288; 58 L. T. 156 168
Hall, W. J., and Co., [1909] 1 Ch. 521 503
Hall *v.* Old Talargoch Lead Mining Co., 3 Ch. D. 749; 45 L. J. Ch. 775; 34 L. T. 901 426
Hallett, Re (National Insurance Corporation, Ex parte), 71 L. T. 408; 42 W. R. 651; 1 Mans. 380 208
Hallmark's Case (Wincham Shipbuilding Co., Re), 9 Ch. D. 329; 47 L. J. Ch. 868; 38 L. T. 660; 26 W. R. 824 ... ... 138, 346, 450
Hallows *v.* Fernie, L. R. 3 Eq. 520; 3 Ch. 467; 36 L. J. Ch. 267; 18 L. T. 340; 16 W. R. 873 ... ... 88, 115, 142, 377, 378, 382
Hamer's Devisees' Case, 2 De G. M. & G. 366; 21 L. J. Ch. 832; 16 Jur. 555 473
Hamilton's (Lord Claud) Case, 8 Ch. 548; 42 L. J. Ch. 465; 28 L. T. 652; 21 W. R. 518 127
Hamilton's Windsor Iron Works, Re (General Credit and Discount Co., Ex parte), 27 W. R. 827; 39 L. T. 658 426
Hamilton's Windsor Iron Works, Re (Pitman and Edwards, Ex parte), 12 Ch. D. 707; 40 L. T. 569; 27 W. R. 445 259
——— *v.* Blackpool Motor Car Co., Ltd. *See* Blackpool Motor Car Co., Ltd.
Hamilton *v.* Brogden (No. 2), W. N. (1891), 36 81
——— *v.* Vaughan Sherrin Electrical Engineering, [1894] 3 Ch. 589; 63 L. J. Ch. 795; 71 L. T. 325; 43 W. R. 126 ... ... 129, 213
Hamley's Case (Percy, &c., Mining Co., Re), 5 Ch. D. 705; 46 L. J. Ch. 543; 37 L. T. 349; 25 W. R. 600 138
Hampshire Land Co., Re, [1894] 2 Ch. 632; 63 L. J. Ch. 677; 42 W. R. 601; 1 Mans. 428 ... ... 232, 512
——— (Portsea Island Building Society, Ex parte), [1896] 2 Ch. 743; 75 L. T. 181; 45 W. R. 136; 3 Mans. 269 99, 232
Hampson *v.* Price's Patent Candle Co., 45 L. J. Ch. 437; 34 L. T. 711; 24 W. R. 754 ... ... 44, 95
Hand *v.* Blow, 82 L. T. 750, [1901] 2 Ch. 721 280
Hankey's Case (International Contract Co., Re), 41 L. J. Ch. 386; 26 L. T. 358; 20 W. R. 506 467
Hannan's Empress Gold Mining Co., Re. *See* Carmichael, Ex parte.
Hannan's King Mining Co., Re, 14 Times L. R. 314 194
Hannan's Lode, Ltd., Re (1899), unreported 510
Hansard Publishing Union, Re, 8 Times L. R. 280 233
Harben *v.* Phillips (No. 1), 23 Ch. Div. 14; 48 L. T. 334; 31 W. R. 173 83, 335, 410, 411
Harding, Ex parte, L. R. 3 Eq. 341; 15 L. T. 528 ... ... 447, 489

PAGE
Hardoon *v.* Belilios, [1901] A. C. 118; 70 L. J. P. C. 9; 83 L. T. 573; 49 W. R. 209 161
Hardwicke, Re. *See* Hubbard, Ex parte.
Hardy *v.* Fothergill, 13 A. C. 351; 58 L. J. Q. B. 44; 59 L. T. 273; 37 W. R. 177 486
——— *v.* Metropolitan Land Co., 7 Ch. 427; 41 L. J. Ch. 257; 26 L. T. 407; 20 W. R. 425 345
Hare *v.* London and N. W. Rail. Co., 1 Johns. 722: 2 J. & H. 80; 30 L. J. Ch. 817; 2 L. T. 229; 8 W. R. 352 ... ... 34, 192
Hargrove, Ex parte. *See* Arthur Average Association, Re.
Harmony Mining Co., Re. *See* Spargo's Case.
Harris's Case (Imperial Land Co. of Marseilles, Re), 7 Ch. 587; 41 L. J. Ch. 621; 26 L. T. 781; 20 W. R. 690 ... ... 104, 133
Harris *v.* North Devon Rail. Co., 20 Beav. 384 204
——— *v.* Sleep, [1897] 2 Ch. 80; 66 L. J. Ch. 511; 76 L. T. 458; 45 W. R. 536 278
Harrison's Case (Bank of Hindustan, China and Japan, Re), 6 Ch. 286; 40 L. J. Ch. 333; 24 L. T. 691; 19 W. R. 572 ... 195
——————— (Universal Banking Co., Re), 3 Ch. 633 132
Harrison, Ex parte (Bentley & Co., Re), 69 L. T. 204 74
——— Ex parte (Cannock, &c., Colliery Co., Re), 28 Ch. D. 363; 54 L. J. Ch. 554; 53 L. T. 189 196
——— *v.* Harrison, 13 P. D. 180; 58 L. J. Prob. 28; 60 L. T. 39; 36 W. R. 748 130
——— *v.* Mexican Rail. Co., 19 Eq. 358; 44 L. J. Ch. 403; 32 L. T. 82; 23 W. R. 403 152
——— *v.* Mortgage Insurance Corporation, 10 Times L. R. 141 ... 509
——— *v.* St. Etienne Brewery Co., W. N. (1893), 108 ... ... 235, 279
Harrogate Estates, Ltd., [1903] 1 Ch. 498; 72 L. J. Ch. 313; 88 L. T. 82; 51 W. R. 334 ... ... 238, 239, 247
Harrold *v.* Plenty, [1901] 2 Ch. 314; 70 L. J. Ch. 562; 85 L. T. 45; 49 W. R. 646 184
Harpur's Cycle Co., Re, [1900] W. N. 187 425
Hartford *v.* Amicable Life Assurance Co., Ir. R. 5 C. L. 368 423
Hart's Case (Alexandra Park Co., Re) 6 Eq. 512; 38 L. J. Ch. 85; 16 W. R. 1033 213
Hart *v.* Frontino Gold Mining Co., L. R. 5 Ex. 111; 39 L. J. Ex. 93; 22 L. T. 30 190
Hartley's Case (Poole Firebrick Co., Re), 10 Ch. 157; 44 L. J. Ch. 240; 32 L. T. 106; 23 W. R. 203 159
Harvey Oyster Co., Re. *See* Ormerod's Case.
Harward's Case (Great Oceanic Telegraph Co., Re), 13 Eq. 30 134
Harwood, Ex parte (Land Shipping Colliery Co., Re), 20 L. T. 736 ... 132
Hastings Corporation *v.* Letton, [1908] 1 K. B. 378; 77 L. J. K. B. 149; 97 L. T. 582 ... ... 429, 540
Hatcher, Ex parte (West of England Bank, Re), 12 Ch. D. 284; 48 L. J. Ch. 723; 41 L. T. 181; 27 W. R. 907 471
Hattersley *v.* Shelburne, Earl of, 31 L. J. Ch. 873; 10 W. R. 881 ... 32, 83
Haven Gold Mining Co., Re, 20 Ch. Div. 151; 51 L. J. Ch. 242; 46 L. T. 322; 30 W. R. 389 ... ... 45, 334, 435
Hawkin's Case (Great Cambrian Mining Co., Re), 2 K. & J. 253 173
Hawkins, Ex parte (United English and Scottish Insurance Co., Re), 3 Ch, 787; 19 L. T. 232; 16 W. R. 1136 ... ... 424, 451
Haycraft Gold Reduction Co., Re, [1900] 2 Ch. 230; 69 L. J. Ch. 497; 83 L. T. 166; 7 Mans. 243 ... ... 330, 414, 439

PAGE

Hayman *v.* Governors of Rugby School, 18 Eq. 28; 30 L. T. 217; 22 W. R. 587 93
Hay's Case (Canadian Oilworks Corporation, Re), 10 Ch. 593; 44 L. J. Ch. 721; 33 L. T. 466 ... ... 136, 352
Hay *v.* Swedish Rail. Co., 5 Times L. R. 460 274
———————————, 8 Times L. R. 775 280
Head, Ex parte, 15 L. T. 262; 15 W. R. 142 185
Head's Case, L. R. 3 Eq. 84; 36 L. J. Ch. 121 215
Healey *v.* Storey, 3 Ex. 3; 18 L. J. Ex. 8 392
Heaton Steel and Iron Co., Re. *See* Blyth's Case.
Heavan, Ex parte. *See* Lundy Granite Co., Re.
Hebb's Case, 4 Eq. 9; 36 L. J. Ch. 748; 16 L. T. 308; 15 W. R. 754 ... 133
Heiron's Case (Metropolitan Bank, Re), 15 Ch. Div. 139; 49 L. J. Ch. 631; 43 L. T. 299 ... ... 453, 454
Heiton *v.* Waverley Hydropathic Co., 4 Rettie, Scotch Sess. Cas. (4th Series) 830 ... ... 77, 78, 102
Helbert *v.* Banner (Barned's Bank, Re), L. R. 5 H. L. 28; 40 L. J. Ch. 410; 20 W. R. 63 ... ... 469, 470, 480
Helmore *v.* Smith, 35 Ch. D. 449; 56 L. J. Ch. 145; 56 L. T. 72; 35 W. R. 157 278
Hemans *v.* Hotchkiss Ordnance Co., [1899] 1 Ch. 115; 68 L. J. Ch. 99; 79 L. T. 681; 47 W. R. 276 ... ... 153, 332
Hemming *v.* Maddick (No. 2), 7 Ch. 395; 26 L. T. 565; 41 L. J. Ch. 522; 20 W. R. 433 213
Hemp, Yarn, and Cordage Co., Re. *See* Hindley's Case.
Hemp, Yarn, and Cordage Co. *v.* Nelson (1897), unreported 282
Henderson, Re. *See* Newcastle-upon-Tyne Co., Re.
——— ——— *v.* Bank of Australasia, 40 Ch. D. 170; 58 L. J. Ch. 197; 59 L. T. 856; 37 W. R. 332; 4 Mines L. R. 734 ... 35, 44
——————— *v.* Bank of Australasia, 45 Ch. D. 330; 59 L. J. Ch. 794 ... 333
——————— *v.* Huntington, &c., Copper Co., 5 Scotch Sess. Cas. (4th Series) 1 ... ... 352, 354
——————— *v.* Lacon, 5 Eq. 249; 17 L. T. 527; 16 W. R. 328 ... 115, 140, 379, 426
Hendriks *v.* Montagu, 17 Ch. D. 638; 50 L. J. Ch. 456; 44 L. T. 879; 30 W. R. 160 15
Henry Lister & Co., Re (Huddersfield Banking Co., Ex parte), [1892] 2 Ch. 417; 61 L. J. Ch. 721; 67 L. T. 180; 40 W. R. 589 495
Henry Pound, Son and Hutchings. *See* Pound, Son and Hutchings.
Henry *v.* Great Northern Rail. Co., 1 De G. & J. 606; 4 K. & J. 1; 27 L. J. Ch. 1; 30 L. T. O. S. 141; 3 Jur. N. S. 1133 ... ... 320, 322
Hercules Insurance Co. (Pugh and Sharman's Case), 13 Eq. 566; 41 L. J. Ch. 580; 26 L. T. 274 ... 454, 475
———————————, Re, 11 Eq. 321; 40 L. J. Ch. 379 416
———————————, 19 Eq. 302 233
Hercynia Copper Co., Re (Richardson's Case), [1894] 2 Ch. 403; 63 L. J. Ch. 567; 70 L. T. 709; 42 W. R. 593; 1 Mans. 286 ... 128, 138, 145, 220
Hereford and South Wales Waggon Co., Re, 2 Ch. Div. 621; 45 L. J. Ch. 461; 33 L. T. 40; 24 W. R. 953 ... ... 59, 66, 219
Hereford and South Wales Waggon and Engineering Works, Re, 17 Eq. 423; 29 L. T. 881; 22 W. R. 314 442
Herefordshire Banking Co., Re (Bulmer, Ex parte), 33 Beav. 435; 33 L. J. Ch. 609; 10 Jur. N. S. 462; 10 L. T. 151; 12 W. R. 564 478

PAGE

Herepath and Delmar, Re. *See* Delmar, Ex parte.
Heritage, Ex parte, 9 Eq. 5; 21 L. T. 479 191
Hermann Loog, Ltd., Re (Ramsay's Case), 36 Ch. D. 502; 58 L. T. 47; 35 W. R. 687 437
Hermann *v.* Hodges, 16 Eq. 18; 43 L. J. Ch. 192; 21 W. R. 571 ... 256
Herne Bay Waterworks Co., Re, 10 Ch. D. 42; 48 L. J. Ch. 69; 39 L. T. 324; 27 W. R. 36 436
Herts and Essex Waterworks Co., [1909] W. N. 48 238
Heseltine & Son, Ltd., Re, W. N. (1891), 25 454
Hester & Co., Re, 44 L. J. Ch. 757; W. N. (1875), p. 179 ... 518, 519, 522
Heward *v.* Wheatley, 3 De G. M. & G. 628; 22 L. J. Ch. 435; 17 Jur. 403; 1 W. R. 216 478
Hewitt's Case (Colombia Factory Works, Re), 25 Ch. D. 283; 53 L. J. Ch. 343; 49 L. T. 479; 32 W. R. 234 138
Heyford Iron Works Co., Re. *See* Forbes and Judd's Case; Pell's Case.
Heymann *v.* European Central Rail. Co., 7 Eq. 154 ... ... 142, 381
Hibblewhite *v.* McMorine, 6 M. & W. 200; 9 L. J. Ex. 217; 2 Rail. Cas. 51 192
Hichens *v.* Congreve, 4 Russ. 562; 4 Sim. 420 60
Higgins, Ex parte. *See* Zoedone Co., Re.
Higgins's and Hitchman's Contract, 21 Ch. D. 95; 51 L. J. Ch. 722; 30 W. R. 700 298
Higginshaw Mills and Cotton Spinning Co., Re, [1896] 2 Ch. 544; 65 L. J. Ch. 771; 75 L. T. 5; 45 W. R. 56 ... ... 422, 425
Higginson and Dean, Re, [1899], 1 Q. B. 325; 68 L. J. Q. B. 198; 79 L. T. 673; 47 W. R. 285; 5 Mans. 289 540
Higg's Case (Bank of Hindustan, China and Japan, Re), 2 H. & M. 657; 12 L. T. 669; 13 W. R. 937 516
Higgs *v.* Northern Assam Tea Co., L. R. 4 Ex. 387; 38 L. J. Ex. 233; 21 L. T. 336; 17 W. R. 1125 ... ... 179, 233, 271
Hilder *v.* Dexter, [1902] A. C. 474; 71 L. J. Ch. 781; 87 L. T. 311; 51 W. R. 225 ... ... 70, 140
——— *v.* Wilcox & Co., [1903] W. N. 64 275
Hill's Case, 4 Ch. 769, n. 215
——— (Maria Anna, &c., Coal Co., Re), 20 Eq. 595; 44 L. J. Ch. 423; 32 L. T. 747; 23 W. R. 546 ... ... 172, 199, 472
Hill's Waterfall Estate and Gold Mining Co., Re (Baylis, Ex parte), [1896] 1 Ch. 947; 65 L. J. Ch. 476; 74 L. T. 341; 2 Mans. 158 468
Hill Pottery Co., Re, L. R. 1 Eq. 649; 15 W. R. 97 424
Hill *v.* Bridges (Bridges, Re), 17 Ch. D. 342; 50 L. J. Ch. 470; 44 L. T. 730 488
Hille India Rubber Co., Re, W. N. (1897), 20 424
Hindley's Case, [1896] 2 Ch. 121; 65 L. J. Ch. 591; 74 L. T. 627; 44 W. R. 630; 3 Mans. 187 74
Hinds *v.* Buenos Ayres Grand National Tramways Co., Ltd., [1906] 2 Ch. 654; 76 L. J. Ch. 17; 95 L. T. 780; 13 Mans. 411; 23 T. L. R. 6 ... 6
Hindustan, Bank of. *See* Campbell's Case.
Hippisley's Case, 9 Ch. 1; 43 L. J. Ch. 1; 29 L. T. 519; 22 W. R. 113 ... 151
Hiram Maxim Lamp Co., [1903] 1 Ch. 70; 72 L. J. Ch. 18; 51 W. R. 74... 488, 547
Hire Purchase Furnishing Co. *v.* Richens, 20 Q. B. D. 387; 58 L. T. 460; 36 W. R. 365 467
Hirsch *v.* Burns, 77 L. T. 377 ... ... 140, 144, 145, 213, 507
Hirsche *v.* Sims, [1894] A. C. 654; 64 L. J. P. C. 1; 71 L. T. 357 ... 41, 343
Hirst *v.* West Riding Union Banking Co., [1901] 2 K. B. 560; 70 L. J. K. B. 828; 85 L. T. 3; 49 W. R. 715 110

PAGE

Hoare & Co., Ltd., [1904] 2 Ch. 208; 73 L. J. Ch. 601; 91 L. T. 115; 53 W. R. 51 51
Hoare's Case (Electric Telegraph Co. of Ireland, Re), 30 Beav. 225 ... 255
Hoare *v.* Tasker & Sons, Ltd. *See* Tasker & Sons, Ltd.
Hobbs *v.* Midland Rail. Co., 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. 270; 30 W. R. 516 298
Hoby *v.* Birch, 59 L. J. Q. B. 247 ... 62 L. T. 404 488
—— *v.* Grosvenor Library Co., 28 W. R. 386 15
Hodge's Distillery Co., Re (Maude, Ex parte), 6 Ch. 51; 40 L. J. Ch. 21; 23 L. T. 749; 19 W. R. 113 ... ... 479, 503
Hodgkinson *v.* Kelly, 6 Eq. 496; 37 L. J. Ch. 837; 16 W. R. 1078 ... 415
———— *v.* National Live Stock, 26 Beav. 473 ... ... 30, 46
Hodgson *v.* Hancock, 1 Y. & J. 317 392
———— *v.* Accles, Ltd. *See* Accles, Ltd.
———— *v.* Powis (Earl of), 1 De G. M. & G. 6; 12 Beav. 392 ... 34, 35
Hodson *v.* Tea Company, 14 Ch. D. 859; 49 L. J. Ch. 234; 28 W. R. 458 260, 272
Holden's Case (European Central Rail. Co., Re), 8 Eq. 444; 38 L. J. Ch. 610; 21 L. T. 196; 17 W. R. 875 177
Holdsworth *v.* Davenport, 3 Ch. D. 185; 46 L. J. Ch. 20; 35 L. T. 319; 25 W. R. 20 272
Holland *v.* Dickson, 37 Ch. D. 669; 57 L. J. Ch. 502; 58 L. T. 845; 36 W. R. 320 236
Hollyford Copper Mining Co., Re, 5 Ch. 93; 21 L. T. 734; 18 W. R. 157 477
Holmes *v.* Newcastle Abattoir Co., 1 Ch. D. 682; 45 L. J. Ch. 383; 24 W. R. 505 ... ... 43, 344, 411
Holophane, Ltd. *v.* Hesseltine, 13 Times L. R. 7 73
Holroyd *v.* Marshall, 10 H. L. C. 191; 33 L. J. Ch. 193; 7 L. T. 172; 11 W. R. 171; 9 Jur. N. S. 213 245
Holt *v.* Sydney Coal Co., 69 L. T. 132 300
Holyford Mining Co., Re, Ir. 3 Eq. 208 503
Home Assurance Association, Re, 25 L. T. 199 446
———————————. *See* Wollaston's Case.
Home Assurance Co., Re, 12 Eq. 59; 41 L. J. Ch. 110; 24 L. T. 613; 19 W. R. 817 442
Home Investment Society, Re, 14 Ch. D. 167; 28 W. R. 576 498
Homer District Consolidated Gold Mines, Re (Smith, Ex parte), 39 Ch. D. 546; 58 L. J. Ch. 134; 60 L. T. 97 ... ... 98, 150
Hong Kong Land and Investment Co., Ex parte. *See* New Oriental Banking Corporation, Re.
Hooke *v.* Piper. *See* Trueman, Re, Hooke v. Piper.
Hoole *v.* Great Western Rail. Co., 3 Ch. 262; 17 L. T. 453; 16 W. R. 260 ... ... 46, 316, 321, 411
Hoole *v.* Speak, [1904] 2 Ch. 732; 73 L. J. Ch. 719; 91 L. T. 183 ... 401
Hooley Re (United Ordnance and Engineering Co., Ex parte), [1899] 2 Q. B. 579; 68 L. J. Q. B. 993; 6 Mans. 404 ... ... 145, 208, 478
Hooper *v.* Bourne, 5 App. Cas. 1; 49 L. J. Q. B. 370; 42 L. T. 97; 28 W. R. 493 298
——— *v.* Western Counties Telephone Co., 68 L. T. 591; 41 W. R. 84; 9 Times L. R. 17 ... ... 251, 271
Hooper *v.* Herts, [1906] 1 Ch. 549; 75 L. J. Ch. 253; 94 L. T. 324; 54 W. R. 350 183
Hooper *v.* Kerr Stuart & Co., [1901] 83 L. T. 729 330
Hop and Malt Exchange Co., Re. *See* Briggs, Ex parte.
Hope *v.* Croydon and Norwood Tramways, 34 Ch. D. 730; 56 L. J. Ch. 760; 56 L. T. 822; 35 W. R. 594 284

PAGE

Hope *v.* International Financial Society, 4 Ch. Div. 327; 46 L. J. Ch. 200; 35 L. T. 924; 25 W. R. 203 200

Hopkins, Re (Williams v. Hopkins), 18 Ch. D. 377; 45 L. T. 117; 29 W. R. 767 482

——— *v.* Worcester and Birmingham Canal Proprietors, 6 Eq. 437 ... 276

Hopkinson *v.* Newspaper Proprietary Syndicate. *See* Newspaper Proprietary Syndicate, Re.

Horbury Bridge Co., 11 Ch. Div. 109; 48 L. J. Ch. 341; 40 L. T. 353; 27 W. R. 433 ... ... 334, 337

Hornby's Case (Ottoman & Co., Re), 37 L. J. Ch. 929; 19 L. T. 287; 16 W. R. 1164 415

Horne and Hellard, Re, 29 Ch. D. 736; 54 L. J. Ch. 919; 53 L. T. 562 259

Horne (W. C.) & Sons, Ltd. (Horne *v.* Co.), [1906] 1 Ch. 271; 75 L. J. Ch. 206; 54 W. R. 278 279

Horner & Co., Re, 5 Mans. 355; W. N. (1898), 159 511

———————. *See* Plimsoll's Case.

Horsey Estate *v.* Steiger, [1899] 2 Q. B. 79; 67 L. J. Q. B. 747; 79 L. T. 116 512

Horsey, Ex parte (London and Colonial Co., Re), 5 Eq. 561; 16 W. R. 535 487

Ho Tung *v.* Man On Insurance Co., [1902] A. C. 232; 71 L. J. P. C. 46; 85 L. T. 617 25

Houldsworth *v.* City of Glasgow Bank, 5 App. Cas. 317; 28 W. R. 677; 42 L. T. 914 ... ... 142, 364

——————— *v.* Evans, L. R. 3 H. L. 263; 37 L. J. Ch. 800; 19 L. T. 211 ... ... 171, 203

——————— *v.* Yorkshire Woolcombers Association, [1903] 2 Ch. 284; 72 L. J. Ch. 635; 88 L. T. 811 259

House and Land Investment Trust, Re (Smith, Ex parte), 42 W. R. 572; 8 R. 232; 1 Mans. 418 425

Household Fire Insurance Co. *v.* Grant, 4 Ex. Div. 216; 48 L. J. Ex. 577; 41 L. T. 298; 27 W. R. 858 133

Howard's Case (Leed's Banking Co., Re), 1 Ch. 561; 36 L. J. Ch. 42; 14 L. T. 747; 14 W. R. 942 ... ... 104, 150, 173

Howard *v.* Escombe, 3 Times L. R. 316 434

——— *v.* Patent Ivory Manufacturing Co., 38 Ch. D. 156; 57 L. J. Ch. 878; 58 L. T. 395; 36 W. R. 801 ... 176, 218, 227, 233, 235

Howard *v.* Sadler, [1893] 1 Q. B. 1; 68 L. T. 120; 41 W. R. 126; 5 R. 45 86

Howatson Patent Furnace Co., Re, 4 Times L. R. 152 352

Howbeach Coal Co. *v.* Teague, 5 H. & N. 151; 29 L. J. Ex. 137; 8 W. R. 264; 36 L. T. O. S. 187 ... ... 87, 105, 173

Hoylake Rail. Co. *See* Littledale, Ex parte.

Hoyle's Case. *See* London and Northern Bank.

Hubback, Re (International Marine Hydropathic Co. *v.* Hawes), 29 Ch. D. 934; 54 L. J. Ch. 923; 52 L. T. 908; 33 W. R. 666 477

Hubbard & Co., Re, 68 L. J. Ch. 54; 79 L. T. 665; 5 Mans. 360 259, 260

Hubbard, Ex parte (Hardwicke, Re), 17 Q. B. D. 690; 55 L. J. Q. B. 490; 35 W. R. 2 ... ... 240, 243

Hubbuck *v.* Helms, 56 L. J. Ch. 536; 35 W. R. 574; 56 L. T. 232 261, 276

Huckle *v.* Wilson, 2 C. P. D. 410; 26 W. R. 98 112

Huddersfield Banking Co., Ex parte (Henry Lister & Co., Re), [1892] 2 Ch. 417; 61 L. J. Ch. 721; 67 L. T. 180; 40 W. R. 589 495

Hudson's Case (Contract Corporation, Re), 12 Eq. 1; 40 L. J. Ch. 444; 24 L. T. 534; 19 W. R. 691 ... ... 469, 480

PAGE

Hughes, Ex parte (Agriculturist Cattle Insurance Co., Re), 4 Ch. D. 34, n. 492
Hulett's Case, 2 J. & H. 306; 31 L. J. Ch. 293; 8 Jur. N. S. 357; 5 L. T. 668; 10 W. R. 226 271
Hull and County Bank, Re. *See* Burgess's Case.
Humber & Co., Ltd. *v.* John Griffiths Cycle Co., [1901] 85 L. T. 141 ... ... 218, 423
Humber Ironworks and Shipbuilding Co., Re (William's Case). *See* William's Case (Humber Ironworks, &c., Co., Re).
Humber Ironworks Co., Re, 8 Eq. 122 489
——— (Warrant Finance Co.'s Case), 4 Ch. 643; 38 L. J. Ch. 712; 20 L. T. 859; 17 W. R. 780 491
——— (Warrant Finance Co.'s Case) (No. 2), 5 Ch. 88 492
Humble *v.* Mitchell, 11 A. & E. 205 180
Hummel *v.* George Routledge & Sons, Ltd. *See* Routledge & Sons, Ltd.
Hume *v.* Record, &c., Syndicate, 80 L. T. 404 5
Hunter *v.* Stewart, 4 De G. F. & J. 168 179
Hutchinson's Case, [1895] 1 Ch. 226; 64 L. J. Ch. 131; 71 L. T. 667; 43 W. R. 267 ... ... 128, 138
Hutchison *v.* Colorado, &c., Co., 3 Times L. R. 265 183
Hutton *v.* Scarborough Hotel Co., 2 Dr. & Sm. 514, 521; 13 L. T. 87; 13 W. R. 1059; 11 Jur. N. S. 551; 4 De G. J. & Sm. 672 26, 152
——— *v.* West Cork Rail. Co., 23 Ch. Div. 654; 52 L. J. Ch. 689; 31 W. R. 827 ... ... 44, 78, 95, 328
Hyam's Case, 1 De G. F. & J. 75; 29 L. J. Ch. 243; 6 Jur. N. S. 181; 1 L. T. 115; 8 W. R. 52 197
Hydraulic Tube Drawing and Steel Ordnance Co., Re, 16 W. R. 572; 18 L. T. 205 415
Hyslop *v.* Morrel Bros., Ltd., W. N. (1891), 19 143

I.

Ibo Investment Trust, Ltd., [1903] 2 Ch. 373; [1904] 1 Ch. 26; 72 L. J. Ch. 661; 88 L. T. 752; 51 W. R. 593 ... ... 445, 446
Ilfracombe Building Society, Re, [1901] 1 Ch. 102 ... ... 416, 444
Illingworth *v.* Houldsworth, [1904] A. C. 355; 73 L. J. Ch. 739; 91 L. T. 602; 53 W. R. 113 ... ... 238, 259
Imperial Bank of China, India, and Japan, Re, 1 Ch. 339; 35 L. J. Ch. 445; 12 Jur. 422; 14 L. T. 211; 14 W. R. 594 518
Imperial Bank of China *v.* Bank of Hindustan, 6 Eq. 91; 16 W. R. 1107 ... ... 516, 517
Imperial Continental Water Corporation, Re, 33 Ch. D. 314; 56 L. J. Ch. 189; 55 L. T. 47 454
Imperial Guardian Assurance Society, 9 Eq. 447; 39 L. J. Ch. 147 437, 446
Imperial Hydropathic Hotel Co., Re (Blackpool *v.* Hampson), 23 Ch. Div. 1; 49 L. T. 147; 31 W. R. 330 ... ... 48, 77, 82, 92, 410, 411
Imperial Land Co. of Marseilles, Re (Colborne and Strawbridge, Ex parte), 11 Eq. 478; 40 L. J. Ch. 343; 24 L. T. 255; 19 W. R. 223 ... 233, 269, 415, 491
——— (National Bank, Re), 10 Eq. 298; 39 L. J. Ch. 331; 22 L. T. 598; 18 W. R. 661 ... ... 451, 462

PAGE

Imperial Land Co. of Marseilles. *See* Joaffreson, Ex parte; Larking's Case; Townsend's Case; Vining's Case; Wall's Case.
Imperial Land Credit Corporation. *See* Eve's Case.
Imperial Mercantile Credit Association, Re, 12 Eq. 504; 41 L. Ch. 116 515, 516, 520
——— ——— ——— ———, Re. *See* Chapman & Barker's Case; Marino's Case; Payne's Case; Richardson's Case.
——— ——— ——— ———, Re, 12 Jur. N. S. 739 439
——— ——— ——— ———, *v.* Chapman, 19 W. R. 379 ... 343
——— ——— ——— ———, *v.* Coleman, L. R. 6 H. L. 189; 42 L. J. Ch. 644; 29 L. T. 1; 21 W. R. 696 92, 222, 347, 353
——— ——— ——— ——— *v.* London, Chatham, and Dover Rail. Co., 15 W. R. 1187 236
Imperial Mercantile Credit Company, Re, 5 Eq. 264; 16 W. R. 244 ... 460
Imperial Rubber Co., Re. *See* Bush's Case.
Imperial Steam and Household Coal Co., 37 L. J. Ch. 517; 18 L. T. 390; 16 W. R. 689 424
Ince Hall Rolling Mills Co., Re, 23 Ch. D. 545, n.; 30 W. R. 945 ... 41
Inchiquin (Lord), Ex parte, [1891] 3 Ch. 28; 60 L. J. Ch. 556; 64 L. T. 841; 39 W. R. 610 128
Ind's Case, 7 Ch. 485; 41 L. J. Ch. 564; 26 L. T. 487; 20 W. R. 430 187
Inderwick *v.* Snell, 2 Mac. & G. 216; 19 L. J. Ch. 542; 14 Jur. 727 ... 93, 111
Indian Mechanical Gold Extracting Co., Re, [1891] 3 Ch. 538; 61 L. J. Ch. 31; 40 W. R. 184 20
Indian Zoedone Co., Re, 26 Ch. Div. 70; 53 L. J. Ch. 468; 50 L. T. 547; 32 W. R. 481 ... ... 333, 419
Inglis *v.* Great Northern Rail. Co., 1 Macq. 112; 1 Paterson, 78 207
Inland Revenue Commissioners *v.* Maple & Co., [1908] A. C. 22; 77 L. J. K. B. 55 301
Inman *v.* Ackroyd and Best, Ltd., [1901] 1 Q. B. 613; 82 L. T. 621; 16 T. L. R. 379 80
Innes & Co., [1903] 2 Ch. 254; 72 L. J. Ch. 643; 89 L. T. 142; 51 W. R. 514 ... ... 344, 353
Inns of Court Hotel Co., Re, 6 Eq. 82; 37 L. J. Ch. 692 450
Insurance Company, An, Re, 33 L. T. 49 442
International Cable Co., Re, 8 Times, L. R. 316; 66 L. T. 253 ... 79, 86, 435
International Commercial Co., Re, 75 L. T. 639 444
International Contract Co., Re. *See* Hankey's Case; Levita's Case; Peruvian Rail. Co.; Pickering's Claim.
International Life Assurance Society, Re, 39 L. J. Ch. 271 81
——— ——— ——— ———, 20 L. T. 433 518
——— ——— ——— ———. *See* Gibbs and West's Case.
International Marine Cable Co., 2 Meg. 183 435
International Marine Hydropathic Co., 28 Ch. D. 470; 33 W. R. 587 ... 426, 587
——— ——— ——— ——— *v.* Hawes. *See* Hubback, Re (International, &c., Co. *v.* Hawes).
International Pulp and Paper Co., Re, 3 Ch. D. 598; 45 L. J. Ch. 446; 35 L. T. 229; 24 W. R. 535 ... ... 424, 427

PAGE

International Society of Auctioneers and Valuers, Re. *See* Baillie's Case.
Interoceanic Railway of Mexico, 3 Mans. 162 532
Inventors' Association, Re, 12 L. T. 840; 11 Jur. N. S. 872; 13 W. R. 1033 437
Ireland *v.* Hart, [1902] 1 Ch. 522; 71 L. J. Ch. 276; 86 L. T. 385; 50 W. R. 315 ... ... 184, 214
Irish Mercantile Loans Society, In re, [1907] 1 Ir. Rep. 98 417
Irish North-Western Rail. Co., Re, Ir. R. 3 Eq. 190 526
Iron Ship Coating Co. *v.* Blunt, 3 C. P. 484; 37 L. J. C. P. 273; 16 W. R. 868 91
Irrigation Co. of France, Re, 39 L. J. Ch. 663; 23 L. T. 453; 18 W. R. 1083 439
———————————, *See* Fox, Ex parte.
Irvine *v.* Union Bank of Australia, 2 App. Cas. 366; 46 L. J. C. P. 87; 37 L. T. 176; 25 W. R. 682 ... ... 107, 255
Isaac's Case (Anglo-Austrian Printing Co., Re), [1892] 2 Ch. 158; 61 L. J. Ch. 481; 66 L. T. 593; 40 W. R. 518 ... ... 128, 138, 145, 220
Island of Anglesea Coal and Coke Co., Re. *See* Owen, Ex parte.
Isle of Wight Ferry Co., Re, 2 H. & M. 597 417
Isle of Wight Rail. Co. *v.* Tahourdin, 25 Ch. Div. 320; 53 L. J. Ch. 353; 50 L. T. 132; 32 W. R. 297 ... ... 93, 328, 331
Islington and General Electric Supply, Re, W. N. (1892), 81 ... 21, 49

J.

Jackson & Co., Re, [1899] 1 Ch. 348; 68 L. J. Ch. 190; 79 L. T. 662; 6 Mans. 125 167
Jackson, Re (Jackson, Ex parte), 27 L. T. 696; 20 W. R. 1022 486
——— *v.* Munster Bank, 13 L. R. Ir. 118 ... ... 79, 328
——— ———————, 15 L. R. Ir. 356 345
——— *v.* Rainford Coal Co., [1896] 2 Ch. 340; 65 L. J. Ch. 757; 44 W. R. 554 ... ... 234, 235
——— *v.* Turquand, L. R. 4 H. L. 305; 39 L. J. Ch. 11 ... ... 131, 367
James Colmer, Ltd., Re. *See* Colmer, Ltd.
James, Ex parte (Mutual Aid Permanent Benefit Building Society, Re), 49 L. T. 530 462
——— *v.* Boythorpe Colliery Co., 2 Meg. 55 268
——— *v.* Buena Ventura Nitrate Grounds Syndicate, Ltd., [1896] 1 Ch. 456; 65 L. J. Ch. 284; 74 L. T. 1; 44 W. R. 372 ... 49, 151
——— *v.* Eve, L. R. 6 H. L. 335; 42 L. J. Ch. 793; 22 W. R. 109 ... 88, 224, 345
——— *v.* May, L. R. 6 H. L. 328; 42 L. J. Ch. 802; 29 L. T. 217 ... 81, 213
Jamieson's Case (Norham Castle Ship Co., Re), 4 Times L. R. 308 ... 168
Jarvis & Co., Re, [1899] 1 Ch. 193; 68 L. J. Ch. 145; 79 L. T. 727; 47 W. R. 186; 6 Mans. 116 169
Jarvis *v.* Jarvis, 63 L. J. Ch. 10; 69 L. T. 412; 1 Mans. 199 245
Jeaffreson, Ex parte (Imperial Land Co. of Marseilles, Re), 11 Eq. 109; 40 L. J. Ch. 3; 23 L. T. 645; 19 W. R. 57 520
Jeavons, Re. *See* Mackay, Ex parte.
Jegon, Ex parte (South Llanharran Colliery Co., Re), 12 Ch. Div. 503; 41 L. T. 567; 28 W. R. 194 318

PAGE

Jenner's Case (Percy and Kelly Nickel Co., Re), 7 Ch. Div. 132; 47 L. J. Ch. 201; 37 L. T. 807; 26 W. R. 291 ... ... 86, 138
Jenner Institute, Re, 15 Times L. R. 394 327
Jennings, Re (Belfast and County Down Rail. Co., Ex parte), 1 Ir. Ch. 236 334
——— *v.* Hammond, 9 Q. B. D. 225; 51 L. J. Q. B. 493; 31 W. R. 40 5
Jervis *v.* Wolferstan, 18 Eq. 19 478
Jessopp's Case (London and County Assurance Co., Re), 2 De G. & J. 638; 27 L. J. Ch. 757 198
Jewish Colonial Trust (Juedische Colonialbank), Ltd., [1908] 2 Ch. 287 ... ... 19, 20
Job *v.* Lamb, 11 Exch. 539; 25 L. J. Ex. 87; 2 Jur. N. S. 93; 4 W. R. 290 217
Jobling, Ex parte. *See* Wheal Buller Consols, Re.
Johannesburg Hotel Co., Re, [1891] 1 Ch. 119; 60 L. J. Ch. 319; 64 L. T. 61; 39 W. R. 260; 2 Meg. 409 165
John Crossley & Sons, Ltd., Re, W. N. (1892), 55 51
John Morley Building Co. *v.* Barras, [1891] 2 Ch. 386; 60 L. J. Ch. 496; 64 L. T. 856; 39 W. R. 619 ... ... 87, 88, 90, 410
John Reid & Sons, Ltd., [1900] 2 Q. B. 634; 69 L. J. Q. B. 736; 83 L. T. 196; 49 W. R. 15; 7 Mans. 475 418
Johns *v.* Balfour, 5 Times L. R. 389 44
——, *v.* Ware, [1899] 1 Ch. 359; 68 L. J. Ch. 155; 80 L. T. 112; 47 W. R. 202, 6 Mans. 38 241
Johnson, Ex parte. *See* Commercial Life Association, Re.
Johnson (J. C.) & Co., [1902] 2 Ch. 101 ... ... 238, 249
——— *v.* Lyttle's Iron Agency, 5 Ch. D. 687; 46 L. J. Ch. 786; 30 L. T. 528; 25 W. R. 548 205
——— *v.* Russian Spratts Patent, Ltd. *See* Russian Spratts Patent, Ltd., Re.
Johnston Foreign Patents Co., [1904] 2 Ch. 234. (*See* Trust (J. P.), Ltd. *v.* same Co.) 256
——— *v.* Renton, 9 Eq. 181; 39 L. J. Ch. 390; 22 L. T. 90; 18 W. R. 284 ... ... 189, 213
Joint Stock Coal Co., Re, 8 Eq. 146; 38 L. J. Ch. 429; 20 L. T. 966; 17 W. R. 585 444
Joint Stock Companies Winding-up Act, Re, 13 Beav. 434 440
Joint Stock Discount Co., Re. *See* Mann's Case; Nation's Case; Shepherd's Case.
——— ——— ——— Re (Warrant Finance Co., Ex parte), 5 Ch. 86; 38 L. J. Ch. 565; 20 L. T. 508; 18 W. R. 102 492
——— ——— ——— Ex parte. *See* General Rolling Stock Co., Re (Joint Stock Discount Co., Ex parte).
——— ——— ——— *v.* Brown, L. R. 3 Eq. 139; 15 L. T. 174 ... 45
——— ——— ——— 8 Eq. 381; 20 T. L. 844; 17 W. R. 1037 345
Jones's Case (Bosworthen, &c., Mining Co., Re), 6 Ch. 48; 40 L. J. Ch. 133 ... ... 136, 164
Jones, Ex parte (London and County Assurance Co., Re), 27 L. J. Ch. 666 204
——, Ex parte (London and Northern Bank, Re), [1900] 1 Ch. 220; 69 L. J. Ch. 24; 81 L. T. 512; 7 Mans. 60 ... ... 133, 134
——, Lloyd & Co., Re, 41 Ch. D. 159; 58 L. J. Ch. 582; 61 L. T. 219; 37 W. R. 615; 1 Meg. 161 166

PAGE

Jones *v.* Scottish Accident Insurance Co., 17 Q. B. D. 421; 55 L. J. Q. B. 415 17
—— *v.* Tower Furnishing Co., 61 L. T. 84 240
—— *v.* Victoria Graving Dock Co., 2 Q. B. D. 314; 46 L. J. Q. B. 219; 36 L. T. 144; 25 W. R. 348 227
Joplin Brewery Co., [1902] 1 Ch. 79; 71 L. J. Ch. 21; 85 L. T. 411; 50 W. R. 75 249
Joseph Wright, Ex parte. *See* Wright's Case.
Joshua Stubbs, Ltd., [1891] 1 Ch. 475; 60 L. J. Ch. 190; 64 L. T. 306; 39 W. R. 617 ... ... 278, 281
Jubilee Sites Syndicate, Re, [1899] 2 Ch. 204; 68 L. J. Ch. 427; 80 L. T. 869; 47 W. R. 606; 6 Mans. 331 ... ... 414, 436
Jury *v.* Stoker, 9 L. R. Ir. 385, 404 ... ... 124, 383, 390

K.

Karberg's Case, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700 74, 140, 141, 142, 380
Karuth's Case (Pelotas Coffee Co., Re), 20 Eq. 506; 44 L. J. Ch. 622 ... 128
Kaye *v.* Croydon Tramways Co., [1898] 1 Ch. 358; 67 L. J. Ch. 222; 78 L. T. 237; 46 W. R. 405 ... ... 327, 518
Kearns *v.* Leaf, 1 H. & M. 681; 10 L. T. 185; 12 W. R. 462 522
Keatinge *v.* Paringa Consolidated Mines, Ltd., [1902] W. N. 15; 18 T. L. R. 266 41
Keene's Executors' Case, 3 De G. M. & G. 272 478
Kehoe *v.* Waterford Rail. Co., 21 L. R. Ir. 240 315
Kellock's Case (Barned's Banking Co., (Re), 3 Ch. 769; 39 L. J. Ch. 112; 18 L. T. 671; 16 W. R. 919 497
Kelner *v.* Baxter, 2 C. P. 174; 36 L. J. C. P. 94; 15 L. T. 313; 15 W. R. 278 217
Kemp *v.* Courage, 7 Times L. R. 50 109
Kennedy, Ex parte. *See* Great Northern Salt Works, Re.
Kent's Case (Lands Development Association, Re), 39 Ch. Div. 259; 57 L. J. Ch. 977; 59 L. T. 449; 36 W. R. 818; 1 Meg. 69 ... 166, 450
Kent Be ..ilt Building Society, Re, 1 Dr. & Sm. 417; 30 L. J. Ch. 785; 7 Jur. N. S. 1045; 4 L. T. 610; 9 W. R. 686 31
Kent Collieries, Ltd., In re, [1907] 23 T. L. R. 559 274
Kent County Gas Co., In re, Ex parte, Brown, [1907] 95 L. T. 756 ... 380
Kent Tramways Co., Re, 12 Ch. Div. 312; 40 L. T. 393 67
Kent *v.* Freehold Land Co., 3 Ch. 493; 37 L. J. Ch. 653; 16 W. R. 990 ... 142
—— —— —— —— 4 Eq. 588; 17 L. T. 77 381
—— *v.* Jackson, 2 De G. M. & G. 49 107
Ker's Case (City of Glasgow Bank, Re), 4 A. C. 549 473
Kernaghan *v.* Williams, 6 Eq. 228 34
Key (W.) & Son, Ltd., [1902] 1 Ch. 467; 71 L. J. Ch. 254; 86 L. T. 374; 50 W. R. 234 199
Keynsham Blue Lime Co., Re, 33 Beav. 123; 9 Jur. N. S. 855; 8 L. T. 687; 11 W. R. 926 ... ... 427, 509
Kharaskhoma Syndicate, Re, [1897] 2 Ch. 451; 66 L. J. Ch. 675; 77 L. T. 82; 46 W. R. 37; 4 Mans. 249 ... ... 149, 165, 167, 169, 172, 472, 479
Kidwelly Co. *v.* Raby, 2 Price, 93 157
Kilbrecon Mining Co., Re. *See* Libri's Case.
Kincaid's Case (North Kent Rail. Co., Re), 11 Eq. 192; 40 L. J. Ch. 19; 23 L. T. 460; 19 W. R. 122 ... ... 85, 127, 417

PAGE

Kincaid's Case (Russian Ironworks Co.), 2 Ch. 412; 36 L. J. Ch. 499; 16 L. T. 222; 15 W. R. 571 142
King's Case (Financial Corporation, Re), 2 Ch. 714; 36 L. J. Ch. 695; 16 L. T. 684; 15 W. R. 948 207
——— (Great Wheal Busy Mining Co., Re), 6 Ch. 196; 40 L. J. Ch. 361; 24 L. T. 599; 19 W. R. 549 475
King's Bross Industrial Dwellings Co., 11 Eq. 149; 23 L. T. 585; 19 W. R. 225 ... ... 226, 437
King *v.* Marshall, 33 Beav. 565; 10 L. T. 557; 12 W. R. 971; 4 N. R. 258 234
Kingsbury Collieries, Ltd. & Moore's Contract, [1907] 2 Ch. 259; 76 L. J. Ch. 469; 96 L. T. 829 ... ... 44, 300
Kingston Cotton Mills, Re (No. 1), [1896] 1 Ch. 6; 65 L. J. Ch. 145; 73 L. T. 482; 44 W. R. 210; 2 Mans. 626 ... ... 307, 463
Kingston Cotton Mills, Re (No. 2), [1896] 2 Ch. 279; 65 L. J. Ch. 673; 74 L. T. 568; 3 Mans. 171 ... ... 308, 463
Kingstown Yacht Club, Re, 21 L. R. Ir. 199 177
Kintrea, Ex parte (Bank of Hindustan, China and Japan), 5 Ch. 95; 39 L. J. Ch. 193; 21 L. T. 688; 18 W. R. 197 475
Kipling *v.* Todd, 3 C. P. D. 350; 47 L. J. C. P. 617; 39 L. T. 188; 27 W. R. 84 ... ... 127, 144
Kirby's Case, 46 L. T. 682 ... ... 167, 168
Kirk *v.* Bell, 16 Q. B. 290 100
Kit Hill Tunnel Co. *See* Williams, Ex parte (Kit Hill Tunnel Co., Re).
Knight's Case (North Hallenbeagle Mining Co., Re), 2 Ch. 321; 36 L. J. Ch. 317; 15 L. T. 546; 15 W. R. 294 207
Knights Deep, Ltd. *v.* Inland Revenue Commissioners, [1900] 1 Q. B. 217; 69 L. J. Q. B. 66; 81 L. T. 625; 48 W. R. 198 264
Knowles *v.* Scott, [1891] 1 Ch. 717; 60 L. J. Ch. 284; 64 L. T. 135; 39 W. R. 523 468
Knox *v.* Hayman, 67 L. T. 137 380
Krasnapolsky Restaurant Co., Re, [1892] 3 Ch. 174; 61 L. J. Ch. 593; 67 L. T. 51; 40 W. R. 639 445
Kyshe *v.* Alturas Gold Co., 36 W. R. 496; 4 Times L. R. 331 82

L.

La Compagnie de Mayville *v.* Whitley, [1896] 1 Ch. 788; 65 L. J. Ch. 729; 74 L. T. 441; 44 W. R. 568 ... ... 87, 88, 99
Ladd's Case. *See* Fairbairn Engineering Co., Re.
Ladies' Dress Association *v.* Pulbrook, [1900] 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6; 7 Mans. 465 52
Lady Forrest (Murchison) Gold Mine, Ltd., [1901] 1 Ch. 582; 70 L. J. Ch. 275; 84 L. T. 559 ... ... 61, 64, 351
Ladywell Mining Co. *v.* Brookes, 34 Ch. D. 398; 35 Ch. Div. 400; 56 L. J. Ch. 684; 56 L. T. 677; 35 W. R. 785 ... ... 61, 64, 351
Laffitte & Co., Re. *See* De Rosaz, Ex parte.
Lafitte & Co. *v.* Lafitte, 42 L. J. Ch. 716; 29 L. T. 80; 21 W. R. 750 ... 489
Lagunas Nitrate Co. *v.* Schroeder, [1901] 85 L. T. 22 321
Lagunas Nitrate Co. *v.* Lagunas Syndicate, [1899] 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74 ... 63, 64, 222, 349, 350, 351, 360
Lake George Mines, [1904] 1 Ch. 803; 73 L. J. Ch. 333 ... ...
Lake View Gold Mines, Re, W. N. (1900) 44 520
Lamb *v.* Sambas Rubber, &c., Co., [1908] 1 Ch. 845; 77 L. J. Ch. 386; 98 L. T. 633 143

PAGE

Lambert *v.* Neuchâtel Asphalte Co., 30 W. R. 913; 47 L. T. 73; 51 L. J. Ch. 882; 30 W. R. 913 ... ... 111, 315, 319, 320
——— *v.* Northern Rail. Co. of Buenos Ayres, 18 W. R. 180 80
Lamson Store Service Co., Re, [1895] 2 Ch. 726; 64 L. J. Ch. 777; 73 L. T. 311; 44 W. R. 42; 2 Mans. 537 53
Lancashire Cotton Co., Re. *See* Carnelly, Ex parte.
Lancaster Banking Co., Re, W. N. (1897) 3; 75 L. T. 647 20
Land Credit Co. of Ireland, Re (Trower and Lawson's Case), 14 Eq. 8; 41 L. J. Ch. 468 ... ... 453, 455
Land Credit Co. of Ireland, Re (Overend Gurney, Ex parte), 4 Ch. 460; 39 L. J. Ch. 27; 20 L. T. 641; 17 W. R. ... 102
——— ——— ——— *v.* Fermoy, 8 Eq. 7; 5 Ch. 763 ... 343, 346
——— ——— ——— ——— ———, (Munster, Ex parte), 14 W. R. 957; 14 L. T. 723 378
Land Mortgage Bank of Florida, Re, [1898] 1 Ch. 444; 67 L. J. Ch. 183; 78 L. T. 156; 46 W. R. 333; 5 Mans. 178 535
Land Securities Co., Re, 42 W. R. 624; 1 Mans. 369; 8 R. 713, 506 453, 512
——— ——— ———, 2 Mans. 127 463
——— ——— ———. *See* Farquhar, Ex parte.
Landore Siemens Steel Co., Re, Palmer's Precedents, 4th ed. 613 ... 530
Landowners' Drainage and Inclosure Co. *v.* Ashford, 16 Ch. D. 411; 50 L. J. Ch. 276; 44 L. T. 20 ... ... 102, 232, 233
Lands Allotment Co., Re, [1894] 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404; 1 Mans. 107 75, 299, 345, 347, 356
——— ——— ——— *v.* Broad, 2 Mans. 470; 13 R. 699 348
Lands Development Association, Re. *See* Kent's Case.
Land Shipping Colliery Co., Re. *See* Gull, Ex parte.
Lanc's Case (British Provident Assurance Society, Re), 1 De G. J. & S. 504; 33 L. J. Ch. 84; 10 Jur. N. S. 25; 12 W. R. 60 346
Lane *v.* Stern, 3 Giff. 629; 9 Jur. N. S. 320; 10 W. R. 555 279
Lang's Case (City of Glasgow Bank, Re), 4 A. C. 547 471
Langer's Case, 37 L. J. Ch. 292; 18 L. T. 67 469
Langham Skating Rink Co., Re, 5 Ch. Div. 669; 46 L. J. Ch. 345; 33 L. T. 605 ... ... 35, 435, 442
Langham *v.* East Wheal Mining Co., 37 L. J. Ch. 253 141
Langley Mills Steel and Ironworks Co., Re, 12 Eq. 26; 40 L. J. Ch. 313; 24 L. T. 382; 19 W. R. 764 ... ... 444, 446
Larking, Ex parte, 4 Ch. D. 566; 46 L. J. Ch. 235 351
Larkworthy's Case (Exchange Trust, Ltd.), [1903] 1 Ch. 711; 72 L. J. Ch. 387; 88 L. T. 56 205
Lathom *v.* Greenwich Ferry Co., 72 L. T. 790; 2 Mans. 408; 13 R. 503 280
Latta, Ex parte. *See* Royal Bank of Australia, Re.
Law Courts Chambers, Re, 61 L. T. 669 436
Law Guarantee Society *v.* Bank of England, 24 Q. B. D. 406; 62 L. T. 496; W. R. 493 199
Law Guarantee, &c., Society *v.* Mitcham and Cheam Brewery, [1906] 2 Ch. 98; 75 L. J. Ch. 556; 94 L. T. 809; 54 W. R. 551 273
Lawes' Case (Vale of Neath, &c., Joint Stock Co., Re), 1 De G. M. & G. 421; 20 L. J. Ch. 295; 21 *ib.* 688 ... ... 39, 328
Lawless *v.* Anglo-Egyptian Co., L. R. 4 Q. B. 262; 38 L. J. Q. B. 129; 17 W. R. 498 ... ... 309, 394
Lawrence's Case, 2 Ch. 412; 36 L. J. Ch. 490; 16 L. T. 222; 15 W. R. 571 142
Lawrence and Bullen, Ltd., [1901] W. N. 158 52

PAGE

Laxon & Co., Re, [1892] 3 Ch. 31; 67 L. T. 584; 40 W. R. 614 430
——— ——— (No. 2), [1892] 3 Ch. 555; 61 L. J. Ch. 667; 67 L. T. 85; 40 W. R. 621 12
Leak *v.* Driffield, 24 Q. B. D. 98; 59 L. J. Q. B. 89; 61 L. T. 771; 38 W. R. 93 130
Leas Hotel Co. (Salter *v.* Co.), [1902] 1 Ch. 332 276
Leaver, Ex parte, Metropolitan (Brush) Electric Light and Power Co., Re, 51 L. T. 817 454
Lee *v.* Neuchâtel Asphalte Co., 41 Ch. Div. 1; 58 L. J. Ch. 408; 61 L. T. 11; 37 W. R. 321 ... ... 39, 311, 312, 315
Leeds Banking Co., Re. *See* Addinell's Case; Barrett's Case; Clarke, Ex parte; Fearnside's Case; Howard's Case.
Leeds Estate Building Co. *v.* Shepherd, 36 Ch. D. 787; 57 L. J. Ch. 646; 57 L. T. 684; 36 W. R. 322 38, 76, 79, 304, 305, 308, 313, 342, 343, 353, 354, 355
Leeds & Hanley Theatres of Varieties Ltd., [1902] 2 Ch. 809; 72 L. J. Ch. 1; 87 L. T. 488; 51 W. R. 5 ... ... 64, 348, 349
Lees Brook Spinning Co., [1906] 2 Ch. 394; 75 L. J. Ch. 565; 95 L. T. 54; 54 W. R. 563 50
Legal & General Investment Co., [1901] W. N. 72 249
Legg *v.* Matheson, 2 Giff. 71; 29 L. J. Ch. 385; 6 Jur. N. S. 1010; 2 L. T. 112 267
Leicester Club Co., Re. *See* Cannon, Ex parte.
Leifchild's Case (British and Foreign Cork Co., Re), L. R. 1 Eq. 231; 13 L. T. 267; 14 W. R. 22; 11 Jur. N. S. 941 44
Leinster Contract Corporation, [1903] 1 Ir. 517 482
Leishman *v.* Cochrane, 9 L. T. 104; 12 W. R. 181 129
Leng, Re (Tarn *v.* Emmerson), (1895) 1 Ch. 652; 64 L. J. Ch. 468; 72 L. T. 407; 43 W. R. 406 482
Leominster Hotel Co. *v.* Shrewsbury Rail. Co., 26 L. J. Ch. 764 226
Letheby & Christopher, Ltd., [1904], 1 Ch. 815; 73 L. J. Ch. 509; 90 L. T. 774; 52 W. R. 450 192
Lever *v.* Land Securities Co., 8 Times L. R. 94 321
Levita's Case (International Contract Co., Re), 3 Ch. 36; 17 L. T. 337; 16 W. R. 95 135
——— ——— ———, 5 Ch. 489; 39 L. J. Ch. 673; 22 L. T. 395; 18 W. R. 476 ... ... 129, 134
Levy *v.* Abercorris Slate Co., 37 Ch. D. 260; 57 L. J. Ch. 202; 58 L. T. 218; 36 W. R. 411 257
Lewis's Case. *See* Lundy Granite Co., Re.
Lewis *v.* Pontypridd, Caerphilly and Newport Rail. Co., 11 Times L. R. 208 ... ... 396, 412
Leyton & Walthamstow Cycle Co., [1901] W. N. 225; 50 W. R. 93 ... 436
Liberator Permanent Benefit Building Society, Re, 71 L. T. 406 462, 463
Libri's Case (Kilbrecon Mining Co., Re), 30 L. T. O. S. 185 198
Licensed Victuallers' Trading Association, Re. *See* Audain, Ex parte.
Life Association of England, Re. *See* Blake, Ex parte, Thomson's Case.
———, 34 L. J. Ch. 64; 10 Jur. N. S. 762; 10 L. T. 833; 12 W. R. 1069 427
Lindsay Petroleum Co. *v.* Hurd, L. R. 5 P. C. 221; 22 W. R. 492 60, 356
Lindus *v.* Melrose, 3 H. & N. 177; 31 L. T. O. S. 6; 36 W. R. 441 ... 392
Lintott, Ex parte, 4 Eq. 184; 36 L. J. Ch. 510; 16 L. T. 228; 15 W. R. 617 ... ... 177, 479
Lion Mutual Insurance Co. *v.* Tucker, 12 Q. B. D. 176; 53 L. J. Q. B. 185; 49 L. T. 764; 32 W. R. 546 22

PAGE

Lishman's Claim, 23 L. T. 40 271
Lister, Ex parte (Milford Docks Co., Re). *See* Milford Docks Co., Re.
Lister (Henry) & Co. Re (Huddersfield Banking Co., Ex parte), [1892] 2 Ch. 417; 61 L. J. Ch. 721; 67 L. T. 180; 40 W. R. 589 ... 495, 496
Lister *v.* Henry Lister & Son, Ltd., 62 L. J. Ch. 568; 68 L. T. 826; 41 W. R. 330; 3 R. 363 268
Littledale, Ex parte (Hoylake Rail. Co., Re), 9 Ch. 257; 43 L. J. Ch. 529; 30 L. T. 213; 22 W. R. 443 196
Littlehampton Steamship Co., Re. *See* Gregg, Ex parte.
———————————, 2 De G. J. & S. 521; 34 L. J. Ch. 237; 11 Jur. N. S. 211; 12 L. T. 8; 13 W. R. 420 ... ... 438, 439
Liverpool and London, &c., Insurance Co., Re, 46 L. T. 54; 30 W. R. 378 448
Liverpool Civil Service, Re. *See* Greenwood, Ex parte, Liverpool Civil Service Association, Re.
Liverpool Exchange Co., Ex parte. *See* Progress Assurance Co., Re.
Liverpool Household Stores Association, Re, 59 L. J. Ch. 616; 62 L. T. 873; 2 Meg. 217 ... ... 104, 343, 361
L.L. Syndicate, Ltd., [1901] W. N. 164 216
Llanelly Rail. Co. *v.* South Wales Rail. Co., 14 Q. B. 902 ... ... 32, 298
Llanharry Hematite Co. *See* Stock's Case; Roney, Re; Tothill's Case.
Lloyd (David) & Co., Re, 6 Ch. D. 339; 37 L. T. 83; 25 W. R. 872 273, 426
Lloyd Générale Italiano, Re, 29 Ch. D. 219; 54 L. J. Ch. 748; 33 W. R. 728. 416
Lock *v.* Queensland Investment and Land Mortgage Co., [1896] 1 Ch. 397; 65 L. J. Ch. 301; 73 L. T. 720; 44 W. R. 257 43
———————————, [1896] A. C. 461; 65 L. J. Ch. 798; 75 L. T. 3; 45 W. R. 65 ... ... 43, 177
Lockhart *v.* Moldacot Sewing Machine Co., 5 Times L. R. 307 80
Lodurck *v.* Earl of Perth, 1 Times L. R. 76 380
Logan, Ex parte (London and Scottish Bank, Re), 9 Eq. 149; 21 L. T. 742; 18 W. R. 273 490
Logan *v.* Bank of Scotland, [1904] 2 K. B. 495; 73 L. J. K. B. 794; 91 L. T. 252; 53 W. R. 39 409
London, Birmingham, &c., Banking Co., 34 Beav. 332; 34 L. J. Ch. 418; 11 Jur. N. S. 316; 12 L. T. 45; 13 W. R. 446 ... ... 178, 196
London, Brighton & South Coast Rail. Co. *v.* Fairclough, 2 M. & Gr. 674; 2 Ry. Cas. 544; 3 Scott, N. R. 68 334
——————————— *v.* Truman, 11 App. Cas. 45; 55 L. J. Ch. 354; 54 L. T. 250; 34 W. R. 657 297
London and Birmingham Flint Glass and Alkali Co., Re (Wright, Ex parte), 1 De G. F. & J. 257; 28 L. J. Bk. 17; 7 W. R. 539 436
London & Birmingham Rail Co. *v.* Winter, Cr. & Ph. 57 227
London & Bombay, &c., Bank, Re, 18 Ch. D. 581; 50 L. J. Ch. 557; 45 L. T. 166 476
———————————. *See* Cama, Ex parte; Drew's Case.
London and Caledonian Insurance Co., Re, 11 Ch. D. 140; 40 L. T. 666; 27 W. R. 713 ... ... 357, 417, 428
London & Colonial Co., Re. *See* Clark's Case; Horsey, Ex parte.
London and Colonial Finance Corporation, 77 L. T. 146 144
London & County Assurance Co., Re, 30 L. J. Ch. 373 250
———————————. *See* Jessopp's Case; Jones, Ex parte.
London Chartered Bank of Australia, Re, [1893] 3 Ch. 540; 62 L. J. Ch. 841; 69 L. T. 593; 42 W. R. 14 529
London, Chatham and Dover Rail. Co. *v.* South Eastern Rail Co., [1893] A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637 492

PAGE

London and County Coal Co., Re, L. R. 3 Eq. 355 435
——————— ——— Insurance Co., Re. *See* Jessopp's Case.
London and Devon Biscuit Co., Re, 12 Eq. 190; 40 L. J. Ch. 574; 24 L. T. 650; 19 W. R. 943 424
London and General Bank, Re, 63 L. J. Ch. 853; 1 Mans. 538; 13 R. 137 458
———————————, [1895] 2 Ch. 166; 72 L. T. 611; 43 W. R. 481; 2 Mans. 282 ... ... 307, 463
London and Globe Finance Corporation, [1903] 1 Ch. 728; 72 L. J. Ch. 368; 88 L. T. 194; 51 W. R. 651 ... ... 400, 458
London and Hull Soap Works, Ltd., [1907] W. N. 254 441
London and Lancashire Paper Mills Co., Re (Scott's Case), 57 L. J. Ch. 766; 59 L. T. 362 ... ... 453, 454
London and Mashonaland Exploration Co. *v.* New Mashonaland Exploration Co., W. N. (1891) 165 ... ... 93, 362
London and Mediterranean Banking Co., Re, 15 W. R. 33; 15 L. T. 153 ... ... 435, 437
———————————————. *See* Bolognesi's Case; Wright, Joseph, Ex parte.
London and Mercantile Co., Re, L. R. 1 Eq. 277; 35 L. J. Ch. 229; 13 L. S. 665; 14 W. R. 219 ... ... 439, 510
London and Midland Bank *v.* Mitchell, [1899] 2 Ch. 161; 68 L. J. Ch. 568; 81 L. T. 263; 47 W. R. 602 184
London and New York Investment Corporation, Re, [1895] 2 Ch. 860; 64 L. J. Ch. 729; 73 L. T. 280; 44 W. R. 137; 2 Mans. 541 ... 50, 152
London and North Western Rail. Co. *v.* Price, 11 Q. B. D. 485 44
London and Northern Bank, Re. *See* Jones, Ex parte.
——————————— Archer's Case, [1901] W. N. 247; Haddock's Case; Hoyle's Case, [1902] 2 Ch. 73; 71 L. J. Ch. 511; 86 L. T. 430; 50 W. R. 536 454
——————————— Insurance Corporation. *See* Stace and Worth's Case.
London and Paris Banking Corporation, Re, 19 Eq. 444; 23 W. R. 643 433, 436
London and Paris Financial Corporation, Re, 13 Times L. R. 569 69, 72
London and Provincial Coal Co., Re, 5 Ch. D. 525; 46 L. J. Ch. 842; 36 L. T. 545 ... ... 136, 210
London and Provincial Law Assurance Society *v.* London and Provincial Joint Stock Life Assurance Co., 17 L. J. Ch. 37; 11 Jur. 938 ... 15
London and Provincial Starch Co., 20 L. T. 390 352
———————————. *See* Gower's Case.
London and Provincial Telegraph Co., Re, 9 Eq. 653; 39 L. J. Ch. 419; 23 L. T. 237; 18 W. R. 597 214
London and Scottish Bank, Re (Logan, Ex parte), 9 Eq. 149; 21 L. T. 742; 18 W. R. 273 490
London and South Western Rail. Co. *v.* Gomm, 20 Ch. Div. 562 ... 298
London and Southern Counties Freehold Land Co., Re, 31 Ch. D. 223; 55 L. J. Ch. 224; 54 L. T. 44; 34 W. R. 163 ... ... 87, 96
London and Staffordshire Fire Insurance Co., Re, 24 Ch. D. 149; 53 L. J. Ch. 78; 48 L. T. 955; 31 W. R. 781 ... ... 140, 141, 142, 370
London and Suburban Bank, Re, [1892] 1 Ch. 604; 61 L. J. Ch. 316; 66 L. T. 716; 40 W. R. 326 ... 430
———————————, 6 Ch. 641; 40 L. J. Ch. 774; 19 W. R. 763 439
London and Westminster Bread Co., Re, 59 L. J. Ch. 155; 62 L. T. 224; 38 W. R. 277; 2 Meg. 30 518

PAGE

London and Westminster Supply Association *v.* Griffiths, 1 Cab. & El. 15 181
London and Yorkshire Bank *v.* Cooper, 15 Q. B. D. 473; 54 L. J. Q. B. 495 538
London, Birmingham, &c., Banking Co., Re, 34 Beav. 332; 34 L. J. Ch. 418; 12 L. T. 45; 13 W. R. 446 ... ... 178, 196
London Celluloid Co., Re (Bayley's Case), 39 Ch. D. 190; 36 W. R. 673 40, 41
London Cotton Manufacturing Co., Re, L. R. 2 Eq. 53; 35 L. J. Ch. 425; 12 Jur. N. S. 313; 14 L. T. 135; 14 W. R. 575 44
London County Council's Tramway Arbitration (1897), 13 T. L. R. 254 409
London Drapery Stores, Re, [1898] 2 Ch. 684; 67 L. J. Ch. 690; 47 W. R. 118 498
London Financial Association *v.* Wrexham Rail. Co., 18 Eq. 566; 30 L. T. 491; 22 W. R. 681 525
London Flour Co., Re, 19 L. T. 136; 16 W. R. 552 444
London Founders' Association *v.* Clarke, 20 Q. B. D. 576; 57 L. J. Q. B. 291; 59 L. T. 93; 36 W. R. 489 185
London, Greenwich and Windsor Hotels Co. (Quartermaine's Case, Re). *See* Quartermaine's Case.
London, Hamburgh, &c., Bank, Re. *See* Emmerson, Ex parte (London, Hamburgh, &c., Bank, Re).
London, Hamburgh, &c., Bank, Re. *See* Evan's Case; Zulueba's Claim.
London Health Electrical Institute, Re, 76 L. T. 98; 45 W. R. 566 ... 444
London India Rubber Co., Re, 1 Ch. 329; 35 L. J. Ch. 592; 14 L. T. 316; 14 W. R. 527 ... ... 415, 416
———————————, 5 Eq. 519; 37 L. J. Ch. 235; 17 L. T. 530; 16 W. B. 334 ... ... 153, 504
London Metallurgical Co., Re (Parker, Ex parte), [1895] 1 Ch. 758; 64 L. J. Ch. 442; 72 L. T. 421; 43 W. R. 476; 2 Mans. 276 ... 498
London Metallurgical Co., Re, [1897] 2 Ch. 262; 66 L. J. Ch. 635; 76 L. T. 829; 45 W. R. 601; 4 Mans. 172 467
London Pressed Hinge Co. (Campbell *v.* Co.), [1905] 1 Ch. 576; 74 L. J. Ch. 321; 92 L. T. 409; 53 W. R. 407 276
London Quay and Warehouses Co., 3 Ch. 394; 37 L. J. Ch. 397; 18 L. T. 195; 16 W. R. 530 420
London Trust Co. *v.* Mackenzie, 62 L. J. Ch. 870; 68 L. T. 380; 3 R. 597 343, 344
London United Breweries, Ltd., In re (Smith *v.* Co.), [1907] 2 Ch. 511; 76 L. J. Ch. 612; 97 L. T. 541 284
London Wharfing Co., Re, 35 Beav. 37 436
London, Windsor and Greenwich Hotels, Re, 1 Meg. 242 449
Longdendale Cotton Spinning Co., Re, 8 Ch. D. 150; 38 L. T. 776; 26 W. R. 491 273
Longman *v* Bath Electric Tramways, [1905] 1 Ch. 646; 74 L. J. Ch. 424; 92 L. T. 743; 53 W. R. 480 190
Lonsdale Vale Ironstone Co., 16 W. R. 601 ... ... 445, 496
Loog, Ltd., Re (Ramsay's Case). *See* Hermann Loog, Ltd.
Looker *v.* Wrigley, 9 Q. B. D. 397 ... ... 254, 395
Lord Claud Hamilton's Case. *See* Hamilton's Case.
Lord Inchiquin, Ex parte (Portuguese Copper Mines, Re), [1891] 3 Ch. 28; 60 L. J. Ch. 556; 64 L. T. 841; 39 W. R. 610 128
Lord Lurgan's Case. *See* Metal Constituents.
Lord *v.* Governor and Company of Copper Miners, 2 Philips, 740 ... 111
Loring *v.* Davis, 32 Ch. D. 625; 55 L. J. Ch. 725; 54 L. T. 899; 34 W. R. 701 181
Los's Case (Bank of Hindustan, China and Japan, Re), 34 L. J. Ch. 609; 12 L. T. 690; 13 W. R. 883; 11 Jur. N. S. 661 516

PAGE

Lough Neagh Ship Co., Re, [1896] 1 I. R. 29 494
Louisiana, &c., Mortgage Co., [1909] W. N. 170 50
Lowe, Ex parte. *See* Standard Manufacturing Co., Re.
Lowe's Case, 9 Eq. 589; 39 L. J. Ch. 458; 18 W. R. 370 215
Lowenfeld, Ex parte (Sheppard's Corn Malting Co., Re), 70 L. T. 3; 1 Mans. 325 503
Lowndes *v.* Garnett Gold Mining Co., 33 L. J. Ch. 418; 10 L. T. 229; 12 W. R. 573; 3 N. R. 601 ... ... 81, 224
Lubbock *v.* British Bank of South America, [1892] 2 Ch. 198; 61 L. J. Ch. 498; 67 L. T. 74; 41 W. R. 103 ... ... 309, 311, 316
Lucy's Case, 4 De M. & G. 356; 22 L. J. Ch. 732; 17 Jur. 1143 480
Lumsden's Case (Blakely Ordnance Co., Re), 4 Ch. 31; 19 L. T. 437; 17 W. R. 65 ... ... 130, 191, 213
Lund *v.* Blanchard, 4 Hare, 9 344
Lundy Granite Co., Re (Heavan, Ex parte), 6 Ch. 462; 40 L. J. Ch. 588; 24 L. T. 922; 19 W. R. 609 ... ... 423, 425
——————— (Lewis's Case), 20 W. R. 408, 519; 26 L. T. 673 79
Lyde *v.* Eastern Bengal Rail. Co., 36 Beav. 10 ... ... 31, 153
Lydney, &c., Coal Co. *v.* Bird, 33 Ch. Div. 85; 34 W. R. 749 ... 59, 62, 66, 69, 122, 348
Lynde *v.* Anglo-Italian Hemp Spinning Co., [1896] 1 Ch. 178; 65 L. J. Ch. 96; 73 L. T. 502 141
Lyon's Case (English Rolling Stock Co., Re), 35 Beav. 646; 14 L. T. 507; 14 W. R. 720; 12 Jur. N. S. 738 ... ... 97, 105
Lyons *v.* Perth Electric Tramways Syndicate, Ltd. *See* Perth, &c., Tramways, Ltd.
Lysaght, Re (Lysaght *v.* Lysaght), [1898] 1 Ch. 115; 67 L. J. Ch. 65; 77 L. T. 737 7
Lyster's Case (Tavistock Ironworks Co., Re), 4 Eq. 233; 36 L. J. Ch. 616; 16 L. T. 824 ... ... 97, 207

M.

Maas *v.* Pepper, [1905] A. C. 102; 74 L. J. K. B. 452; 92 L. T. 371 ... 240
McClure, Ex parte (English and Scottish Marine Insurance Co., Re), 5 Ch. 737; 39 L. J. Ch. 685; 18 W. R. 1122 490
Macdonald, Sons & Co., Re, [1894] 1 Ch. 89; 63 J. Q. B. 193; 69 L. T. 567; 1 Mans. 319 ... ... 155, 209
Macdougal *v.* Gardner, 10 Ch. 606; 33 L. T. 521; 23 W. R. 846; 1 Ch. Div. 13; 45 L. J. Ch. 27; 24 W. R. 118 ... ... 111, 331, 410
——————— *v.* Jersey Imperial Hotel Co., 2 H. & M. 528; 4 N. R. 497; 12 W. R. 1142 ... ... 37, 46, 105
Macdowall's Case (Oriental Bank Corporation, Re), 32 Ch. D. 366; 55 L. J. Ch. 620; 54 L. T. 667; 34 W. R. 529 ... ... 447, 489
McEntire *v.* Crossley, [1895] A. C. 457; 64 L. J. P. C. 129; 72 L. T. 731; 2 Mans. 334 ... ... 240, 245
Macfarlane's Claim, 17 Ch. D. 337; 50 L. J. Ch. 273; 44 L. T. 299 482, 488
Macfadyen & Co., In re (Vizianagram Mining Co., Ex parte), [1908] 2 K. B. 817; 77 L. J. K. B. 1027 75
Macgregor *v.* Deal and Dover Rail. Co., 18 Q. B. 618; 22 L. J. Q. B. 69 ... 31
Mackay, Ex parte (Shirley, Re), 58 L. T. 237 477
——————— (Jeabons, Re), 8 Ch. 643; 42 L. J. Bk. 68; 28 L. T. 828; 21 W. R. 664 24

PAGE

Mackay *v.* Commercial Bank of New Brunswick, 5 P. C. 394; 43 L. J. P. C. 31; 30 L. T. 180; 22 W. R. 473 109
McKay's Case (Morvah Consols, Re), 2 Ch. D. 1; 45 L. J. Ch. 148; 33 L. T. 517; 24 W. R. 49 ... ... 348, 353
————, [1896] 2 Ch. 757; 65 L. J. Ch. 909; 75 L. T. 298; 3 Mans. 274 190
Mack's Claim, [1900] W. N. 114 92
Mackenzie, Ex parte, 7 Eq. 240; 38 L. J. Ch. 199; 19 L. T. 667; 17 W. R. 343 ... ... 271, 489
McConnell's Claim, [1901] 1 Ch. 728; 70 L. J. Ch. 251; 84 L. T. 557 ... 79, 80, 91, 92
McConnell *v.* Wright, [1903] 1 Ch. 546; 72 L. J. Ch. 347; 51 W. R. 661; 88 L. T. 431 ... ... 383, 390
McKeown *v.* Bondard Peveril Gear Co., 65 L. J. Ch. 735; 74 L. T. 712; 45 W. R. 152 141
———— *v.* Joint Stock Institute, [1899] 1 Ch. 671; 68 L. J. Ch. 390; 80 L. T. 641; 6 Mans. 338 ... ... 396, 412
McKewan's Case (Maria Anna Steinbank Coal and Coke Co.), 6 Ch. D. 447 22
Mackley's Case (Tal-y-Drws Slate Co., Re), 1 Ch. D. 247; 45 L. J. Ch. 158; 33 L. T. 460; 24 W. R. 92 136
Maclagan's Case (Scottish Petroleum Co., Re), 51 L. J. Ch. 841 ... 104, 133
MacLeay *v.* Tait, [1906] A. C. 24 390
McMahon *v.* North Kent Ironworks Co., [1892] 2 Ch. 148; 60 L. J. Ch. 372; 64 L. T. 317; 39 W. R. 349 276
McMahon, Re (Fuller *v.* McMahon), [1900] 1 Ch. 173; 69 L. J. Ch. 142; 81 L. T. 715; 7 Mans. 38 ... ... 172, 478
McMillan *v.* Le Roi Mining Co., [1906] 1 Ch. 331; 75 L. J. Ch. 174; 54 W. R. 281; 94 L. T. 160 335
McMurdo, Re, [1902] 2 Ch. 684; 71 L. J. Ch. 691; 50 W. R. 644; 86 L. T. 814 496
McMurdo, Re, 8 Times L. R. 507 179
Madeley *v.* Ross (Sleeman & Co.), [1897] 1 Ch. 505; 66 L. J. Ch. 233; 76 L. T. 321 283
Madell *v.* Thomas & Co., [1891] 1 Q. B. 230; 60 L. J. Q. B. 227; 64 L. T. 9; 39 W. R. 280 240
Madras Coffee Co., Re, 17 W. R. 643 439
Madras Irrigation, &c., Co., Re, W. N. (1881) 172 530
Madrid Bank, Re. *See* Wilkinson's Case.
———— (Williams, Ex parte), 2 Eq. 216; 35 L. J. Ch. 474; 14 L. T. 456; 14 W. R. 706 ... ... 49, 66
———— *v.* Pelly, 7 Eq. 442; 21 L. T. 13 352
Madrid and Valencia Rail. Co., Re; 2 Mac. & G. 169; 1 H. & Tw. 597; 19 L. J. Ch. 260 12
Magdalena Steam Navigation Co., Re, Johns. 690 ... ... 108, 233, 255
Mahony *v.* East Holyford Mining Co., L. R. 7 H. L. 869; 33 L. T. 383 103
Makins *v.* Percy Ibbotson & Sons, [1891] 1 Ch. 133; 60 L. J. Ch. 164; 63 L. T. 515; 38 W. R. 73 276
Malcolm *v.* Hodgkinson, L. R. 8 Q. B. 209; 21 W. R. 360 446
Malleson *v.* General Mineral Patents Syndicate, [1894] 3 Ch. 538; 63 L. J. Ch. 868; 71 L. T. 476; 43 W. R. 41 22
———— *v.* National Insurance Corporation, [1894] 1 Ch. 200; 63 L. J. Ch. 286; 70 L. T. 157; 42 W. R. 249; 1 Mans. 249 ... 26, 27, 161, 163

PAGE

Manchester Brewery Co. *v.* North Cheshire and Manchester Brewery Co., [1898] 1 Ch. 539; 67 L. J. Ch. 351; 78 L. T. 537; 46 W. R. 515 ... 15
Manchester and County Bank v. Higginshaw Mills and Cotton Spinning Co. *See* Higginshaw Mills and Cotton Spinning Co., Re.
Manchester Corporation *v.* Williams, [1891] 1 Q. B. 94; 60 L. J. Q. B. 23; 63 L. T. 805; 39 W. R. 302 2
Manchester and Oldham Bank, Re, 54 L. J. Ch. 926 214
Manchester Queensland Cotton Co., Re, 16 L. T. 583; 15 W. R. 1070 ... 437
Manchester, Sheffield and Lincolnshire Rail Co. *v.* North Central Wagon Co., 13 A. C. 554 240
Mangles *v.* Grand Collier Dock Co., 2 Rail. Cas. 359; 10 Sim. 519; 9 L. J. Ch. 177 157
Manisty's Case. *See* European Arbitration.
Manley's Case (Yeoland Consols, Re), 2 Meg. 74 475
Mann's Case (Joint Stock Discount Co., Re), 3 Ch. 459, n. 475
Manners *v.* St. David's Mines, [1904] 2 Ch. 593; 73 L. J. Ch. 764; 91 L. T. 277 ... ... 300, 514
Mannesmann Tube Co., Re (Von Siemens *v.* the Co.), [1901] 2 Ch. 93; 70 L. J. Ch. 565; 84 L. T. 579; 8 Mans. 300 263
Marc *v.* Anglo-Indian Steamship Co., 3 Times L. R. 142 132
Marezzo Marble Co., Re, 43 L. J. Ch. 544; 29 L. T. 720; 22 W. R. 248 ... 440
Maria Anna, &c., Coal Co., Re. *See* Hill's Case.
Marine and General Land Investment Co., Re, 62 L. T. 723 441
Marine Investment Co., Re. *See* Poole's Executors, Ex parte.
——— Mansions Co., Re, 4 Eq. 601; 37 L. J. Ch. 115 ... 234, 235, 262, 285
Marino's Case (Imperial Mercantile Credit Association, Re), 2 Ch. 596; 36 L. J. Ch. 468; 16 L. T. 368; 15 W. R. 683 ... ... 192, 214
Markham and Darter's Case, [1899] 1 Ch. 414; 80 L. T. 282; 47 W. R. 509; 6 Mans. 84; [1899] 2 Ch. 480; 81 L. T. 145 ... ... 165, 167
Marriage, Neave & Co., Re, [1896] 2 Ch. 663; 65 L. J. Ch. 839; 75 L. T. 169; 45 W. R. 42 278
Marriott *v.* East Grinstead Water Co., [1909] 1 Ch. 70 31
Marron Bank Paper Mill Co., Re, 38 L. T. 140 443
Marrs *v.* Thompson (1902), 86 L. T. 759 4
Marsden *v.* Meadows, 7 Q. B. D. 80; 50 L. J. Q. B. 536; 45 L. T. 301; 29 W. R. 816 ... ... 240, 244
Marseilles Extension Co., Re (Crédit Foncier, &c., Ex parte), 7 Ch. 161; 41 L. J. Ch. 345; 25 L. T. 858; 20 W. R. 254 ... ... 78, 96, 99, 251
Marseilles Extension Rail. Co., Re (Smallpage and Brandon's Case), 30 Ch. D. 598; 55 L. J. Ch. 116 466
Marshall *v.* Glamorgan Iron Co., 7 Eq. 129; 38 L. J. Ch. 69; 19 L. T. 639; 17 W. R. 435 210
——— *v.* Rogers, 14 Times L. R. 217 ... ... 236, 259
——— *v.* South Staffordshire Tramways Co., [1895] 2 Ch. 36; 64 L. J. Ch. 481; 72 L. T. 542; 43 W. R. 469; 2 Mans. 292 ... ... 272, 277
Marshall's Valve Gear Co. *v.* Manning & Co., [1909] 1 Ch. 267 411
Martin's Case, 2 H. & M. 669; 13 L. T. 671; 13 W. R. 988 516
Marzetti's Case (Rail. and General Light Co., Re), 28 W. R. 541; 42 L. T. 206; W. N. (1880) 50 ... ... 342, 343, 361
Masbach *v.* Anderson & Co., 26 W. R. 100 427
Maskelyne British Typewriter, Ltd., Re, [1898] 1 Ch. 133; 67 L. J. Ch. 125; 77 L. T. 579; 46 W. R. 294 281
Mason *v.* Bogg, 2 My. & Cr. 443 482
Mason *v.* Harris, 11 Ch. Div. 97; 40 L. T. 644; 40 L. J. Ch. 589; 27 W. R. 699 ... ... 111, 410

PAGE

Mason *v.* Motor Traction Co., [1905] 1 Ch. 419; 74 L. J. Ch. 273; 92 L. T. 234 513

Mason's Hall Tavern Co. *See* Habershon's Case.

Masonic and General Life Assurance Co. *v.* Sharpe. *See* Sharpe, Re.

Masonic and General Life Assurance Co., Re, 32 Ch. D. 373; 55 L. J. Ch. 666; 34 W. R. 739 436

Massey *v.* Allen, 9 Ch. D. 164; 47 L. J. Ch. 702; 26 W. R. 908 454

Massey and Gibbons' Case. *See* National Bank of Wales.

Master's Case (European Bank, Re), 7 Ch. 192; 41 L. J. Ch. 501; 26 L. T. 269; 20 W. R. 499 475

Matheson Bros., Ltd., Re, 27 Ch. D. 225; 51 L. T. 111; 32 W. R. 847 ... 417

Mathias *v.* Yetts, 46 L. T. 506 141

Matlock Old Bath Co., Re. *See* Maynard's Case; Wheatcroft's Case.

Maude, Ex parte. *See* Hodge's Distillery Co., Re.

Maudsley, Sons & Field, Ltd., [1900] 1 Ch. 602; 69 L. J. Ch. 347; 82 L. T. 378; 48 W. R. 568 277

Maund *v.* Monmouthshire Canal Co., 4 Man. & G. 452; 3 Rail. Cas. 159; Car. & M. 606; 2 Dowl. N. S. 113; 5 Scott, N. R. 457; 6 Jur. 932 ... 109

Maunsell *v.* Midland Great Western Rail Co., 1 H. & M. 130; 32 L. J. Ch. 513; 9 Jur. N. S. 660; 8 L. T. 326; 11 W. R. 768 ... 32, 34

Maxoudoff's Case (Oriental Commercial Bank, Re), 6 Eq. 582; 37 L. J. Ch. 471; 18 L. T. 450; 16 W. R. 784 494

Maxwell *v.* Port Tenant Co., 24 Beav. 495 221

May's Metal Separating Syndicate, Re. *See* Smithson's Case.

Maynard's, Ltd., Re, [1898] 1 Ch. 515; 67 L. J. Ch. 186; 78 L. T. 150; 46 W. R. 346 167

Maynard's Case (Matlock Old Bath Co., Re), 9 Ch. 60; 43 L. J. Ch. 146; 29 L. T. 630; 22 W. R. 119 ... ... 136, 164

Maynard *v.* Consolidated Kent Collieries Corporation, Ltd., [1903] 2 K. B. 121; 72 L. J. K. B. 681; 88 L. T. 676; 52 W. R. 117 197

Mayville (Cie de) *v.* Whitley, [1896] 1 Ch. 788 411

M'Collin *v.* Gilpin, 5 Q. B. D. 390; 6 Q. B. Div. 516; 49 L. J. Q. B. 558; 42 L. T. 899; 28 W. R. 813 ... ... 78, 393

M'Euen *v.* West London Wharves Co., 6 Ch. 655; 40 L. J. Ch. 471; 25 L. T. 133; 19 W. R. 837 ... ... 158, 193

M'Gowan *v.* Dyer, L. R. 8 Q. B. 141; 21 W. R. 560 110

M'Ilwraith *v.* Dublin Trunk Rail. Co., 7 Ch. 134; 41 L. J. Ch. 262; 25 L. T. 776 158

M'Lean's Case (Drum Slate Quarry Co., Re), 55 L. J. Ch. 33; 53 L. T. 250 352

Mears *v.* Western Canada Pulp Co., [1905] 2 Ch. 353 ... 33, 147, 148

Mechanics' Bank *v.* Seton, 1 Peters, 299 99

Medical Attendance Association, Re. *See* Onslow's Case.

Medical Battery Co., Re, [1894] 1 Ch. 444; 63 L. J. Ch. 189; 69 L. T. 799; 42 W. R. 191; 1 Mans. 104 437

Melbourne Brewery and Distillery [1901], 1 Ch. 453 436

Melhado *v.* Hamilton, 29 L. T. 364; 21 W. R. 874 152

——— *v.* Porto Alegre Rail. Co., 9 C. P. 503; 43 L. J. C. P. 253; 31 L. T. 57; 23 W. R. 57 ... ... 66, 219, 220

Melson (Alfred) & Co., [1906] 1 Ch. 841; 75 L. J. Ch. 500; 54 W. R. 468; 94 L. T. 641 443

Menier and Hooper's Telegraph Works, 9 Ch. 350; 30 L. T. 209; 43 L. J. Ch. 330; 22 W. W. R. 396 ... ... 112, 410

Mercantile Bank of Australia, Re, [1892] 2 Ch. 204; 61 L. Ch. 417; 67 L. T. 159; 40 W. R. 440 ... ... 417, 418

PAGE
Mercantile Credit Association, Re, 37 L. J. Ch. 295; 16 W. R. 559 ... 455
Mercantile Investment and General Trust Co. *v.* River Plate Trust, Loan and Agency Co., [1892] 2 Ch. 303; 61 L. J. Ch. 473; 66 L. T. 711 ... 277
Mercantile Investment and General Trust Co. *v.* River Plate Trust, Loan and Agency Co., [1894] 1 Ch. 578; 63 L. J. Ch. 366; 70 L. T. 131; 42 W. R. 365 274
Mercantile Trading Co., Re. *See* Stringer's Case.
Merchants' Banking Co. of London *v.* Merchants' Joint Stock Bank, 9 Ch. D. 560; 47 L. J. Ch. 828; 26 W. R. 847 15
Merchants' Co., Re. *See* Breech-Loading Armoury Co.
Merchants' Fire Office, Re, [1899] 1 Ch. 432; 68 L. J. Ch. 211; 80 L. T. 285; 47 W. R. 480 455
Merchants' Fire Office, Ltd. *v.* Armstrong, [1901] W. N. 163; 17 T. L. R. 709 343
Meredith and Convers, Ex parte (State Fire Insurance Co., Re), 32 L. J. Ch. 300 225
Mersey Iron and Steel Co. *v.* Naylor, 9 Q. B. D. 648; 51 L. J. Q. B. 576; 47 L. T. 359; 31 W. R. 80 ... 423
———————————, 9 A. C. 434; 53 L. J. Q. B. 497; 51 L. T. 637; 32 W. R. 989 ... ... 482, 493
Mersey Rail. Co., Re, [1895] 2 Ch. 287; 64 L. J. Ch. 625; 72 L. T. 735; 12 R. 345 ... ... 267, 268
Mersina and Adana Construction Co., Re, 5 Times L. R. 680 40
Metal Constituents, Ltd. (Lord Lurgan's Case), [1902] 1 Ch. 707; 71 L. J. Ch. 323; 50 W. R. 492; 86 L. T. 291 ... ... 135, 141
Metropolitan Bank, Re. *See* Heiron's Case.
———————— *v.* Heiron, 5 Ex. Div. 319; 34 L. T. 676; 29 W. R. 370 356
———————— *v.* Jones, 2 Ch. D. 366; 45 L. J. Ch. 525; 24 W. R. 815 420
———————— *v.* Vivian & Co. *See* Vivian & Co., Re.
Metropolitan Carriage Co., Re. *See* Brown's Case.
Metropolitan Coal Consumers' Association. *See* Wainwright, Ex parte.
———————————, Re. *See* Karberg's Case.
———————————— *v.* Scrimgeour, [1895] 2 Q. B. 604; 65 L. J. Q. B. 22; 73 L. T. 137; 44 W. R. 35; 2 Mans. 579 ... ... 35, 66, 70, 72, 343
Metropolitan Fire Insurance Co., Re, 16 Times L. R. 513 133
Metropolitan Rail. Co. and Cosh, 13 Ch. Div. 607, 611; 42 L. T. 73; 28 W. R. 685 298
Metropolitan Saloon Co. *v.* Hawkins, 4 H. & N. 90 2
Metropolitan Warehousing Co., Re, 36 L. J. Ch. 827; 17 L. T. 108; 15 W. R. 1121 433
Meux's Executor's Case, 2 De G. M. & G. 522 472
Mexican and South American Co., Re. *See* De Pass's Case.
Mexican Mining Co. *See* Perkins, Re.
Mid Wales Hotel Co., Re, 17 L. T. 597 442
Middlesborough Assembly Rooms, Re, 14 Ch. D. 104; 49 L. J. Ch. 413; 42 L. T. 609; 28 W. R. 868 433
Middlesbrough Fire Brick Co., Re, 52 L. T. 98; 33 W. R. 339 427
Midland Coal, Coke, and Iron Co., Re. *See* Craig's Claim.
Midland Counties District Bank, Ltd. *v.* Attwood, [1905] 1 Ch. 357; 74 L. J. Ch. 286; 92 L. T. 360 506
Midland Electric Light Co., Re, 60 L. T. 666; 37 W. R. 471 ... 137, 213
Midland Great Western Rail. Co. (Ireland) *v.* Gordon, 16 M. & W. 804 157, 158

PAGE

Migotti's Case (South Blackpool Hotel Co., Re), 4 Eq. 238; 36 L. J. Ch. 531; 16 L. T. 271; 15 W. R. 731 136
Milan Tramways Co., Re (Theys, Ex parte), 25 Ch. D. 587; 53 L. J. Ch. 1008; 50 L. T. 545; 32 W. R. 601 ... ... 482, 493
Miles, Ex parte (Exhall Coal Mining Co., Re), 4 De G. J. & S. 471; 34 L. J. Ch. 123; 11 L. T. 581; 13 W. R. 219 133
——— *v.* Bough, 3 G. & D. 119; 12 L. J. Q. B. 74; 3 Ry. Cas. 668 ... 334
——— *v.* New Zealand Estate Co., 32 Ch. Div. 266; 54 L. J. Ch. 1035; 54 L. T. 582; 34 W. R. 669 178
Milford Docks Co., Re (Lister, Ex parte), 23 Ch. D. 292; 52 L. J. Ch. 774; 48 L. T. 560; 31 W. R. 715 437
Military and General Tailoring Co., Re, 47 L. J. Ch. 141; 26 W. R. 75 ... 445
Miller's Dale Lime Co., Re, 31 Ch. D. 211; 55 L. J. Ch. 203; 53 L. T. 692; 34 W. R. 192 339
Mills (Richard) & Co. (Brierly Hill), Ltd., Smith *v.* The Co. [1905] W. N. 36 540
Mills *v.* Northern Rail. Co. of Buenos Ayres, 5 Ch. 621; 23 L. T. 719; 19 W. R. 171 ... ... 46, 287, 316, 319
Milne *v.* Arizona Copper Co. (1899), 1 Fras. 935; 36 S. L. R. 741 ... 323
Milward *v.* Avill, 4 Mans. 403 281
Milwood Colliery Co., Re, 24 W. R. 898 424
Mining Shares Investment Co., Re, [1893] 2 Ch. 660; 62 L. J. Ch. 434; 68 L. T. 578; 41 W. R. 376 19
Mitcalfe's Case (Diamond Fuel Co., Re), 13 Ch. Div. 169; 49 L. J. Ch. 301; 41 L. T. 717; 28 W. R. 309 ... ... 352, 353
Mitchell's Case, 9 Eq. 363; 39 L. J. Ch. 199; 21 L. T. 811; 18 W. R. R. 331 ... ... 130, 213, 214
———————. *See* City of Glasgow Bank *v.* Mitchell.
——— Claim (River Steamer Co., Re), 6 Ch. 822; 25 L. T. 319; 19 W. R. 1130 497
Mitchell, Re, 6 Ch. D. 655; 37 L. T. 145; 25 W. R. 903 272
Mitre Assurance Co., Re. *See* Eyre's Case.
Moffatt *v.* Farquhar, 7 Ch. D. 591; 47 L. J. Ch. 355; 38 L. T. 18; 26 W. R. 522 ... ... 194, 197
Mogridge, Re, 57 L. J. Ch. 932; 58 L. T. 801 132
Molineaux *v.* London, Birmingham, &c., Insurance Co., [1902] 2 K. B. 589; 71 L. J. K. B. 848; 51 W. R. 36; 87 L. T. 324 85, 91, 127, 128, 138
Möller *v.* Maclean, 1 Megone, 274 87
Monarch Insurance Co., Re. *See* Gorrissen's Case.
Monmouth, &c., Indemnity Society, [1909] W. N. 6 21
Montgomery Moore Ship, &c., Syndicate, [1903] W. N. 121; 51 W. R. 644 436
Montreal & St. Lawrence Light & Power Co. *v.* Robert, [1906] A. C. 196; 75 L. J. P. C. 33; 94 L. T. 229 102
Montrotier Asphalte Co., Re. *See* Perry's Case.
———————————, 22 W. R. 895 421
Moor *v.* Anglo-Italian Bank, 10 Ch. D. 681; 40 L. T. 620; 27 W. R. 652 426, 433
Moore and Robinson's Banking Co., Ex parte (Armytage, Re), 14 Ch. D. 379; 49 L. J. Bk. 60; 42 L. T. 443; 28 W. R. 924 241
——— Bros. & Co., Re, [1899] 1 Ch. 627; 68 L. J. Ch. 302; 80 L. T. 104; 47 W. R. 401; 6 Mans. 290 138
———, Ex parte. *See* Florence Land Co., Re.
——— *v.* Explosives Co., 56 L. J. Q. B. 235 382
——— *v.* Hammond, 6 B. & C. 456 ... ... 98, 172

PAGE

Moore *v.* North-Western Bank, [1891] 2 Ch. 599; 60 L. J. Ch. 627; 64 L. T. 456; 40 W. R. 93 184
——— *v.* Rawlings, 6 C. B. N. S. 289; 28 L. J. C. P. 247; 33 L. T. O. S. 205 207
Morgan's Brewery Co. *v.* Croskill, [1902] 1 Ch. 898; 71 L. J. Ch. 585 25, 409
Morgan's Case (Glamorganshire Banking Co., Re), 28 Ch. D. 620; 54 L. J. Ch. 765; 51 L. T. 623; 33 W. R. 209 450
Morrice *v.* Aylmer, L. R. 7 H. L. 717; 45 L. J. Ch. 614; 34 L. T. 418; 24 W. R. 587 54
Morrison Re, [1901] 1 Ch. 701; 70 L. J. Ch. 399; 49 W. R. 441; 84 L. T. 383 524
Morrison *v.* Skerne Ironworks, 60 L. T. 588 278
Morrison *v.* Trustees, Executors, and Securities Corporation, 68 L. J. Ch. 11; 79 L. T. 605; 5 Mans. 356 ... ... 42, 207
Morris's Case (Oriental Commercial Bank, Re), 8 Ch. 800; 43 L. J. Ch. 47; 29 L T. 256; 22 W. R. 22 470
Mortgage Insurance Corporation, Re, W. N. (1896) 4 533
Mortgage Insurance Corporation *v.* Canadian Agricultural Co., [1901] 2 Ch. 377; 70 L. J. Ch. 684; 84 L. T. 561 284
Moscow Gas Co. *v.* International Financial Society, 7 Ch. 225; 41 L. J. Ch. 350; 26 L. T. 377; 20 W. R. 294 466
Moseley *v.* Cressey's Co., 1 Eq. 405; 35 L. J. Ch. 360; 14 L. T. 99; 14 W. R. 246 ... ... 147, 395
——— Green Coal and Coke, Re (Barrett's Case), 4 De G. J. & S. 756; 34 L. J. Bk. 41; 12 L. T. 193, 756; 13 W. R. 559
——— ——— Co., Re (Official Liquidator, Ex parte), 10 L. T. 819 325
Mosely *v.* Koffyfontein Mines, Ld., [1904] 2 Ch. 108; 73 L. J. Ch. 569; 91 L. T. 266; 53 W. R. 140 ... ... 41, 164
Moss *v.* Syers, 32 L. J. Ch. 711; 11 W. R. 1046 152
Mount Morgan (West) Gold Mine, Re. *See* West, Ex parte.
Mowatt *v.* Castle Steel & Iron Co., 34 Ch. D. 58; 55 L. T. 645 267
Moxham *v.* Grant, [1900] 1 Q. B. 88; 69 L. J. Q. B. 97; 7 Mans. 65 343, 359
Moye *v.* Sparrow, 18 W. R. 400; 22 L. T. 154 250
Mozley *v.* Alston, 16 L. J. Ch. 217; 1 Phillips, 790; 11 Jur. 315; 4 Rail. Cas. 630 ... ... 83, 110
Mudford's Claim, 14 Ch. D. 634; 49 L. J. Ch. 452; 42 L. T. 825; 28 W. R. 670 142
Muggeridge, Re, 10 Eq. 443; 39 L. J. Ch. 620; 23 L. T. 296; 18 W. R. 963 ... ... 477, 478
Muir *v.* City of Glasgow Bank, 4 A. C. 337 473
Mulkern *v.* Lord, 4 App. Cas. 182; 40 L. T. 594; 27 W. R. 510 112
Mulliner *v.* Midland Rail. Co., 11 Ch. D. 611; 48 L. J. Ch. 258; 40 L. T. 121; 27 W. R. 330 ... ... 32, 298
Municipal Building Society *v.* Kent, 9 App. Cas. 260; 53 L. J. Q. B. 290; 51 L. T. 4; 32 W. R. 681 112
——— ——— ——— *v.* Richards, 39 Ch. Div. 372; 58 L. J. Ch. 8; 59 L. T. 883; 37 W. R. 184 112
——— ——— Freehold Land Co. *v.* Pollington, 59 L. J. Ch. 734; 63 L. T. 238; 2 Meg. 307 ... ... 89, 304, 305, 308, 343, 353
Munns *v.* Burn. *See* Crosley, Re (Munns *v.* Burn).
Munster *v.* Cammell Co., 21 Ch. D. 183; 51 L. J. Ch. 731; 47 L. T. 44; 30 W. R. 312 ... ... 88, 89
———, Ex parte, 14 W. R. 957; 14 L. T. 723 378
——— Bank, Ex parte (Dillon's Claim), 17 L. R. Ir. 341 489
Munster & Leinster Bank, [1907] 1 Ir. Rep. 237 20

PAGE

Munt's Case (Universal Provident Life Association, Re), 22 Beav. 55 ... 39
Munt *v.* Shrewsbury Rail. Co., 13 Beav. 1; 20 L. J. Ch. 169; 15 Jur. 26 34
Murray's Executors' Case, 5 De G. M. & G. 746 223
Murray *v.* Bush, L. R. 6 H. L. 37; 42 L. J. Ch. 586; 29 L. T. 217 ... 198
Musgrave and Hart's Case, 5 Eq. 195; 37 L. J. Ch. 161; 16 W. R. 247 214
Mutoscope and Biograph Syndicate, Re, [1899] 1 Ch. 896; 68 L. J. Ch. 417; 81 L. T. 22; 47 W. R. 520 504
Mutter *v.* Eastern and Midlands Rail. Co., 38 Ch. D. 92; 57 L. J. Ch. 615; 59 L. T. 117; 36 W. R. 401 236
Mutual Aid Permanent Benefit Building Society, Re. *See* James, Ex parte (Mutual Permanent, &c., Building Society, Re).
Mutual Society, Re, 22 Ch. D. 714; 52 L. J. Ch. 621; 48 L. T. 651; 31 W. R. 872 468
Mysore West Gold Mining Co., Re, 42 Ch. Div. 535; 58 L. J. Ch. 731; 61 L. T. 453; 37 W. R. 794; 1 Megone, 347 519

N.

Nacupai Gold Mining Co., Re, 28 Ch. D. 65; 54 L. J. Ch. 109; 51 L. T. 900; 33 W. R. 117 442
Naden, Ex parte (Wood, Re), 9 Ch. 670; 43 L. J. Bk. 121; 30 L. T. 743; 22 W. R. 936 485
Nanney *v.* Morgan, 37 Ch. Div. 346; 57 L. J. Ch. 311; 58 L. T. 325; 36 W. R. 677 193
Nant-y-Glo, &c., Ironworks Co. *v.* Grave, 12 Ch. D. 738; 38 L. T. 345; 26 W. R. 504 ... ... 353, 354
Nassau Phosphate Co., Re, 2 Ch. D. 610; 45 L. J. Ch. 584; 24 W. R. 692 12
Nassau Steam Press *v.* Tyler, 70 L. T. 376; 1 Mans. 459; 10 R. 582 ... 393
Nash *v.* Calthorpe, [1905] 2 Ch. 237; 74 L. J. Ch. 493; 21 T. L. R. 587; 93 L. T. 585 390
Natal Investment Co., Re, 3 Ch. 355; 37 L. J. Ch. 362; 18 L. T. 171; 16 W. R. 637 ... ... 233, 269, 271
———————. *See* Nevill's Case; Snell's Case; Wilson's Case.
Natal Land, &c., Co. *v.* Pauline Colliery, &c., Syndicate, [1904] A. C. 120; 73 L. J. P. C. 22; 89 L. T. 678 218
Nathan, Newman & Co., Re, 35 Ch. D. 1; 56 L. J. Ch. 752; 56 L. T. 95; 35 W. R. 293 473
Nation's Case (Joint Stock Discount Co., Re), L. R. 3 Eq. 77; 36 L. J. Ch. 112; 15 L. T. 308; 15 W. R. 143 ... ... 197, 215
National and Provincial Marine Insurance Co. *See* Parker's Case.
National Arms and Ammunition Co., Re, 28 Ch. D. 474; 54 L. J. Ch. 673; 52 L. T. 237; 23 W. R. 585 426
National Assurance, &c., Association. *See* Abercorn's Case; Cottrell's Case.
National Bank. *See* Imperial Land Co. of Marseilles.
————————, Ex parte (General Provident Association Co., Re), 14 Eq. 507; 27 L. T. 433; 20 W. R. 939 237
National Bank of Wales, Re (Cory's Case), [1899] 2 Ch. 629; 68 L. J. Ch. 634; 81 L. T. 363; 48 W. R. 99 ... 178, 302, 316, 347, 354, 360, 361, 470
————————————————, Massey and Giffin's Case, [1907] 1 Ch. 582; 76 L. J. Ch. 290; 96 L. T. 493 475

PAGE

National Bank of Wales, Re (Taylor, Phillips, and Rickard's Case), [1897] 1 Ch. 298; 66 L. J. Ch. 222; 76 L. T. 1; 45 W. R. 401; 4 Mans. 59 ... ... 470, 473
National Boiler Insurance Co., Re, [1892] 1 Ch. 306; 61 L. J. Ch. 501; 65 L. T. 849 ... ... 19, 20
National Bolivian Navigation Co. *v.* Wilson, 5 A. C. 176; 43 L. T. 60 ... 282
National Building Society, Re, 5 Ch. 309; 22 L. T. 284; 18 W. R. 388 ... 252
National Co. for Distribution of Electricity, &c., Ltd., [1902] 2 Ch. 34 ... 414, 439
National Dwellings Society (1898), 78 L. T. 144 51
National Dwellings Society *v.* Sykes, [1894] 3 Ch. 159; 42 W. R. 696; 63 L. J. Ch. 906; 1 Mans. 457 ... ... 331, 333
National Exchange *v.* Drew, 2 Macq. 103; 25 L. T. 223; 1 Paterson, 487 109
National Financial Co., Re (Oriental Bank, Ex parte), 3 Ch. 791; 18 L. T. 895; 16 W. R. 994 ... ... 81, 213
National Funds Assurance Co., Re, 24 W. R. 1066 434
———————————, 4 Ch. D. 305; 49 L. J. Ch. 183; 35 L. T. 689; 25 W. R. 151 ... 446
———————————, 10 Ch. D. 118; 48 L. J. Ch. 163; 39 L. T. 420; 27 W. R. 302 ... ... 37, 343, 353
National Insurance Corporation, Ex parte. *See* Hallett, Re.
National Mercantile Bank *v.* Hampson, 5 Q. B. D. 177; 49 L. J. Q. B. 480; 28 W. R. 424 243
National Motor Mail Coach Co. (No. 2) (Arester and McLean's Claims), [1908] 2 Ch. 228; 77 L. J. Ch. 796; 99 L. T. 334 ... ... 66, 143
National Motor Mail Coach Co. (No. 1) (Clinton's Claim), [1908] 2 Ch. 515; 77 L. J. Ch. 790 147
National Patent Fuel Co., Re. *See* Barton's Case.
National Provident Society, Re. *See* Wood's Case.
National Savings Bank Association, Re, 1 Ch. 547; 35 L. J. Ch. 803; 12 Jur. N. S. 697; 15 L. T. 127; 14 W. R. 1005 ... ... 438, 469
National Steam Fuel Co., Re. *See* Baker, Ex parte.
National Stores, Re, [1900] 1 Ch. 27; 69 L. J. Ch. 16; 81 L. T. 529; 48 W. R. 185; 7 Mans. 56 459
National United Investment Corporation, [1901] 1 Ch. 950; 70 L. J. Ch. 461; 84 L. T. 766 ... ... 424, 483
National Wholemeal Bread Co., Re (Baines, Ex parte), [1892] 2 Ch. 457; 61 L. J. Ch. 712; 67 L. T. 293; 40 W. R. 591 ... ... 484, 493
Navan and Kingscourt Rail. Co., 17 L. R. Ir. 398 527
Neal, Ex parte (Batey, Re), 14 Ch. D. 579 ... ... 482, 486
Neath Building Society *v.* Luce, 43 Ch. D. 158; 59 L. J. Ch. 3; 61 L. T. 611; 38 W. R. 122 253
Neath and Brecon Rail. Co., Re, [1892] 1 Ch. 349; 66 L. T. 40; 40 W. R. 289 525
Neath Harbour Smelting Works, Re, 56 L. T. 727; 35 W. R. 827 ... 343, 447
Needham's Case, 4 Eq. 135; 36 L. J. Ch. 665; 16 L. T. 472 470
Neilson *v.* James, 9 Q. B. D. 546; 51 L. J. Q. B. 369; 46 L. T. 791 ... 181
Nelson *v.* Anglo American Land Co., [1897] 1 Ch. 130; 66 L. J. Ch. 112; 75 L. T. 482; 45 W. R. 171 237
Nelson (Edward) & Co. *v.* Faber & Co., [1903] 2 K. B. 367; 72 L. J. K. B. 771; 89 L. T. 21 259
Nelson *v.* Rex, [1902] A. C. 250; 71 L. J. P. C. 55; 86 L. T. 164 398
Nevill's Case (Natal Investment Co., Re), 6 Ch. 43; 40 L. J. Ch. 1; 23 L. T. 577; 19 W. R. 36 ... ... 469, 480

PAGE

New, Re, [1901] 2 Ch. 534; 70 L. J. Ch. 710; 50 W. R. 17; 87 L. T. 174 524
New Balkis Eersteling, Ltd. *v.* Randt Gold Mining Co., [1904] A. C. 165; 73 L. J. K. B. 384; 52 W. R. 561; 90 L. T. 494 207
Newberry-Vautin Patents Gold Extraction Co., Re, [1892] 3 Ch. 127, n. 50, 53
New British Iron Co., Re. *See* Beckwith, Ex parte.
New Brunswick Land Co. *v.* Boore, 3 H. & N. 249 139
New Brunswick Rail. Co. *v.* Conybeare, 9 H. L. Cas. 711; 31 L. J. Ch. 297; 6 L. T. 109; 10 W. R. 305 108
——————————— *v.* Muggeridge, 1 Dr. & Sm. 363; 30 L. J. Ch. 242 ... ... 115, 382
New Buxton Lime Co. *See* Shaw's Case.
New Chile Gold Co., Re, 38 Ch. D. 475; 57 L. J. Ch. 1042; 59 L. T. 506; 36 W. R. 909 ... ... 40, 53, 524
New Chile Gold Mining Co., Re, W. N. (1892) 193; 3 R. 219; 68 L. T. 15 41
———————————, 45 Ch. D. 598; 63 L. T. 344; 39 W. R. 59 ... ... 206, 489, 490
New City Constitutional Club, Re (Purssell, Ex parte), 34 Ch. D. 646; 56 L. J. Ch. 332; 56 L. T. 792; 35 W. R. 421 425
New De Kaap, Ltd., In re, [1908] 1 Ch. 589; 77 L. J. Ch. 374; 98 L. T. 665 421
New Druce Portland Co. *v.* Blakiston, [1908] 24 T. L. R. 583 34
New Eberhardt Co. *v.* Menzies, 43 Ch. Div. 118; 59 L. J. Ch. 73; 62 L. T. 301; 38 W. R. 97 ... ... 131, 168
New Flagstaff Mining Co., Re, W. N. (1889) 123 521
New Gas Co., Re, 5 Ch. D. 703; 37 L. T. 111; 25 W. R. 643 ... 432, 435, 444, 445
New Gold Coast Exploration Co., [1901] 1 Ch. 860; 70 L. J. Ch. 355 ... 422
New London and Suburban Omnibus Co., In re, Appleyard *v.* Co., [1908] 1 Ch. 621; 77 L. J. Ch. 358; 98 L. T. 663 ... ... 238, 266
New London Bank *v.* Brocklebank, 21 Ch. Div. 302; 51 L. J. Ch. 711; 47 L. T. 3; 30 W. R. 737 178
New Mashonaland Exploration Co., Re, [1892] 3 Ch. 577; 61 L. J. Ch. 617; 67 L. T. 90; 41 W. R. 75 ... ... 360, 361, 464
New Oriental Bank Corporation, Re, [1892] 3 Ch. 563; 62 L. J. Ch. 63; 67 L. T. 87; 41 W. R. 16 ... ... 441, 442
——————————— (No. 2), [1895] 1 Ch. 753; 64 L. J. Ch. 439; 72 L. T. 419; 43 W. R. 523; 2 Mans. 301 487
New Ormonde Cycle Co., Re, [1896] 2 Ch. 520; 65 L. J. Ch. 785; 75 L. T. 50 14
New Par Consols, Ltd., Re, [1898] 1 Q. B. 573; 67 L. J. Q. B. 595; 5 Mans. 273 456
New Quebrada Co., Re. *See* Clarke's Case.
New Sombrero Phosphate Co. *v.* Erlanger. *See* Erlanger *v.* New Sombrero Phosphate Co.
New Transvaal Co., Re, [1896] 2 Ch. 750; 65 L. J. Ch. 868; 75 L. T. 272; 3 Mans. 264 504
New Travellers' Chambers, Re, [1895] 1 Ch. 395; 64 L. J. Ch. 317; 72 L. T. 89; 43 W. R. 282; 2 Mans. 110 459
——————————— *v.* Cheese, 70 L. T. 271 442
New York Exchange, Re, 39 Ch. D. 415; 58 L. J. Ch. 111; 60 L. T. 66; [1893] 1 Ch. 371 ... ... 437, 511

PAGE
New York Exchange Co., Re, [1893] 1 Ch. 371; 68 L. T. 247 511
New Zealand Bank, Ex parte. *See* Blakely Ordnance Co., Re.
New Zealand Banking Corporation, Re, 39 L. J. Ch. 129; 21 L. T. 481... 423
New Zealand Gold Extraction Co. *v.* Peacock, [1894] 1 Q. B. 622; 63 L. J. Q. B. 227; 70 L. T. 110 ... ... 18, 171, 300, 513, 516
New Zealand Loan, &c., Co., Re, W. N. (1894) 200 459
——————————— *v.* Morrison, [1898] A. C. 349; 67 L. J. P. C. 10; 77 L. T. 603; 46 W. R. 239; 5 Mans. 171 538
New Zealand Midland Rail. Co. *See* Smith *v.* Lubbock.
Newbiggin Gas Co. *v.* Armstrong (1879), 13 C. D. 310; 49 L. J. Ch. 231; 41 L. T. 637; 28 W. R. 217 410
Newcastle Machinists' Co., Re, W. N. (1888) 246 440
Newcastle-upon-Tyne Co., Re (Brown, Ex parte), 19 Beav. 97 102, 192, 346
——————————— (Henderson, Ex parte), 19 Beav. 107 102
Newhaven Local Board *v.* Newhaven School Board, 30 Ch. Div. 350; 53 L. T. 571; 34 W. R. 172 ... ... 89, 100
Newitt, Ex parte (Garrud, Re), 16 Ch. D. 522; 51 L. J. Ch. 381; 44 L. T. 5; 29 W. R. 344 245
Newlands *v.* National Employers' Association, 54 L. J. Q. B. 428; 53 L. T. 242 ... ... 142, 229
Newlove *v.* Shrewsbury, 21 Q. B. D. 41; 57 L. J. Q. B. 476; 36 W. R. 835 244
Newman (G.) & Co., Re, [1895] 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483; 2 Mans. 267 ... ... 78, 343
Newry and Enniskillen Rail. Co. *v.* Combe, 3 Ex. 565; 18 L. J. Ex. 325; 5 Rail. Cas. 633 129
Newspaper Proprietary Syndicate, Re, [1900] 2 Ch. 349; 69 L. J. Ch. 578; 83 L. T. 341 499
Newton *v.* Anglo-Australian Investment Co., [1895] A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401; 2 Mans. 246 ... ... 234, 235
Newton *v.* Birmingham Small Arms Co., Ltd., [1906] 2 Ch. 378; 75 L. J. Ch. 627; 54 W. R. 621; 95 L. T. 135 ... ... 27, 305
Nicholl *v.* Eberhardt Co., 61 L. T. 489; 59 L. J. Ch. 103; 1 Meg. 402 ... 515
Nicholson, Ex parte, 63 L. T. 413 100
Nicholson *v.* Rhodesia Trading Co., [1897] 1 Ch. 434; 66 L. J. Ch. 251; 76 L. T. 147 321
Nicol's Case (Florence Land, &c., Co., Re), 29 Ch. Div. 421; 52 L. T. 933 144, 145, 155
——————— (Royal British Bank Co., Re), 3 D. G. & J. 387, 433; 28 L. J. Ch. 257; 33 L. T. O. S. 14; 7 W. R. 217 193
Niger Merchants *v.* Capper, 18 Ch. D. 557, n.; 25 W. R. 365 442
Nixon's Navigation Co., Re, [1897] 1 Ch. 872; 66 L. J. Ch. 406 53
Nixon *v.* Green, 3 H. & N. 695; 11 Ex. 550 ... ... 157, 162
Noakes *v.* Noakes & Co., [1907] 1 Ch. 64; 76 L. J. Ch. 151; 95 L. T. 606; 71 J. P. 130 273
Nordenfelt *v.* Maxim-Nordenfelt Gun Co., [1894] A. C. 535; 63 L. J. Ch. 908; 71 L. T. 489 ... ... 221, 362
Norham Castle Ship Co., Re. *See* Jamieson's Case.
Normandy *v.* Ind Coope & Co., [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872 ... ... 112, 328
North American Association *v.* Bentley, 19 L. J. Q. B. 427; 15 Jur. 187 171
North Australian Territory Co., Re, 45 Ch. D. 87; 59 L. J. Ch. 654; 63 L. T. 77; 38 W. R. 561; 2 Meg. 239 ... ... 453, 454
——————————— *v.* Goldsborough, 61 L. T. 716 ... 414

PAGE

North Brazilian Sugar Factories, Re, 56 L. T. 229 442
———————————, 37 Ch. D. 83; 57 L. J. Ch. 110; 58 L. T. 4 450
North British Australasian Co., Re. *See* Swan, Ex parte.
North British Insurance Co. *v.* Hallett, 7 Jur. N. S. 1263... 99
North Carolina Estate Co., 5 Times L. R. 328 427
North Charterland Exploration Co. *v.* Riordan, 13 Times L. R. 281 ... 74
North Eastern Rail. Co. *v.* Jackson, 19 W. R. 198 78
North Hallesbeagle Mining Co., Re. *See* Knight's Case.
North Kent Rail. Co., Re, 8 Eq. 356 417
———————————. *See* Kincaid's Case.
North of England Iron Steamship Insurance Association, [1900] 1 Ch. 481; 69 L. J. Ch. 211; 82 L. T. 598; 48 W. R. 604 21
North of England Joint Stock Co., Re. *See* Straffon's Executors' Case.
North of England Steamship Co., [1905] 2 Ch. 15; 74 L. J. Ch. 404; 53 W. R. 499; 93 L. T. 1 327
North Molton Mining Co., Re, 54 L. T. 602; 34 W. R. 527 422
North Shields Quay Co. *See* Davidson's Case.
North Staffordshire Rail., Ex parte. *See* Traders' North Staffordshire Carrying Co., Re.
North Staffordshire Steel Co. *v.* Ward, L. R. 3 Ex. 172; 37 L. J. Ex. 83 105
North Sydney Investment Co. *v.* Higgins, [1899] A. C. 263; 68 L. J. P. C. 42; 80 L. T. 303; 47 W. R. 481; 6 Mans. 321 ... ... 165, 218
North Wales Gunpowder Co., Re, [1892] 2 Q. B. 220; 61 L. J. Q. B. 625; 67 L. T. 178 418
North West Argentine Rail. Co., Re, [1900] 2 Ch. 882, 70 L. J. Ch. 9; 49 W. R. 134 ... ... 502, 504, 517
North Western, &c., Co., Re, Palmer's Precedents, 3rd ed. 603 530
North Western Rail. Co. *v.* McMichael, 6 Ex. 273; 20 L. J. Ex. 6 ... 174
North Western Transportation Co. *v.* Beatty, 56 L. J. P. C. 102; 12 App. Cas. 589; 57 L. T. 426; 36 W. R. 647 ... ... 222, 223, 339
North Yorkshire Iron Co., Re (Richardson, Ex parte), 7 Ch. D. 661; 47 L. J. Ch. 333; 38 L. T. 143; 26 W. R. 367 425
Northage, Re, 60 L. J. Ch. 488; 64 L. T. 625 319
Northampton Coal Co., Re, Palmer's Precedents, 4th ed. 617 530
——————————— *v.* Midland Wagon Co., 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485 ... ... 409, 466
Northern Assam Tea Co., 10 Eq. 458; 39 L. J. Ch. 829 ... ... 179, 271
Northern Coal Mining Co., Re. *See* Blakeley's Case (Northern Coal Mining Co., Re).
Northern Counties of England Fire Insurance Co., Re. *See* Macfarlane's Claim.
Northern Electric Wire Co., Re., 2 Meg. 288; 63 L. T. 369; 6 Times L. R. 437 133
Northmoor Spinning Co., Re, Palmer's Company Precedents, 4th ed. 465 43
Northumberland Avenue Hotel Co., Re (Sully's Case), 33 Ch. D. 16; 54 L. T. 777 ... ... 218, 220
Northumberland District Banking Co., Re (Totty, Ex parte), 1 Dr. & Sm. 273; 29 L. J. Ch. 702; 6 Jur. N. S. 849; 8 W. R. 624 480
Norton Iron Co., Re, 47 L. J. Ch. 9; 26 W. R. 92 443
Norton *v.* Yates, [1906] 1 K. B. 112; 75 L. J. K. B. 252 261
Norwegian Iron Co. *See* Mitchell's Case.
Norwegian Titanic Iron Co., Re., 35 Beav. 223 ... ... 433, 435
Norwich Equitable Fire Insurance Co. *See* Brasnett's Case.

PAGE

Norwich Equitable Fire Insurance Co., Re, 27 Ch. D. 515; 54 L. J. Ch. 254; 51 L. T. 404; 32 W. R. 964 454
Norwich Life Assurance Society, Ex parte, 13 R. 48 279
Norwich Provident Insurance Society. *See* Bath's Case.
Norwich Yarn Co., Re. *See* Bignold Ex parte.

O.

Oakbank Oil Co. *v.* Crum, 8 App. Cas. 65; 48 L. T. 537 ... 95, 152, 322, 323
Oakes *v.* Turquand, L. R. 2 H. L. 325; 36 L. J. Ch. 949; 16 L. T. 808 3, 137, 141, 142, 212, 381, 419
Oak Pits Colliery Co., Re, 21 Ch. D. 322; 51 L. J. Ch. 768; 47 L. T. 7; 30 W. R. 759 425
Odell, Ex parte, Walden, Re, 10 Ch. D. 76; 48 L. J. Bk. 1; 39 L. T. 333; 27 W. R. 274 ... ... 240, 244
Odessa Tramways Co. *v.* Mendel, 8 Ch. Div. 235; 47 L. J. Ch. 505; 38 L. T. 731; 26 W. R. 887 ... ... 42, 144, 176
Odessa Waterworks Co., Re, W. N. (1897) 166; [1901] 2 Ch. 190 ... 503
Okell *v.* Charles, 34 L. T. 822 392
Olathe Silver Mining Co., Re, 27 Ch. D. 278; 33 W. R. 12 436
Old Bushmill's Distillery Co., Re (Brett, Ex parte), [1897] 1 I. R. 489 259, 260
——— ——— (Brydon, Ex parte; Bank of Ireland, Ex parte), [1896] 1 I. R. 301 260
Oldrey *v.* Union Works, 72 L. T. 627 283
Oliver *v.* Bank of England, [1902] 1 Ch. 610; 71 L. J. Ch. 388; 86 L. T. 248; 50 W. R. 340 190
Omnium Investment Co., Re, [1895] 2 Ch. 127; 64 L. J. Ch. 651; 2 Mans. 313 53
One and All Sickness, &c., Association (1909), 25 T. L. R. 674 5
Onslow's Case (Medical Attendance Association, Re), 55 L. T. 612; 3 Times L. R. 551 138
Onward Building Society, Re, [1891] 2 Q. B. 463; 60 L. J. Q. B. 752; 65 L. T. 516; 40 W. R. 26 ... ... 423, 473
Oola Mining Co., Re. *See* Palmer's Case.
Ooregum Gold Mining Co. *v.* Roper, [1892] A. C. 125; 61 L. J. Ch. 337; 66 L. T. 427; 41 W. R. 90 ... ... 40, 41
Opera, Ltd., Re, [1891] 3 Ch. 260; 60 L. J. Ch. 839; 65 L. T. 371; 39 W. R. 705 261
———, 62 L. T. 859; 38 W. R. 637; 2 Meg. 215 424
Oppenheimer, Re, [1907] 1 Ch. 399; 76 L. J. Ch. 287; 96 L. T. 631 ... 8
Oppenheimer *v.* British and Foreign Exchange Bank, 6 Ch. D. 744; 46 L. J. Ch. 882; 37 L. T. 629; 26 W. R. 391 487
Oppert *v.* Brownhill Great Southern Gold Mines, 14 Times L. R. 249 333
Oriental Bank, Ex parte. *See* National Financial Co. Re.
Oriental Bank Corporation, Re, 54 L. J. Ch. 481; 52 L. T. 556 417
——— ——— ——— (The Crown, Ex parte), 28 Ch. D. 643; 54 L. J. Ch. 327; 52 L. T. 170 488, 489
——— ——— ———, 56 L. T. 868 467
——— ——— ——— (Guillemin, Ex parte), 28 Ch. D. 634; 54 L. J. Ch. 322; 52 L. T. 167 ... 447
——— ——— ——— (MacDowall's Case). *See* MacDowall's Case.
Oriental Commercial Bank, Re.
——— ——— ———. *See* Maxoudoff's Case.
——— ——— ———. *See* Morris's Case.

PAGE

Oriental Commercial Bank, Re (European Bank, Ex parte), 7 Ch. 99; 41 L. J. Ch. 217; 25 L. T. 648; 20 W. R. 82 490
Oriental Inland Steam Co., Re (Scinde Rail., Ex parte), 9 Ch. 557; 43 L. J. Ch. 699; 31 L. T. 5; 22 W. R. 810 427
Oriental Steam Co. *v.* Briggs, 2 J. & H. 625; 4 De G. F. & J. 191; 31 L. J. Ch. 241; 5 L. T. 477; 10 W. R. 125 131
Oriental Telephone Co., Re, W. N. (1891) 153 20
Ormerod's Case, [1894] 2 Ch. 474; 63 L. J. Ch. 578; 70 L. T. 795; 42 W. R. 701; 1 Mans. 153 74
——— ——— (Caerphilly Colliery Co., Re), 25 W. R. 765 352
———, 5 Eq. 110; 37 L. J. Ch. 111; 16 W. R. 240 158
Ornamental Pyrographic Co. *v.* Brown, 2 H. & C. 63; 32 L. J. Ex. 190; 8 L. T. 506; 11 W. R. 600 ... ... 105, 173
Orr *v.* Glasgow, Airdrie, &c., Rail. Co., 8 W. R. 643; 2 L. T. 550 ... 175
Ortigosa *v.* Brown, 47 L. J. Ch. 168; 38 L. T. 145 193
Otto Electrical Manufacturing Co., [1906] 2 Ch. 390; 75 L. J. Ch. 682; 54 W. R. 601; 95 L. T. 141 34
Ottoman Co., Re. *See* Hornby's Case.
———, 15 W. R. 1069 454
——— *v.* Farley, 17 W. R. 761 343
Ottos Kopje Diamond Mines, Re, [1893] 1 Ch. 618; 62 L. J. Ch. 166; 68 L. T. 138; 41 W. R. 258 ... ... 189, 190, 214
Outlay Assurance Society, Re, 34 Ch. D. 479; 56 L. J. Ch. 448; 56 L. T. 477; 35 W. R. 343 539
Overend, Gurney & Co. *v.* Gibb, L. R. 5 H. L. 480; 42 L. J. Ch. 78; 4 Ch. 701 ... ... 106, 360, 361
———, Re. *See* Barrow's Case, Lintott, Ex parte.
Owen's Patent Wheel Co., Re, Brown, Ex parte, 29 L. T. 672; 22 W. R. 151 445
Owen & Co. *v.* Cronk, [1895] 1 Q. B. 265; 64 L. J. Q. B. 288; 2 Mans. 115; 14 R. 229 ... ... 280, 281
Owen, Ex parte (Island of Anglesea Coal and Coke Co., Re), 4 L. T. 684 ... 433
Oxford Building Soc., Re, 35 Ch. D. 502; 49 L. T. 495 ... 38, 79, 304, 313, 319, 343, 353, 354, 355, 422
Oxford and Worcester Rail. Co., Re. *See* Barber, Re.

P.

Padstow Association, Re, 20 Ch. D. 137; 51 L. J. Ch. 344; 45 L. T. 774; 30 W. R. 326 ... ... 4, 416
Page *v.* Eastern and Midlands Rail. Co., Cab. & El. 280 305
—— *v.* International Agency and Industrial Trust, Ltd., 62 L. J. Ch. 610; 68 L. T. 435 235
Pagin and Gill's Case (Church Ins. Co., Re), 6 Ch. D. 681; 46 L. J. Ch. 779; 37 L. T. 89; 25 W. R. 905 166
Paine *v.* Hutchinson, 3 Ch. 388; 37 L. J. Ch. 485; 18 L. T. 380; 16 W. R. 553 182
Paine, Re, South Essex Estuary Co., Re, 38 L. J. Ch. 305; 17 W. R. 275 ... 233
Palliser *v.* Gurney, 19 Q. B. Div. 519; 56 L. J. Q. B. 546; 35 W. R. 760; 51 J. P. 520 130
Palmer's Case (Oola Mining Co., Re), Ir. Rep. 2 Eq. 573 ... ... 139, 476
Palmer's Decoration and Furnishing Co., [1904] 2 Ch. 743; 73 L. J. Ch. 828; 53 W. R. 142; 91 L. T. 772 ... ... 233, 269
Panama, &c., Royal Mail Co., Re, 5 Ch. 318; 39 L. J. Ch. 482; 22 L. T. 424; 18 W. R. 441 ... ... 235, 236, 250, 262

PAGE

Panhard et Levassor *v.* Panhard Levassor Motor Co., [1901] 2 Ch. 513; 70 L. J. Ch. 738; 50 W. R. 74; 85 L. T. 20 15

Panmure, Ex parte, 24 Ch. D. 367; 53 L. J. Ch. 57; 50 L. T. 38; 32 W. R. 236 129

Panther Lead Co., Re, [1896] 1 Ch. 978; 65 L. J. Ch. 499; 44 W. R. 573; 3 Mans. 165 486

Paper Bottle Co., Re, 40 Ch. D. 52; 58 L. J. Ch. 82; 60 L. T. 354; 37 W. R. 214 442

Paraguassu Tramroad Co., Re. *See* Adamson's Case; Black's Case; Ferrao's Case.

Parbury's Case, [1896], 1 Ch. 100; 65 L. J. Ch. 104; 73 L. T. 506; 44 W. R. 107; 2 Mans. 616 168

Paris Skating Rink Co., Re, 5 Ch. D. 959; 37 L. T. 298; 25 W. R. 701 ... 436

Park Gate Waggon Co., Re, 17 Ch. Div. 235; 44 L. T. 901; 30 W. R. 20 ... ... 462, 467

Parker, Ex parte, London Metallurgical Co., Re. *See* London Metallurgical Co., Re, Parker, Ex parte.

——— *v.* Dunn, 8 Beav. 497 279

———, Ex parte (National and Provincial Marine Ins. Co., Re), 2 Ch. 685; 15 W. R. 1217 198

——— *v.* Lewis, 8 Ch. 1056; 29 L. T. 199; 21 W. R. 928 358

——— *v.* M'Kenna, 10 Ch. 96; 44 L. J. Ch. 425; 31 L. T. 739; 23 W. R. 271 347

Parry's Case. *See* Great Ship Co., Re.

Parson's Case (European Central Rail. Co., Re), 8 Eq. 656; 39 L. J. Ch. 64 475

Parsons, Ex parte, Townsend, Re, 16 Q. B. D. 532; 55 L. J. Q. B. 137; 53 L. T. 897; 34 W. R. 329 244

Parsons and Robjent's Case. *See* Western Counties Bakeries and Steam Milling Co., Re.

Part's Case (Bank of London Assurance Association, Re), 10 Eq. 622; 23 L. T. 305; 18 W. R. 977; 6 Ch. 421 ... ... 417, 520

Patent Bread Machinery Co. *See* Valpy, Ex parte.

——— Carriage Co., Re. *See* Gore's and Durant's Case.

——— File Co., Re (Birmingham Banking Co., Ex parte), 6 Ch. 83; 40 L. J. Ch. 190; 19 W. R. 193 ... ... 231, 252

——— Invert Sugar Co., Re, 31 Ch. Div. 166; 53 L. T. 737; 34 W. R. 169 ... ... 48, 51, 92

——— Paper Manufacturing Co., Re. *See* Addison's Case.

——— Steam Engine Co., Re, 8 Ch. D. 464; 26 W. R. 811 438

——— Ventilating Co., Re, 12 Ch. D. 254; 48 L. J. Ch. 728; 41 L. T. 82; 27 W. R. 836 52

——— Wood Keg Syndicate, Ltd. *v.* Pearse, [1906] W. N. 164 ... 89, 100, 103, 331, 334

Pawles's Case (Estates Investment Co., Re), 4 Ch. 497; 38 L. J. Ch. 412; 20 L. T. 589; 17 W. R. 599 ... ... 140, 142

Payne's Case (Imperial Mercantile Credit Association, Re), 9 Eq. 223 ... ... 195, 476

Payne (David) & Co. *See* Young *v.* David Payne & Co.

——— *v.* Cork Co., [1900] 1 Ch. 308; 69 L. J. Ch. 156; 82 L. T. 44; 48 W. R. 325 ... ... 26, 517, 519, 520

——— *v.* Fern, 6 Q. B. D. 620; 50 L. J. Q. B. 446; 29 W. R. 441 ... 243

Peabody Gold Mining Co., Re, W. N. (1897) 170 504

Pearks, Gunstone, & Tee, Ltd. *v.* Ward, [1902] 2 K. B. 1; 71 L. J. K. B. 656; 87 L. T. 51 3

PAGE

Pearson's Case (Caerphilly Colliery Co., Re), 5 Ch. Div. 336; 46 L. J. Ch. 339; 25 W. R. 681 ... ... 352, 353
——— (East of London Banking Co., Re), 7 Ch. 309; 41 L. J. Ch. 524; 26 L. T. 379; 20 W. R. 394 ... ... 467, 479, 528
Pearson, Ex parte. *See* Wiltshire Iron Co., Re.
——— (S.) & Son *v.* Dublin Corporation, [1907] A. C. 351; 77 L. J. P. C. 1; 97 L. T. 645 109
——— *v.* London and Croydon Rail. Co., 14 Sim. 541 49
Peat *v.* Clayton, [1906] 1 Ch. 659 184
Peckham Tramways Co., Re, 57 L. J. Ch. 462; 58 L. T. 876 ... 442, 445
Pedlar *v.* Road Block Gold Mines of India, Ltd., [1905] 2 Ch. 427; 74 L. J. Ch. 753; 54 W. R. 44; 93 L. T. 665 ... ... 18, 45
Peek *v.* Derry, 37 Ch. Div. 541; 57 L. J. Ch. 347; 59 L. T. 78; 36 W. R. 899; 14 App. Cas. 337; 58 L. J. Ch. 864; 61 L. T. 265; 38 W. R. 33; 1 Megone, 292 ... ... 366, 368, 377, 378, 379, 383
—— *v.* Gurney, L. R. 6 H. L. 377; 43 L. J. Ch. 19; 22 W. R. 29 364, 366, 367, 376, 381, 387
—— *v.* Trinsmaran Iron Co., 2 Ch. D. 115; 45 L. J. Ch. 281; 24 W. R. 361 276
Peel's Case, 2 Ch. 674; 15 W. R. 391 ... ... 141, 212
Peel *v.* London and North-Western Rail. Co. (No. 1), [1907] 1 Ch. 5; 76 L. J. Ch. 152; 95 L. T. 897 ... ... 35, 336
Pegge *v.* Neath and District Tramways Co., [1898] 1 Ch. 183; 67 L. J. Ch. 17; 77 L. T. 550; 46 W. R. 243 250
Pell's Case (Heyford Iron Works Co., Re), 5 Ch. 11; 39 L. J. Ch. 120; 21 L. T. 412; 18 W. R. 31 ... ... 136, 164
Pellatt's Case (Richmond Hill Hotel Co., Re) 2 Ch. 527; 36 L. J. Ch. 613; 16 L. T. 442; 15 W. R. 726 176
Pelly, Ex parte (Anglo-French Co-operative Society, Re), 21 Ch. Div. 492; 47 L. T. 638; 31 W. R. 177 ... ... 343, 462, 493
Pelotas Coffee Co., Re. *See* Karuth's Case.
Pen'allt Silver-Lead Mining Co., Re. *See* Fothergill's Case.
Pender *v.* Lushington, 6 Ch. D. 70; 46 L. J. Ch. 317 ... 111, 197, 335
Peninsular, &c., Bank, Re. *See* Austin's Case.
Penkivil *v.* Connell, 5 Ex. 381; 19 L. J. Ex. 305 392
Penney, Ex parte (Gresham Life Assurance Society, Re), 8 Ch. 446; 42 L. J. Ch. 183; 28 L. T. 150; 21 W. R. 186 194
Penrose *v.* Martyr, E. B. & E. 499; 28 L. J. Q. B. 28 393
Pentelow's Case (Warren's Blacking Co., Re), 4 Ch. 178; 20 L. T. 50; 17 W. R. 267 ... ... 131, 140
Pen-y-van Colliery Co., Re, 6 Ch. D. 477; 46 L. J. Ch. 390 ... 436, 511
People's Garden Co., Re, 1 Ch. D. 44; 45 L. J. Ch. 129 427
Percival *v.* Wright, [1902] 2 Ch. 421; 71 L. J. Ch. 846; 51 W. R. 31 ... 75
Percy and Kelly Nickel, &c., Co., Re. *See* Jenner's Case.
——— ———, 2 Ch. D. 531; 45 L. J. Ch. 526 ... 446
——, &c., Mining Co., Re. *See* Hamley's Case.
Perkins, Re (Mexican Mining Co., Ex parte), 24 Q. B. Div. 613; 59 L. J. Q. B. Div. 226; 38 W. R. 710 178
Perrett, Ex parte, 15 Eq. 250; 42 L. J. Ch. 305; 28 L. T. 255; 21 W. R. 410 132
Perry's Case (Montrotier Asphalte Co., Re), 34 L. T. 716 346
Perry *v.* Barnet, 15 Q. B. D. 388; 54 L. J. Q. B. 466; 53 L. T. 585 ... 181
——— *v.* Oriental Hotels Co., 12 Eq. 127; 40 L. J. Ch. 420; 24 L. T. 495; 19 W. R. 767 285
——— ———, 5 Ch. 420; 23 L. T. 525; 18 W. R. 779 278

PAGE

Persse's Case, Ir. R. 6 Eq. 298 142
Perth Electric Tramways, Ltd. (Lyons v. Co.), [1906] 2 Ch. 216; 75 L. J. Ch. 534; 54 W. R. 535; 94 L. T. 815 265
Peruvian Guano Co., Re, [1894] 3 Ch. 690; 63 L. J. Ch. 818; 71 L. T. 611; 43 W. R. 170; 1 Mans. 423 79
Peruvian Rails. Co., Re (International Contract Co., Ex parte), 19 L. T. 803; 17 W. R. 199 96
———————. *See* Crawley's Case; Robinson's Case; Wallis's Case.
———————— v. Thames and Mersey Insurance Co. (Peruvian Rail. Co., Re), 2 Ch. 617; 36 L. J. Ch. 864; 16 L. T. 644; 15 W. R. 1002 18, 95, 99, 225
Peveril Gold Mines, Ltd., Re, [1898] 1 Ch. 122; 67 L. J. Ch. 77; 77 L. T. 505; 46 W. R. 198; 4 Mans. 398 ... ... 26, 483
Philadelphia Rail. Co. v. Quigley, 21 Howard, 202 394
Phillips v. Homfray, 24 Ch. Div. 439; 52 L. J. Ch. 401, 833; 49 L. T. 5 364, 376
Phœnix Bessemer Steel Co., Re (Carnforth, Ex parte), 44 L. J. Ch. 683; 32 L. T. 854 ... ... 45, 176, 235
——— Electric Light Co., Re, 31 W. R. 398; 48 L. T. 260 ... 334, 339
——— Life Assurance Co., Re (Burges and Stock's Case), 2 Johns. & H. 441 31
Phosphate Association v. Horrocks, 8 Times L. R. 350 138
Phosphate of Lime Co., Re. *See* Austin's Case.
———————— v. Green, 7 C. P. 43; 25 L. T. 636 ... 40, 108
——————— Sewage Co. v. Hartmont, 5 Ch. Div. 394; 46 L. J. Ch. 661; 37 L. T. 9 ... ... 350, 352
Photographic Artists' Supply Association, Re, 23 Ch. D. 370; 52 L. J. Ch. 654 446
Pickering's Claim (International Contract Co., Re), 6 Ch. 525 228
Pickering v. Stephenson, 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. 608; 20 W. R. 644 ... ... 34, 343
Pierce v. Jersey Waterworks Co., L. R. 5 Ex. 209; 39 L. J. Ex. 156; 22 L. T. 519; 18 W. R. 838... 105
Piercy, In re, Whitwham v. Piercy, [1907] 1 Ch. 289; 76 L. J. Ch. 116; 95 L. T. 868 ... ... 54, 319
Pilbrow v. Pilbrow Rail. Co., 5 C. B. 440; 5 D. & L. 551; 17 L. J. C. P. 165; 5 Rail. Cas. 89 67
Pinkett v. Wright, 2 Hare, 120; 16 L. J. Ch. 119; 6 Jur. 1102 197
Pinkney & Sons' S.S. Co., Ltd., Re, [1892] 3 Ch. 125; 61 L. J. Ch. 691; 67 L. T. 117; 40 W. R. 698 ... ... 50, 53
Pinto Silver Mining Co., Re, 8 Ch. D. 273; 47 L. J. Ch. 591; 38 L. T. 336; 26 W. R. 622 ... ... 357, 417, 428
Pioneers of Mashonaland Syndicate, Re, [1893] 1 Ch. 731; 62 L. J. Ch. 507; 68 L. T. 163; 41 W. R. 492 ... ... 42, 435
Pitman & Edwards, Ex parte. *See* Hamiltons' Windsor Iron Works, Re.
Plaskynaston Tube Co., Re, 23 Ch. D. 542 ... ... 40, 53
Plas-yn-Mhowys Coal Co., Re, 4 Eq. 689 424
Plimsoll's Case (Horner & Co., Re), 24 L. T. 653 133
Pocock and Trickett's Claim. *See* Romford Canal Co., Re.
Pontypridd and Rhondda Valley Tramways Co., Re, 58 L. J. Ch. 536; 37 W. R. 570 424
Poole Firebrick and Blue Clay Co., Re, 17 Eq 268; 43 L. J. Ch. 447; 22 W. R. 247 427
Poole Firebrick Co., Re. *See* Hartley's Case.

PAGE

Poole's Case (Wincham Shipbuilding Co., Re), 9 Ch. Div. 322; 48 L. J. Ch. 48; 35 L. T. 659; 26 W. R. 823 ... ... 43, 81, 82, 175, 286, 450
Poole's Executors, Ex parte (Marine Investment Co., Re), 8 Ch. 702; 42 L. J. Ch. 620 518
Poole *v.* Middleton, 29 Beav. 646; 4 L. T. 631; 9 W. R. 758 ... 182, 194
Poole *v.* National Bank of China, [1907] A. C. 229; 76 L. J. Ch. 458; 96 L. T. 889 ... ... 50, 51
Pooley Hall Colliery Co., Re, 18 W. R. 201; 21 L. T. 690 ... 81, 255
Poppleton, Ex parte (Thomas, Re). *See* Re Thomas.
Portal *v.* Emmens, 1 C. P. Div. 201, 205, 664; 46 L. J. C. P. 45; 46 L. J. C. P. 179; 34 L. T. 318; 35 L. T. 882; 24 W. R. 641; 25 W. R. 235 85, 127, 155
Portsmouth Tramways Co., Re, [1892] 2 Ch. 362; 61 L. J. Ch. 462; 66 L. T. 671; 40 W. R. 553 ... ... 272, 417, 436
Portstewart Tramway Co., Re [1896] 1 I. R. 265 417
Portuguese Consolidated Copper Mines, Re (Badman and Bosanquet's Case), 45 Ch. D. 16; 63 L. T. 423; 39 W. R. 25; 2 Meg. 249 97, 104
Portuguese Consolidated Copper Mines, Re, Lord Inchiquin, Ex parte, [1891] 3 Ch. 28; 60 L. J. Ch. 556; 64 L. T. 841; 39 W. R. 610 ... 128
Portuguese Consolidated Copper Mines, Re, Steele's Case, 42 Ch. Div. 160, 164; 58 L. J. Ch. 491, 813; 60 L. T. 857; 1 Meg. 188 ... 86, 97, 150
Postage Stamp Automatic Delivery Co., [1892] 3 Ch. 566; 61 L. J. Ch. 597; 67 L. T. 88 352
Postlethwaite *v.* Port Phillip Gold Co., 43 Ch. D. 452; 59 L. J. Ch. 201; 62 L. T. 60; 38 W. R. 246 ... ... 516, 517, 520, 523
Potteries, &c., Rail. Co., Re, 5 Ch. 67; 39 L. J. Ch. 273; 22 L. T. 53; 18 W. R. 155 526
——— ——— *v.* Minor, 6 Ch. 621; 40 L. J. Ch. 685; 25 L. T. 522; 19 W. R. 883 ... ... 526, 527
Pound, Son & Hutchings, Re, 42 Ch. D. 402; 58 L. J. Ch. 792; 38 W. R. 18; 1 Meg. 363 ... ... 278, 282, 426
Powell & Sons, Ltd., Re, [1896] 1 Ch. 681; 65 L. J. Ch. 454; 74 L. T. 220; 44 W. R. 618; 3 Mans. 353 466
——— ———, W. N. (1892) 94 437
Powell *v.* London and Provincial Bank, [1893] 2 Ch. 555; 62 L. J. Ch. 795; 69 L. T. 421; 41 W. R. 545 ... ... 183, 192, 233
Power *v.* Hoey, 19 W. R. 916 32
Powles *v.* Page, 3 C. B. 16 99
Prefontaine *v.* Grenier, [1907] A. C. 101; 76 L. J. P. C. 4; 95 L. T. 623 344
Premier Industrial Bank *v.* Carlton Manufacturing Co., Ltd., and Crabtree, [1909] 1 K. B. 106; 78 L. J. K. B. 103; 99 L. T. 810 228, 393
Prendergast *v.* Turton, 1 Y. & C. (Ch.) 98 206
Prentice *v.* London, 10 C. P. 679; 44 L. J. C. P. 353 112
Preston, Ex parte (General Exchange Bank, Re), 37 L. J. Ch. 618 ... 67
——— *v.* Grand Collier Co., 11 Sim. 327 175
——— *v.* Liverpool, &c., Rail. Co., 5 H. L. Cas. 605; 25 L. J. Ch. 421; 4 W. R. 383 34
Pretoria Pietersburg Rail. Co., [1904] 2 Ch. 170, 359; 73 L. J. Ch. 551, 704; 53 W. R. 41, 75; 91 L. T. 274, 285 480
Price *v.* Great Western Rail. Co., 16 M. & W. 244; 16 L. J. Ex. 87; 4 Rail. Cas. 707 274
—— *v.* Mayo, 43 L. J. Ch. 402 479
Prince of Wales Co. *v.* Harding, E. B. & E. 183 102
Princess of Reuss *v.* Bos. *See* Reuss *v.* Bos.

PAGE

Printing and Numerical Registering Co., Re, 8 Ch. D. 535; 47 L. J. Ch. 580; 38 L. T. 676; 26 W. R. 627 483
Pritchard's Case (Tavarone Mining Co., Re), 8 Ch. 956; 42 L. J. Ch. 768; 29 L. T. 363 219
Pritchett and Young *v.* English and Colonial Syndicate, [1899] 2 Q. B. 428; 68 L. J. Q. B. 801; 81 L. T. 206; 47 W. R. 577 437
Progress Assurance Co., Re. *See* Bates, Ex parte; Progress Assurance Co., Re.
——— ——— ———, Liverpool Exchange Co., Ex parte, 9 Eq. 370; 39 L. J. Ch. 504; 22 L. T. 707 425
Provision Merchants Co., Re, 26 L. T. 862 ... ... 479, 503
Pryce, Re. *See* Rensburg, Ex parte.
Prynne, Re, 53 L. T. 465 184
Pudsey Coal Gas Co. *v.* Bradford Corporation, 15 Eq. 167; 28 L. T. 11; 21 W. R. 286 32
Pugh, Re, Banting *v.* Pugh, W. N. (1887) 143 319
——— and Sharman's Case. *See* Hercules Insurance Co.
Pulbrook *v.* Ashby & Co., 56 L. J. Q. B. 376; 35 W. R. 779 245
——— *v.* New Civil Service Society, 26 W. R. 11 522
——— *v.* Richmond Consolidated Mining Co., 9 Ch. D. 610; 48 L. J. Ch. 65; 27 W. R. 377 ... ... 82, 86, 91
Pulsford *v.* Devenish, [1903] 2 Ch. 625; 52 W. R. 73; 73 L. J. Ch. 35 ... 428, 468, 508
Punt *v.* Symons & Co., [1903] 2 Ch. 506; 72 L. J. Ch. 768; 52 W. R. 41 26, 106, 111, 150
Purcell's Case (Hampshire Milk Co., Re), 29 W. R. 170; 25 Ch. D. 291... 135
Pure Spirit Co. *v.* Fowler, 25 Q. B. D. 235; 59 L. J. Q. B. 537; 63 L. T. 559; 38 W. R. 686 ... ... 409, 466
Pursell, Ex parte. *See* New City Constitutional Club, Re.
Pyke and Gibson's Case. *See* Kharaskhoma Exploring Syndicate, Re.
Pyle Works Co., Re, 44 Ch. Div. 534; 59 L. J. Ch. 489; 62 L. T. 887; 38 W. R. 674 ... ... 45, 176, 235
——— ——— ——— (No. 2), [1891] 1 Ch. 173; 60 L. J. Ch. 114; 63 L. T. 628; 39 W. R. 235; 2 Meg. 327 ... ... 235, 252

Q.

Quartermaine's Case (London, Greenwich and Windsor Hotels Co., Re), [1892] 1 Ch. 639; 61 L. J. Ch. 273; 66 L. T. 19; 40 W. R. 298 482, 495
Quebrada Rail. and Copper Co., Re, 40 Ch. D. 363 50
Queen Anne Mansions Co., Re, 1 Mans. 460 45
Queen's Hotel, Ltd., Cardiff, Re, [1900] 1 Ch. 792; 69 L. J. Ch. 414; 48 W. R. 567 284
Queensland Land and Coal Co., Re (Davis *v.* Martin), [1894] 3 Ch. 181; 63 L. J. Ch. 810; 71 L. T. 115; 42 W. R. 600; 1 Mans. 355 ... 250
Queensland Mercantile, &c., Co. Re, [1891] 1 Ch. 536; 60 L. J. Ch. 579; 64 L. T. 555; 39 W. R. 447; 2 Meg. 394 235
Queensland Mercantile Agency Co., Re, 58 L. T. 878 427
Quenerduaine *v.* Cole, 32 W. R. 185 133
Quin's Case, 2 Meg. 360 250

R.

R. Bolton & Co. *See* Bolton & Co.
Radford and Bright, Ltd., [1901] 1 Ch. 272, 735; 70 L. J. Ch. 78, 352; 49 W. R. 270; 84 L. T. 150 335

PAGE

Rail and General Light Co., Re. *See* Marzetti's Case.
Railway Sleepers' Co., 29 Ch. D. 204; 54 L. J. Ch. 720; 52 L. T. 731; 33 W. R. 595 339
Railway Steel and Plant Co. *See* Taylor, Ex parte.
Railway Time Tables Co. (Sandy's Case), 42 Ch. Div. 98; 58 L. J. Ch. 504; 61 L. T. 94; 37 W. R. 531 ... ... 41, 137, 145, 213
Railway Time Tables Publishing Co., Re, 62 L. J. Ch. 935; 68 L. T. 649 251
——— ——— ——— ——— ——— ——— (Welton's Claim), [1899] 1 Ch. 108; 68 L. J. Ch. 50; 76 L. T. 679; 47 W. R. 133 489
Raine's Case (Castle Crag Steamship Co., Re), 4 Times L. R. 302 ... 40
Rainford *v.* James Keith and Blackman Co., Ltd., [1905] 2 Ch. 147; 74 L. J. Ch. 531; 92 L. T. 786 182
Ramsay's Case (European Assurance Society, Re), 3 Ch. D. 388; 46 L. J. Ch. 411; 35 L. T. 654; 25 W. R. 279 470
———. *See* Hermann Loog, Ltd., Re.
Ramsden *v.* Lupton, L. R. 9 Q. B. 17; 43 L. J. Q. B. 17; 29 L. T. 510; 22 W. R. 129 248
Ramsgate Victoria Hotel Co. *v.* Goldsmid, L. R. 1 Ex. 109; 35 L. J. Ex. 90; 13 L. T. 715 135
——— ——— ——— *v.* Montefiori, 14 W. R. 335 135
Ramskill *v.* Edwards, 31 Ch. D. 100; 55 L. J. Ch. 81; 53 L. T. 949; 34 W. R. 96 ... ... 302, 345, 355, 357, 358
Ramwell's Case. *See* Exchange Co., Re.
Rance's Case (County Marine Insurance Co., Re), 6 Ch. 104; 40 L. J. Ch. 277; 23 L. T. 828; 19 W. R. 291 ... ... 37, 305, 343, 353, 461
Rand (Consolidated South) Mines Deep, [1909] 1 Ch. 491, [1909] W. N. 35, 66 ... ... 439, 446
Randall (H. E.), Ltd. *v.* British and American Shoe Co., [1902] 2 Ch. 354; 71 L. J. Ch. 683; 50 W. R. 697; 87 L. T. 442 16
Randt Gold Mining Co., [1904] 2 Ch. 468; 73 L. J. Ch. 598; 53 W. R. 90; 91 L. T. 174 ... ... 160, 208
Randt Gold Mining Co. *v.* Wainwright, [1901] 1 Ch. 184; 70 L. J. Ch. 90; 84 L. T. 348 335
Ranger *v.* Great Western Rail. Co., 5 H. L. Cas. 72 109
Rankin *v.* Hop and Malt Exchange Co., 20 L. T. 207 132
Rashdall *v.* Ford, L. R. 2 Eq. 750; 14 L. T. 790; 14 W. R. 950 395
Rawlings, Ex parte, Davis, Re, 22 Q. B. D. 193; 60 L. T. 157; 37 W. R. 203 240
Raynes Park Golf Club, Re, [1899] 1 Q. B. 961; 68 L. J. Q. B. 529; 80 L. T. 388; 47 W. R. 496; 1 Mans. 316 467
Real Estate Co., Re, [1893] 1 Ch. 398; 62 L. J. Ch. 213; 68 L. T. 24; 41 W. R. 157 430
Rearden *v.* Provincial Bank, [1896] Ir. Rep. 1 Ch. 532 178
Red Rock Gold Mining Co., Re, 1 Meg. 436; 61 L. T. 785 435
Redgrave *v.* Hurd, 20 Ch. Div. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30 W. R. 251 387
Reese River Silver Mining Co. *v.* Smith, L. R. 4 H. L. 64; 39 L. J. Ch. 849 ... ... 140, 366, 379
Reeves *v.* Barlow, 12 Q. B. D. 436; 53 L. J. Q. B. 192; 50 L. T. 782; 32 W. R. 672 244
R. *v.* Aberdare Canal Co., 14 Q. B. 854 329
— *v.* Aspinall, 2 Q. B. Div. 48; 46 L. J. M. C. 145; 36 L. T. 297; 25 W. R. 283 398
— *v.* Barber, 3 Times L. R. 491 398
— *v.* Birmingham and Gloucester Rail. Co., 3 Q. B. 223; 3 Rail. Cas. 148; 2 G. & D. 236; 9 Car. & P. 478; 6 Jur. 804 3

PAGE

R. *v.* Catholic, &c., Co. (1883), 48 L. T. 675 401
— *v.* De Berenger, 3 M. & S. 67 398
— *v.* Government Stock Investment Co., 3 Q. B. D. 442; 47 L. J. Q. B. 478 ... ... 88, 334
— *v.* Great North of England Railway, 9 Q. B. 315; 16 L. J. M. C. 16; 10 Jur. 755; 2 Cox C. C. 70 3
— *v.* Hall, [1891] 1 Q. B. 747; 60 L. J. M. C. 124; 64 L. T. 394; 17 Cox C. C. 278 389
— *v.* Inns of Court Hotel Co. *See* Rudolph, Ex parte.
— *v.* Lawson, [1905] 1 K. B. 541; 74 L. J. K. B. 296; 53 W. R. 459; 92 L. T. 301 399
— *v.* M'Inerney, 30 L. R. Ir. 49 336
— *v.* Midland Counties Rail. Co., 15 Ir. Com. L. Rep. 514 ... 191, 192
— *v.* Newton, 48 L. J. M. C. 77 401
— *v.* Price, 11 A. & E. 727 389
— *v.* Registrar of Joint Stock Companies, 21 Q. B. D. 131; 57 L. J. Q. B. 433; 59 L. T. 67; 36 W. R. 695 170
— *v.* Registrar of Joint Stock Companies, [1891] 2 Q. B. 598; 61 L. J. Q. B. 3; 65 L. T. 392; 39 W. R. 708 ... ... 11, 14
— *v.* Registrar of Joint Stock Companies for Ireland, [1904] 2 Ir. 634 ... 14
— *v.* Shropshire, Justices of, 8 A. & E. 173 329
— *v.* Stuart, [1894] 1 Q. B. 310; 63 L. J. M. C. 23; 70 L. T. 44; 42 W. R. 303 398
— *v.* Tankard, [1894] 1 Q. B. 548; 63 L. J. M. C. 61; 70 L. T. 42; 42 W. R. 350 5
— *v.* Tyler, [1891] 2 Q. B. 588; 61 L. J. M. C. 38; 65 L. T. 662 ... 3, 389
Regent's Canal Iron Works Co., Re, 3 Ch. Div. 43; 45 L. J. Ch. 620; 35 L. T. 288; 24 W. R. 587 251
Regent's Canal Iron Works, Re (Grissell, Ex parte), 3 Ch. D. 411; 35 L. J. Ch. 752; 14 L. T. 843 ... ... 262, 285
Regent United, &c., Stores. *See* Bentley, Ex parte.
Regent United Service Stores, Re, 8 Ch. D. 616; 47 L. J. Ch. 677; 38 L. T. 493; 26 W. R. 579 423
Reid and Sons, Ltd., Re. *See* John Reid & Sons, Ltd., Re.
—— *v.* Explosives Co., 19 Q. B. D. 264; 56 L. J. Q. B. 388; 56 L. T. 439; 35 W. R. 509 ... ... 278, 490
—— *v.* Reid, 31 Ch. D. 402; 55 L. J. Ch. 294; 54 L. T. 100; 34 W. R. 332 471
Reidpath's Case (Constantinople, &c., Hotels Co., Re), 11 Eq. 86; 40 L. J. Ch. 39; 23 L. T. 834; 19 W. R. 219 133
Rendall *v.* Crystal Palace Co., 4 Kay & J. 326 32
Rensburg, Ex parte, Pryce, Re, 4 Ch. D. 685; 36 L. T. 117 270
Renshaw & Co., [1908] W. N. 210 248
Repertoire Opera Co., Re, 2 Mans. 314 447
Reuss (Princess of) *v.* Bos and General Company for Promotion of Land Credit, L. R. 5 H. L. 176; 40 L. J. Ch. 655; 24 L. T. 641 11, 12, 193 413, 416
Reversionary Interest Society, Re, [1892] 1 Ch. 615; 61 L. J. Ch. 379; 66 L. T. 460; 40 W. R. 389 20
Rhodesian Properties, Ltd., [1901] W. N. 130 436
Rica Gold Washing Co., Re, 11 Ch. D. 36; 40 L. T. 531; 27 W. R. 715 438, 442
Richards & Co., Re, 11 Ch. D. 676; 48 L. J. Ch. 555; 40 L. T. 315; 27 W. R. 530 ... ... 424, 483
Richards and The Home Assurance Association, 6 C. P. 591; 24 L. T. 752; 19 W. R. 893 134

PAGE

Richardson's Case (Imperial Mercantile Credit Association, Re), 19 Eq. 588; 44 L. J. Ch. 252; 32 L. T. 18; 23 W. R. 467 475
———. *See* Hercynia Copper Co., Re.
Richardson, Ex parte. *See* North Yorkshire Iron Co., Re.
——— *v.* English Spelter Co., 1 Times L. R. 249 317
——— *v.* Silvester, L. R. 9 Q. B. 34; 43 L. J. Q. B. 1; 29 L. T. 395; 22 W. R. 74 367
——— *v.* Williamson, L. R. 6 Q. B. 276; 40 L. J. Q. B. 145 ... 395
Riche *v.* Ashbury Carriage Co., L. R. 9 Ex. 224; 43 L. J. Ex. 177; 31 L. T. 339; 23 W. R. 7 30
Richmond Hill Hotel Co., Re. *See* Elkington's Case.
Richmond and Painter's Cases (Athenæum Life Assurance Society, Re), 4 K & J. 305 ... ... 108, 204
Rickett *v.* Sharpe. *See* Sharpe, Re.
Ricketts *v.* Bennett, 4 C. B. 686; 17 L. J. C. P. 17; 11 Jur. 1062 ... 231
Ridley *v.* Plymouth Grinding and Baking Co., 2 Ex. 711; 17 L. J. Ex. 252; 12 Jur. 542 ... ... 99, 223
Rio Grande Do Sul Steamship Co., Re, 5 Ch. D. 282; 46 L. J. Ch. 277; 36 L. T. 630; 25 W. R. 328 426
Rileys, Ltd. (Harper *v.* Riley's, Ltd.), [1903] 2 Ch. 590; 72 L. J. Ch. 678; 51 W. R. 681; 89 L. T. 529 ... ... 294, 527
Ripley *v.* Paper Bottle Co., 57 L. J. Ch. 527 206
Rippon, Ex parte (Andrew, Re), 4 Ch. 639; 20 L. T. 936 208
Risdon Iron and Locomotive Works *v.* Furness, [1906] 1 K. B. 49 ... 3, 22
Ritso's Case (Universal Non-Tariff Insurance Co., Re), 4 Ch. Div. 774 ... 134
River Steamer Co., Re. *See* Mitchell's Claim.
Roberts, Ex parte, 1 Drewry, 204 131
——— *v.* Crowe, L. R. 7 C. P. 629; 41 L. J. C. P. 198; 27 L. T. 238 469
Robertson, Re. *See* Crawcour, Ex parte.
——— *v.* Halls, 24 Rettie, 120 262
Robinson's Case (Peruvian Railways Co., Re), 4 Ch. 322; 20 L. T. 96; 17 W. R. 454 133
Robinson, Ex parte. *See* York Glass Co., Re.
——— *v.* Burnell's Vienna Bakery Co., [1904] 2 K. B. 624; 73 L. J. K. B. 911; 52 W. R. 526; 91 L. T. 375 261
——— *v.* Chadwick, 7 Ch. D. 878; 47 L. J. Ch. 607; 38 L. T. 415; 26 W. R. 683 373
——— *v.* Chartered Bank, L. R. 1 Eq. 32; 13 L. T. 454; 14 W. R. 71 194
——— *v.* Montgomeryshire Brewery Co., [1896] 2 Ch. 841; 65 L. J. Ch. 915; 3 Mans. 279 ... ... 252, 271
——— and Preston, Re. *See* Sidney's Case.
Robinson Printing Co. *v.* Chic, Ltd., [1905] 2 Ch. 123; 74 L. J. Ch. 399; 53 W. R. 681; 93 L. T. 262 281
Robson *v.* Smith, [1895] 2 Ch. 118; 64 L. J. Ch. 457; 72 L. T. 559; 43 W. R. 642; 2 Mans. 422... ... ... 259, 261
Rochdale Canal Co. *v.* Radcliffe, 18 Q. B. 287 ... ... 32, 298
Rochdale Property and General Finance Co., 12 Ch. D. 775; 48 L. J. Ch. 768; 41 L. T. 16 464
Rogers & Co. *v.* British and Colonial Supply Association, 68 L. J. Q. B. 14; 79 L. T. 494; 6 Mans. 305 282
Roger's Case (Universal Banking Corporation, Re), 3 Ch. 633; 18 L. T. 779; 16 W. R. 881 132
——— Trusts, Re, 1 Dr. & S. 338; 30 L. J. Ch. 153; 6 Jur. N. S. 1363; 3 L. T. 397; 9 W. R. 64 274

PAGE

Romford Canal Co., Re (Carew's Claim), 24 Ch. D. 85; 52 L. J. Ch. 729; 49 L. T. 118 271
——— (Pocock's and Trickett's Claim), 24 Ch. D. 85; 52 L. J. Ch. 729; 49 L. T. 118 233
Roney, Re (Llanharry Hematite Co.), 4 De G. J. & S. 426; 33 L. J. Ch. 731; 10 L. T. 770; 12 W. R. 994 139
Roots v. Williamson, 38 Ch. D. 485; 57 L. J. Ch. 995; 58 L. T. 802; 36 W. R. 758 ... ... 183, 193
Rose v. Gardden Lodge Coal and Coke Co., 3 Q. B. D. 235; 47 L. J. Q. B. 338; 38 L. T. 101; 26 W. R. 353 427
Ross, Ex parte. *See* British Empire Match Co.
—— v. Estate Investment Co., L. R. 3 Eq. 122; 36 L. J. Ch. 54; 15 L. T. 272; 15 W. R. 104 ... ... 114, 142, 379
Rotherham Alum Co., Re, 25 Ch. Div. 103; 53 L. J. Ch. 290; 50 L. T. 219; 32 W. R. 131 66
Roundwood Colliery Co., Re, [1897] 1 Ch. 373; 66 L. J. Ch. 186; 75 L. T. 641; 45 W. R. 324 ... ... 260, 261, 424
Roussell v. Burnham, [1909] 1 Ch. 127 ... ... 146, 367
Routh v. Webster, 10 Beav. 561 388
Routledge (George) & Son, Ltd. (Hummel v. Co.), [1904] 2 Ch. 474 ... 265
Rowell v. Inland Revenue Commissioners, [1897] 2 Q. B. 194; 66 L. J. Q. B. 528 264
Rowe's Trustees' Claim. *See* West Coast Gold Fields, Ltd.
———, [1908] 1 Ch. 165
Roxburghe Press, Ltd., Re, [1899] 1 Ch. 210; 68 L. J. Ch. 111; 80 L. T. 280; 47 W. R. 281; 6 Mans. 57 169
Royal Bank of Australia, Re, Latta, Ex parte, 3 De G. & S. 186; 19 L. J. Ch. 387; 14 Jur. 908 446
Royal Bank of India (Asiatic Banking Corporation, Ex parte), 4 Ch. 252; 19 L. T. 805; 17 W. R. 359 299
Royal British Bank Co., Re. *See* Nicol's Case.
——— v. Turquand, 5 E. & B. 248; 6 E. & B. 327; 24 L. J. Q. B. 327; 1 Jur. N. S. 1086 ... ... 102, 107, 232
Ruben v. Gt. Fingal Consolidated, [1904] 2 K. B. 712; [1906] A. C. 439 190
Ruby Consolidated Mining Co. *See* Askew's Case.
Rudge v. Bowman, 3 Q. B. 689; 37 L. J. Q. B. 193 448
Rudolph, Ex parte (Reg. v. Inns of Court Hotel Co.), 11 W. R. 806; 8 L. T. 551 196
Rudow v. Great Britain Mutual Life Assurance Society, 17 Ch. D. 600; 50 L. J. Ch. 504; 44 L. T. 688; 29 W. R. 585 ... ... 422, 424
Rugely Gas Co., Re, W. N. (1899) 127 21
Rumball v. Metropolitan Bank, 2 Q. B. D. 194; 46 L. J. Q. B. 346; 36 L. T. 240; 25 W. R. 366 158
Russell, Cordner & Co., Re, [1891] 3 Ch. 171; 60 L. J. Ch. 805; 39 W. R. 635 437
Russell v. East Anglian Rail Co., 3 Mac. & G. 104; 20 L. J. Ch. 257; 6 Rail. Cas. 501; 15 Jur. 935 ... ... 278, 279
—— v. Wakefield Waterworks Co., 20 Eq. 474; 44 L. J. Ch. 496; 32 L. T. 685; 23 W. R. 887 ... ... 32, 410, 411
Russian, &c., Ironworks Co. *See* Kincaid's Case; Stewart's Case; Taite's Case; Webster's Case; Whitehouse's Case.
Russian Petroleum and Liquid Fuel Co. (London Investment Trust, Ltd. v. the Co.), [1907] 2 Ch. 540; 77 L. J. Ch. 21; 97 L. T. 564 268
Russian Spratt's Patent, Ltd., Re, [1898] 2 Ch. 149; 67 L. J. Ch. 381; 78 L. T. 480; 46 W. R. 514 234
Rutherford's Case. *See* City of Glasgow Bank v. Mitchell.

S.

PAGE

S. Frost & Co. Re. *See* Frost & Co.
Sabloniere Hotel Co., Re, 3 Eq. 74; 15 L. T. 298; 15 W. R. 85 509
Sadgrove *v.* Bryden, [1907] 1 Ch. 318, 76 L. J. Ch. 184; 96 L. T. 361 ... 336
Sadler *v.* Worley, [1894] 2 Ch. 170; 63 L. J. Ch. 551; 70 L. T. 494; 42 W. R. 476 283
Safety Explosives, Ltd., [1904] 1 Ch. 226; 73 L. J. Ch. 184; 90 L. T. 331; 52 W. R. 470 495
Sahlgreen and Carrall's Case (Anglo-Danish, &c., Steam Navigation Co., Re), 3 Ch. 323; 16 W. R. 121, 497 ... ... 132, 133, 144
Sailing Ship Co., Re., W. N. (1897) 58 434
Saint David's Gold Mining Co., Re, 14 L. T. 539; 14 W. R. 755 439
Saint Hilda's Incorporated College, Cheltenham, [1901] 1 Ch. 556; 70 L. J. Ch. 266; 49 W. R. 279 20
Saint James's Bank, Re. *See* Colville's Case.
Saint James's Club, Re, 2 De G. M. & G. 383; 16 Jur. 1075 416
Saint Marylebone Joint Stock Bank, Re. *See* Walker, Ex parte.
Saint Neots Water Co., [1905] W. N. 183; 93 L. T. 788 417
Saint Thomas Dock Co., Re., 2 Ch. D. 116; 45 L. J. Ch. 304; 34 L. T. 228; 24 W. R. 544 445
Sale Hotel, Ltd., Re, 14 Times L. R. 344 349
Salisbury Gold Mining Co. *v.* Hathorne, [1897] A. C. 268; 66 L. J. P. C. 62; 76 L. T. 212; 45 W. R. 591 331
Salisbury-Jones and Dale's Case. *See* Bolton, Re.
Salisbury *v.* Metropolitan Rail. Co., 20 L. T. 72; 22 L. T. 839 ... 37, 311, 342, 343, 353
Salmon *v.* Quinn & Axtens, Ltd., [1909] 1 Ch. 311; A. C. 442; 25 T. L. R. 590; 78 L. J. Ch. 506 ... ... 110, 219, 411
Salomon *v.* A. Salomon & Co., [1897] A. C. 22; 65 L. J. Ch. 35; 75 L. T. 426; 45 W. R. 193; 4 Mans. 89 ... ... 12, 64, 120, 222, 252, 413
Salomons *v.* Laing, 12 Beav. 339 ... ... 29, 31, 46, 131, 299
Salt & Co. (1908), 98 L. T. 558 482
Salter *v.* Leas Hotel Co., [1902] 1 Ch. 332; 71 L. J. Ch. 294; 86 L. T. 182; 50 W. R. 409 276
Salton *v.* New Beeston Cycle Co., Ltd., [1899] 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462; 6 Mans. 238 ... 79, 80
———————————, [1900] 1 Ch. 43; 69 L. J. Ch. 20; 81 L. T. 437; 48 W. R. 92; 7 Mans. 74 428
Sanders, Re (Whinney, Ex parte), 13 Q. B. D. 476; 1 Morrell, 185 ... 477
Sandys' Case. *See* Railway Time Tables Co., Re.
Sanitary Burial Association, Re, [1900] 2 Ch. 289; 69 L. J. Ch. 551; 82 L. T. 639; 48 W. R. 529; 7 Mans. 459 511
Sankey Brook Coal Co. Re (No. 1), 9 Eq. 721; 39 L. J. Ch. 233; 22 L. T. 62; 18 W. R. 427 ... ... 176, 234
——————————— (No. 2), 10 Eq. 381; 22 L. T. 784; 18 W. R. 914 234
——————————— *v.* Marsh, 6 Ex. 185; 40 L. J. Ex. 125; 24 L. T. 479; 19 W. R. 1012 493
Sargent, Ex parte (Tahiti Cotton Co., Re), 17 Eq. 273; 43 L. J. Ch. 425; 22 W. R. 815 ... ... 183, 195
Saunders (T. H.) & Co., [1908] 1 Ch. 415 199
Saunder's Case (Waterloo Life Assurance Co., Re), 2 De G. J. & S. 101; 10 L. T. 3; 12 W. R. 502 344

PAGE

Savigny's Case (Central Klondyke Gold Mining and Trading Co.), W. N. (1899) 1; 5 Mans. 336 475
Savin *v.* Hoylake Rail. Co., L. R. 1 Ex. 9; 35 L. J. Ex. 52; 11 Jur. 934; Har. & R. 67; 14 L. T. 374 67
Sayles *v.* Blanc, 14 Q. B. 205; 19 L. J. Q. B. 19; 6 Rail. Cas. 79; 14 Jur. 87 185
Scadding *v.* Lorant, 1 H. L. Cas. 418 331
Scholey *v.* Central Rail. of Venezuela, 9 Eq. 266, n.; 39 L. J. Ch. 354 ... 142
Schumann, Ex parte (Forster & Co., Re), 19 L. R. Ir. 240 506
Schwabacher, Re, Stern *v.* Schwabacher (1908), 98 L. T. 127 182
Scinde, Punjaub and Delhi Bank Corporation, Re, 6 Ch. 53, n. 503
Scinde Railway, Ex parte. *See* Oriental Inland Steam Co., Re.
Scotch Granite Co., Re, 17 L. T. 533 421
Scottish and Universal Finance Bank, Re. *See* Ship's Case.
Scottish Joint Stock Trust, Re, [1900] W. N. 114 ... ... 17, 430
Scottish Petroleum Co., Re. *See* Anderson's Case; Maclagan's Case.
——————————— (Wallace's Case), 23 Ch. Div. 413; 49 L. T. 348; 31 W. R. 846 ... ... 100, 140, 142, 150, 209, 378, 385
Scott's Case. *See* London, &c., Paper Mills Co., Re.
Scott *v.* Colburn, 26 Beav. 276 252
—— *v.* Ebury, Lord, 2 C. P. 255; 36 L. J. C. P. 161; 15 L. T. 506; 15 W. R. 517 ... ... 67, 217
—— *v.* Snyder Dynamite Projectile Co., 67 L. T. 104 381
Securities and Properties Corporation *v.* Brighton Alhambra, 62 L. J. Ch. 566; 68 L. T. 249; 3 R. 302 280
Sedgwick, Ex parte (Court Grange Silver-Lead Mining Co., Re), 2 Jur. N. S. 949 81
Self-acting Sewing Machine Co., Re, 54 L. T. 676; 34 W. R. 758 ... 138
Seligman *v.* Prince, [1895] 2 Ch. 617; 64 L. J. Ch. 745; 73 L. T. 124; 44 W. R. 6; 2 Mans. 586 ... ... 222, 252, 449
Septimus Parsonage & Co., [1901] 2 Ch. 424; 70 L. J. Ch. 706; 84 L. T. 866; 49 W. R. 700 ... ... 437, 442
Serrell *v.* Derbyshire, &c., Rail. Co., 19 L. J. C. P. 371 228
Severn and Wye Rail. Co., Re, [1896] 1 Ch. 559; 65 L. J. Ch. 400; 74 L. T. 219; 44 W. R. 347; 3 Mans. 90 322
Sewell's Case, 3 Ch. 131; 18 L. T. 2; 16 W. R. 381 151
Seymour, Ex parte. *See* South Kensington Co-operative Stores, Re.
——— *v.* Bagshaw, 18 C. B. 903 367
——— *v.* Bridge, 14 Q. B. D. 460; 54 L. J. Q. B. 347 ... ... 1, 181
Shackell & Co. *v.* Chorlton & Sons, [1895] 1 Ch. 378; 64 L. J. Ch. 353; 72 L. T. 188; 43 W. R. 394; 2 Mans. 233 ... ... 425, 494
Shackleford, Ford & Co., Ltd. *v.* Dangerfield, L. R. 3 C. P. 407; 37 L. J. C. P. 151; 16 W. R. 675 16
Shakespear, Re (Deakin *v.* Lakin), 30 Ch. D. 169; 55 L. J. Ch. 44; 53 L. T. 145; 33 W. R. 744 130
Sharp *v.* Dawes, 2 Q. B. Div. 26; 46 L. J. Q. B. 104; 36 L. T. 188; 25 W. R. 66, 97, 171, 332
—— *v.* Jackson, [1899] A. C. 419; 68 L. J. Q. B. 866; 80 L. T. 841; 6 Mans. 264 449
Sharpe, Re (Masonic and General Life Assurance Co. *v.* Sharpe), [1892] 1 Ch. 154; 61 L. J. Ch. 193; 65 L. T. 806; 40 W. R. 241 342, 343, 353, 355, 356
——————— (Rickett *v.* Sharpe), 45 Ch. D. 286; 60 L. J. Ch. 38; 62 L. T. 777 7
Sharpley *v.* Louth Rail. Co., 2 Ch. Div. 663; 46 L. J. Ch. 259; 25 W. R. 66 142

PAGE

Shaw's Case. *See* Brampton and Longtown Rail. Co., Re.
——— (New Buxton Lime Co., Re), 34 L. T. 715 127
Shaw *v.* Benson, 11 Q. B. D. 563; 52 L. J. Q. B. 575 ... ... 4, 5
——— *v.* Holland, [1900] 2 Ch. 305; 69 L. J. Ch. 621; 82 L. T. 782; 48 W. R. 680; 7 Mans. 409 ... ... 347, 353
——— *v.* Port Philip Gold Mining Co., 13 Q. B. D. 103; 53 L. J. Q. B. 369; 50 L. T. 685; 32 W. R. 771 ... ... 109, 190
——— *v.* Simmons, 12 Q. B. D. 117; 53 L. J. Q. B. 29; 32 W. R. 292 ... 4
Shaws, Bryant & Co., In re, [1901] W. N. 124 80
Shearman, Ex parte, 66 L. J. Ch. 25; 75 L. T. 385 142
Shears *v.* Jacob, L. R. 1 C. P. 513; 35 L. J. C. P. 241; 14 L. T. 286; 14 W. R. 609 252
Sheffield Building Society. *See* Watson, Ex parte.
Sheffield Corporation *v.* Barclay, [1905] A. C. 392; 74 L. J. K. B. 747; 93 L. T. 83; 54 W. R. 49 190
Sheffield, Ex parte, 3 Times L. R. 556 142
Sheffield Gas Co. *v.* Harrison, 17 Beav. 294 144
Sheffield Nickel Co. *v.* Unwin, 2 Q. B. D. 214; 46 L. J. Q. B. 299; 36 L. T. 246; 25 W. R. 493 ... ... 210, 350
Sheffield, &c., Rail. Co. *v.* Woodcock, 7 M. & W. 574 ... ... 92, 174
Shepheard *v.* Broome, [1904] A. C. 342; 73 L. J. Ch. 608; 91 L. T. 178; 53 W. R. 111 ... ... 381, 390
Shepheard *v.* Browne & Gregory, Ltd. *See* Browne & Gregory, Ltd.
Shepherd's Case (Joint-Stock Discount Co., Ex parte), L. R. 2 Eq. 564; 2 Ch. 16; 35 L. J. Ch. 626; 36 L. J. Ch. 32; 14 L. T. 788; 15 L. T. 198; 15 W. R. 2 ... ... 194, 214
Sheppard *v.* Scinde, Punjaub and Delhi Railway, 56 L. J. Ch. 866; 57 L. T. 585; 36 W. R. 1 504
Sheppard's Corn Malting Co., Re. *See* Lowenfeld, Ex parte.
Sheppy Portland Cement Co., Re, W. N. (1892) 194; 68 L. T. 83 ... 421
Sherwell *v.* Combined Incandescent Mantle Syndicate, [1907] W. N. 110, 211; 23 T. L. R. 482 ... ... 115, 146
Ship's Case (Scottish and Universal Finance Bank, Re), 2 De G. J. & S. 544; 12 L. T. 256; 13 W. R. 599; 11 Jur. N. S. 331 ... ... 137, 212
Ship *v.* Crosskill, 10 Eq. 73; 39 L. J. Ch. 550; 22 L. T. 365; 18 W. R. 618 385
Shipman's Case, 5 Eq. 219; 37 L. J. Ch. 193; 16 W. R. 354 215
Shireff's Case (Imperial Wine Co., Re), 14 Eq. 417; 42 L. J. Ch. 5; 20 W. R. 966 490
Shirley, Re (Mackay, Ex parte), 58 L. T. 237 535
Shropshire Union Rail. Co. *v.* The Queen, L. R. 7 H. L. 496; 45 L. J. Q. B. 31; 32 L. T. 283; 23 W. R. 709 ... ... 182, 188
Sichell's Case, 3 Ch. 119; 37 L. J. Ch. 373; 17 L. T. 363; 16 W. R. 292 475
Siddall, Re, 29 Ch. D. 1; 54 L. J. Ch. 682; 52 L. T. 114; 33 W. R. 509 5
Sidney's Case (Robinson and Preston's Brewery Co., Re), 13 Eq. 228 ... 136
Silber Light Co. *v.* Silber, 12 Ch. D. 717; 48 L. J. Ch. D. 385; 40 L. T. 96; 27 W. R. 427 ... ... 111, 412
Silkstone and Dodworth Coal and Iron Co., Re, 17 Ch. D. 158; 50 L. J. Ch. 444; 44 L. T. 405; 29 W. R. 484 425
Silkstone and Haigh Moor Colliery Co. *v.* Edey, [1900] 1 Ch. 167; 69 L. J. Ch. 73; 48 W. R. 137 ... ... 350, 468
Silkstone Coal Co., Re. *See* Whitworth's Case.
Silkstone Fall Colliery Co., Re, 1 Ch. Div. 38; 34 L. T. 46 340
Silver Valley Mines, Re, 21 Ch. D. 381; 47 L. T. 597; 31 W. R. 96 ... 467
Simes *v.* Coates (1908), S. C. 751 25

PAGE

Simm *v.* Anglo-American Telegraph Co., 5 Q. B. Div. 188; 49 L. J. Q. B. Div. 395; 42 L. T. 37; 28 W. R. 290 ... ... 189, 190
Simon's Reef Consolidated Gold Mining Co., Re, 31 W. R. 238 445
Simpson's Case (Aldborough Hotel Co., Re), 4 Ch. 184; 39 L. J. Ch. 121; 17 W. R. 424 132
——— *v.* Heaton Steel Co., 19 W. R. 614; 25 L. T. 179 132
——— *v.* Molson's Bank, [1895] A. C. 270; 64 L. J. P. C. 51; 11 R. 427 191
——— *v.* Palace Theatre, 69 L. T. 70 ... ... 516, 517
——— *v.* Westminster Palace Hotel Co., 2 De G. F. & J. 141; 8 H. L. Cas. 712; 29 L. J. Ch. 561; 2 L. T. 527 ... ... 18, 411
Simultaneous Colour Printing Syndicate *v.* Foweraker, [1901] 1 K. B. 771; 70 L. J. K. B. 453 261
Sinclair *v.* Glasgow and London Contract Corporation, [1904] 6 F. 818 ... 410
Sir John Moore Gold Mining Co., Re, 12 Ch. D. 325; 28 W. R. 203 ... 422
——————————, 37 L. T. 242; 25 W. R. 900 ... 439, 453, 454
Skinner *v.* City of London Ass. Corporation, 14 Q. B. Div. 882; 54 L. J. Q. B. 437; 53 L. T. 191; 33 W. R. 628 ... ... 185, 196
Slate Fire Ins. Co., Re. *See* Meredith and Convers, Ex parte.
Slater *v.* Darlaston Coal Co., W. N. (1877) 165 530
Slee *v.* International Bank, 17 L. T. 425 194
Slobodinsky, In re, [1903] 2 K. B. 517; 72 L. J. K. B. 883; 89 L. T. 190; 52 W. R. 156 262
Small *v.* National Provincial Bank of England, [1894] 1 Ch. 686; 63 L. J. Ch. 270; 70 L. T. 492; 42 W. R. 378 241
——— *v.* Smith, 10 App. Cas. 119 ... ... 44, 45
Smallpage and Brandon's Case. *See* Marseilles Extension Rail. Co., Re.
Smith, Ex parte, Re Bank of Hindostan (1867), 3 Ch. 125; 37 L. J. Ch. 185; 17 L. T. 339; 16 W. R. 170 498
Smith, Ex parte. *See* Homer Gold Mines, Re.
——————— (House and Land Investment Trust, Re). *See* House and Land Investment Trust, Re.
———, Re (Davidson *v.* Myrtle), [1896] 2 Ch. 590; 65 L. J. Ch. 761; 74 L. T. 810; 45 W. R. 29 7
——— *v.* Anderson, 15 Ch. Div. 247; 50 L. J. Ch. 39; 43 L. T. 329; 29 W. R. 21 ... ... 5, 76
——— *v.* Ashbury Carriage Co. (British and Foreign Plant Co. *v.* Ashbury), 20 L. T. 360 31
——— *v.* Brown, [1896] A. C. 622; 65 L. J. P. C. 89; 75 L. T. 213; 45 W. R. 132 ... ... 159, 166
——— *v.* Chadwick, 20 Ch. Div. 27; 51 L. J. Ch. 597; 46 L. . 70; 30 W. R. 661; 9 App. Cas. 187; 53 L. J. Ch. 873; 50 L. T. 697; 32 W. R. 687 ... ... 376, 378, 381, 382, 383
——— *v.* Hull Glass Co., 11 C. B. 897; 21 L. J. C. P. 106; 7 Rail. Cas. 287; 16 Jur. 595 226
——— *v.* Law Guarantee and Trust Syndicate, [1904] 2 Ch. 569; 73 L. J. Ch. 733; 91 L. T. 545 285
——— *v.* Lubbock (New Zealand Midland Rail., Re), [1901] 2 Ch. 357; 70 L. J. Ch. 595; 49 W. R. 529 285
——— *v.* Manchester, Duke of, 24 Ch. D. 611; 53 L. J. Ch. 96; 49 L. T. 96 106
——— *v.* Paringa Mines, Ltd., [1906] 2 Ch. 193; 75 L. J. Ch. 702; 94 L. T. 571 331
Smith, Fleming, & Co.'s Case (Commercial Bank Corporation of India, Re), 1 Ch. 538; 36 L. J. Ch. 333; 12 Jur. N. S. 806; 15 L. T. 148; 15 W. R. 78 424

PAGE

Smith, Knight & Co. (Ashbury, Ex parte). *See* Hakim's Case; Weston's Case.
——— ——— ———, Re, 4 Ch. 421; 20 L. T. 206; 17 W. R. 510 ... 455
——— ——— ———, 37 L. J. Ch. 864 480
Smith's Case (Bank of Hindustan, China, and Japan), 3 Ch. 125; 37 L. J. Ch. 185; 17 L. T. 339; 16 W. R. 170 ... 422, 471
——— ——— (Reese River Silver Mining Co., Re), 2 Ch. 604; 36 L. J. Ch. 618; 16 L. T. 549; 15 W. R. 882 141
Smith & Co., [1901] Ir. R. Ch. 73 271
Sneath *v.* Valley Gold Co., [1893] 1 Ch. 477; 68 L. T. 602; 2 R. 292 ... 274
Snell's Case (Natal Investment Co., Re), 5 Ch. 22; 21 L. T. 445; 18 W. R. 30 210
Snook *v.* Self-Acting Sewing Machine Co., 3 Times L. R. 612 380
Société Générale de Paris *v.* Tramways Union Co., 14 Q. B. D. 424; 54 L. J. Q. B. 177; 52 L. T. 912 184, 190
——— ——— ——— *v.* Walker, 11 App. Cas. 20; 55 L. J. Ch. 169; 54 L. T. 389; 34 W. R. 662 ... ... 182, 183, 184, 187, 188, 191, 192
Somerset and Dorset Rail. Co., Re, 18 W. R. 332; 21 L. T. 656 527
Somerville's Case, 6 Ch. 266; 40 L. J. Ch. 431; 23 L. T. 882; 19 W. R. 453 ... ... 137, 212
Somes *v.* Currie, 1 K. & J. 605; 1 Jur. N. S. 954 504
Sorsbie *v.* Tea Corporation. *See* Tea Corporation.
South African Supply & Cold Storage (Wild *v.* Co.), [1904] 2 Ch. 268; 73 L. J. Ch. 657; 91 L. T. 447; 52 W. R. 649 513
South African Territories, Ltd. *v.* Wallington, [1898] A. C. 309; 67 L. J. Q. B. 470; 78 L. T. 426; 46 W. R. 545 ... 249, 265
——— Australian Petroleum Fields, Re, [1894] W. N. 189 526
——— Barrule Slate Quarry Co., Re, 8 Eq. 688 427
——— Blackpool Hotel Co., Re. *See* Megotti's Case.
——— Durham Brewery Co., Re, 31 Ch. Div. 261; 55 L. J. Ch. 179; 53 L. T. 928; 34 W. R. 126 ... ... 152, 232
——— Essex Estuary Co., Re (Chorley, Ex parte), 11 Eq. 157; 40 L. J. Ch. 153; 19 W. R. 430. ... 233, 271
——— ——— ——— (Payne, Re). *See* Payne, Re (South Essex Estuary Co., Re).
——— Hetton Coal Co. *v.* North Eastern News Association, [1894] 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. 844; 42 W. R. 322 ... 2
——— Kensington Co-operative Stores, Re (Seymour, Ex parte), 17 Ch. D. 161; 50 L. J. Ch. 446; 44 L. T. 471; 29 W. R. 662 ... 425
——— Llanharran Colliery Co., Re. *See* Jegon, Ex parte.
——— London Fish Market Co., 39 Ch. Div. 324; 59 L. T. 210; 37 W. R. 3 ... ... 90, 198, 417
——— Luipaards Vlei Gold Mines, Re, 13 Times L. R. 504 432
——— of France Co. *See* Beville's, Baron de, Case.
——— ——— ——— Pottery Works Syndicate, Re, 37 L. T. 260; 25 W. R. 870 423
——— of Ireland Colliery Co. *v.* Waddle, 4 C. P. 617; 37 L. J. C. P. 211; 17 W. R. 896 226
——— Wales Atlantic S.S. Co., Re, 2 Ch. D. 763; 46 L. J. Ch. 177; 35 L. T. 294 ... ... 5, 416
——— Western of Venezuela Rail. Co., [1902] 1 Ch. 701; 71 L. J. Ch. 407; 86 L. T. 321; 50 W. R. 300 81
——— Yorkshire Rail., &c., Co. *v.* Great Northern Rail. Co., 3 De G. M. & G. 576 266
——— Yorkshire Waggon Co., Re, 8 Times L. R. 413 194

PAGE

Southall *v.* British Mutual Assurance Society, 6 Ch. 614; 40 L. J. Ch. 698; 19 W. R. 865 ... ... 415, 514, 518, 522
Southampton Dock Co. *v.* Richards, 1 Man. & Gr. 448; 2 Rail. Cas. 215; 1 Scott's N. R. 219 ... ... 173, 334
Southampton, Portsmouth, &c., Steamboat Co., Re. *See* Bird, Ex parte.
Southern Brazilian Rio Grande do Sul Rail. Co., [1905] 2 Ch. 78; 74 L. J. Ch. 392; 92 L. T. 598; 53 W. R. 489 ... ... 18, 258, 267
Southern Counties Deposit Bank *v.* Kirkwood, 11 Times L. R. 563; 73 L. T. 374 97
Southport Banking Co. *See* Fisher's Case.
Sovereign Life Assurance Co., Re, [1892] 3 Ch. 279; 62 L. J. Ch. 36; 67 L. T. 336; 41 W. R. 1 36
——— ——— ——— ——— *v.* Dodd, [1892] 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4 531
Spackman *v.* Evans, L. R. 3 H. L. 171; 37 L. J. Ch. 752; 19 L. T. 151 203
——— *v.* Lattimore, 3 Giff. 16; 4 L. T. 45; 9 W. R. 229 157
Spargo's Case (Harmony Mining Co., Re), 8 Ch. 407; 42 L. J. Ch. 488; 28 L. T. 153; 21 W. R. 306 165
Sparks *v.* Liverpool Waterworks Co., 13 Ves. 428 206
Sparling's Case, 26 W. R. 41 134
Spence *v.* Coleman, [1901] 2 K. B. 199; 70 L. J. K. B. 632; 84 L. T. 703; 49 W. R. 516 536
Spence's Patent Cement Co., Re, 9 Eq. 9; 39 L. J. Ch. 79; 21 L. T. 413; 18 W. R. 82 442
Spiers and Pond, Ltd., Re, W. N. (1894) 135; 2 Mans. 596; 13 R. 838 20
Spiller *v.* Paris Skating Rink Co., 7 Ch. D. 368; 26 W. R. 456 218
——— *v.* Turner, [1897] 1 Ch. 911 323
Spiral Globe, Ltd., In re (Watson *v.* the Co.), [1902] 1 Ch. 396; 2 Ch. 209; 71 L. J. Ch. 538; 86 L. T. 499 ... ... 238, 249
Spitzel *v.* Chinese Corporation, 15 Times L. R. 281 132
Spokes *v.* Grosvenor Hotel Co., [1897] 2 Q. B. 124; 66 L. J. Q. B. 572; 76 L. T. 679; 45 W. R. 546 111, 410, 412
——— ——— ——— ———, 13 Times L. R. 431 111
Stace and Worth's Case (London and Northern Insurance Corporation, Re), 4 Ch. 683; 17 W R. 751 88
Staffordshire, &c., Canal *v.* Birmingham Canal Co., L. R. 1 H. L. 254; 35 L. J. Ch. 757 ... ... 32, 298
——— ——— and Shropshire Rail. Co., Re. *See* Bowen, Ex parte.
Staffordshire Gas and Coke Co., Re, [1893] 3 Ch. 523; 63 L. J. Ch. 68; 69 L. T. 376 466
Stagg *v.* Medway Upper Navigation Co., [1903] 1 Ch. 169; 72 L. J. Ch. 177; 87 L. T. 705; 51 W. R. 329 236
Stainbank *v.* Fernley, 9 Sim. 556; 8 L. J. Ch. 142; 3 Jur. 262 367
Standard Manufacturing Co., [1891] 1 Ch. 627; 60 L. J. Ch. 292; 64 L. T. 487; 39 W. R. 369; 2 Meg. 418 ... ... 237, 261, 263
Standard Portland Cement Co., Re, 59 L. J. Ch. 408; 62 L. T. 822 ... 443
Standard Rotary Machine Co., In re (1907), 95 L. T. 829 261
Standing *v.* Bowring, 31 Ch. Div. 282; 55 L. J. Ch. 213; 54 L. T. 197; 34 W. R. 204 191
Standring & Co., Re, W. N. (1895) 99 436
Stanhope's Case (Agriculturist Cattle Insurance Co., Re), 1 Ch. 161; 35 L. J. Ch. 296 203
Stanhope Silkstone Collieries Co., Re, 11 Ch. D. 160; 48 L. J. Ch. 409; 40 L. T. 204; 27 W. R. 561 424

PAGE

Stanley's Case (British Provident Association, Re), 4 De G. J. & S. 407; 33 L. J. Ch. 535; 10 L. T. 674; 12 W. R. 894 ... ... 176, 234
Stapleford Colliery Co., Re. *See* Barrow's Case.
Staples *v.* Eastman's Photographic Materials Co., [1896] 2 Ch. 303; 65 L. J. Ch. 682; 74 L. T. 479 322
Star and Garter Hotel Co., Re, 42 L. J. Ch. 374; 28 L. T. 258 439
Stark, Ex parte, [1897] 1 Ch. 575; 66 L. J. Ch. 297; 76 L. T. 300; 45 W. R. 420 ... ... 74, 212
Starkey *v.* Bank of England, [1903] A. C. 114; 72 L. J. Ch. 402; 88 L. T. 244; 51 W. R. 513 395
State Fire Insurance Co. *See* Webster's Case.
State of Wyoming Syndicate, In re. *See* Wyoming.
Statham *v.* Brighton Marine Palace Co., [1899] 1 Ch. 199; 68 L. J. Ch. 172; 80 L. T. 73; 47 W. R. 185; 6 Mans. 308 ... ... 42, 164
Steam Stoker Co., Re, 19 Eq. 416; 44 L. J. Ch. 386; 32 L. T. 143; 23 W. R. 545 439
Stear *v.* South Essex Gas Co., 30 L. J. C. P. 49; 9 C. B. N. S. 180 ... 223
Stearic Acid Co., Re, 11 W. R. 980; 32 L. J. Ch. 784; 8 L. T. 759; 9 Jur. N. S. 1066 429
Steel's Case (Whitley, Re), 49 L. J. Ch. 176 ... ... 133, 134
Steele *v.* Harmer, 14 M. & W. 831 225
——— *v.* Sutton Gas Co., 12 Q. B. D. 68; 53 L. J. Q. B. 207; 49 L. T. 682; 32 W. R. 289 305
Stenotyper, Ltd., Re, [1901] 1 Ch. 250 449
Stephens *v.* Mysore Reefs (Kangundy) Mining Co., [1902] 1 Ch. 745; 71 L. J. Ch. 295; 86 L. T. 221; 50 W. R. 509 ... ... 18, 45
Stephenson's Case (Farmers' United, Ltd.), [1900] 2 Ch. 442; 69 L. J. Ch. 684 169
Stephenson, Ex parte, 15 L. R. Ir. 51... 41
Stevens *v.* Hudson's Bay Co. (1909), 25 T. L. R. 709 36
——— *v.* Cork and Kinsale Rail. Co., Ir. Rep. 6 Eq. 604 527
——— *v.* Marston, 60 L. J. Q. B. 192; 64 L. T. 274; 39 W. R. 129 ... 245
——— *v.* Mid-Hants Rail. Co., 8 Ch. 1064; 42 L. J. Ch. 694; 29 L. T. 318; 21 W. R. 858 527
——— *v.* South Devon Rail. Co., 20 L. J. Ch. 491; 9 Hare, 313; 21 L. J. Ch. 816 ... ... 34, 111, 319, 320
Stevenson's Case (Cleveland Iron Co., Re), 16 W. R. 95 142
——— ——— (Durham Salt Co., Re), 2 Meg. 360 250
Stewart's Case (Agriculturist Cattle Insurance Co., Re), 1 Ch. 511; 35 L. J. Ch. 758; 14 L. T. 841; 14 W. R. 954 ... 203, 212
——— ——— (Russian, &c., Ironworks Co., Re), 1 Ch. 574; 35 L. J. Ch. 738; 14 L. T. 817 ... ... 141, 212
Stewart *v.* Austin, L. R. 3 Eq. 299; 15 L. T. 407; 15 W. R. 122 143, 147
Stock and Share Auction Co., Re, [1894] 1 Ch. 736; 63 L. J. Ch. 245; 70 L. T. 235; 42 W. R. 300; 1 Mans. 125 536
Stock's Case. *See* Roney, Re.
Stock, Ex parte (Llanharry Hematite Co., Re), 33 L. J. Ch. 731; 4 De G. J. & S. 426; 10 L. T. 770; 12 W. R. 994 334
Stocken's Case (Blakely Ordnance Co., Re), 3 Ch. 412; 37 L. J. Ch. 230; 17 L. T. 554; 16 W. R. 322 ... ... 177, 207
Stockport District Waterworks Co. *v.* Manchester Corporation, 9 Jur. N. S. 266; 7 L. T. 545; 11 W. R. 156 32
Stockton and Darlington Rail. Co., Re, 9 H. L. Cas. 246 297
Stockton Iron Co., Re, 2 Ch. D. 101; 44 L. J. Ch. 168 196
Stockton Iron Furnace Co., Re, 10 Ch. D. 335; 48 L. J. Ch. 417; 40 L. T. 19; 27 W. R. 433 446

PAGE

Stone *v.* City and County Bank, 3 C. P. D. 282; 49 L. J. C. P. 681; 38 L. T. 9 ... ... 340, 506
Storey, Ex parte, 62 L. T. 791; 2 Meg. 266; 6 Times L. R. 357 142
Storforth Lane Colliery Co., Re, 10 Ch. D. 487; 48 L. J. Ch. 416; 27 W. R. 615 443
Straffon's Executors' Case (North of England Joint Stock Co., Re), 1 De G. M. & G. 576 102
Strand Music Hall Co., Re, 3 De G. J. & S. 147; 14 W. R. 6 250
——— Wood Co., [1904] 2 Ch. 1; 73 L. J. Ch. 550; 90 L. T. 800; 53 W. R. 69 464
Strang, Ex parte, 5 Ch. 492; 39 L. J. Ch. 644; 22 L. T. 85; 18 W. R. 475 ... ... 162, 489
Stranton Iron Co., Re, 16 Eq. 559; 43 L. J. Ch. 215 197
Stranton Iron and Steel Co., Re (Barnett's Case), 19 Eq. 449; 44 L. J. Ch. 233; 23 W. R. 378 489
Strapp *v.* Bull & Sons, [1895] 2 Ch. 1; 64 L. J. Ch. 58; 72 L. T. 514; 43 W. R. 641 280
Stratford, &c., Rail. Co. *v.* Stratton, 2 B. & Ad. 518 173
Stray *v.* Russell, 1 E. & E. 880; 29 L. J. Q. B. 115; 6 Jur. N. S. 168; 1 L. T. 443; 8 W. R. 240 185
Streatham and General Estates Co, Re, [1897] 1 Ch. 15; 66 L. J. Ch. 57; 75 L. T. 574; 45 W. R. 105 234
Stringer's Case (Mercantile Trading Co., Re), 4 Ch. 475; 38 L. J. Ch. 698; 20 L. T. 591; 17 W. R. 694 ... ... 39, 311, 319, 461
Stringer, Ex parte, 9 Q. B. D. 436 196
Strong *v.* Carlyle Press, [1893] 1 Ch. 268; 62 L. J. Ch. 541; 68 L. T. 396; 41 W. R. 404 ... ... 278, 426
——— (No. 2), W. N. (1893) 51 ... ... 410, 466
Stroud *v.* Lawson, [1898] 2 Q. B. 44; 67 L. J. Q. B. 718; 78 L. T. 729; W. R. 626 412
——— *v.* Royal Aquarium, 89 L. T. 243, [1903] W. N. 146 78
Stuart's Trusts, Re, 4 Ch. D. 213; 46 L. J. Ch. 86; 25 W. R. 295 ... 318
Stubbs *v.* Lister, 1 Y. & C. (Ch.) 81 205
Stubbs, Ltd. (Joshua), [1891] 1 Ch. 475; 60 L. J. Ch. 190; 64 L. T. 306; 39 W. R. 617 ... ... 278, 281
Studdert *v.* Grosvenor, 33 Ch. D. 528; 55 L. J. Ch. 689; 55 L. T. 171; 34 W. R. 754 ... ... 35, 336, 343
Sturge *v.* Eastern Union Rail. Co., 7 De G. M. & G. 158; 25 L. T. O. S. 238; 19 Jur. 713 320
Sturgis (British) Motor Power Syndicate, Re, 53 L. T. 715; 34 W. R. 163 446
Suburban Hotel Co., Re, 2 Ch. 737; 36 L. J. Ch. 710; 17 L. T. 22; 15 W. R. 1096 ... ... 45, 434
Sugden *v.* Alsbury. *See* Alsbury, Re.
Sullivan *v.* Mitcalfe, 5 C. P. Div. 455; 44 L. T. 80; 29 W. R. 181 ... 124
Sully's Case. *See* Northumberland Avenue Hotel Co., Re.
Sumatra Tobacco Co., Re, W. N. (1893) 80 52
Sunlight Incandescent Gas Lamp Co., Re, [1900] 2 Ch. 728; 69 L. J. Ch. 673; 83 L. T. 406 421
Sussex Brick Co., [1904] 1 Ch. 598; 73 L. J. Ch. 308; 90 L. T. 426; 52 W. R. 371 215
Sutton *v.* English and Colonial Produce Co., [1902] 2 Ch. 502; 71 L. J. Ch. 685; 87 L. T. 438; 50 W. R. 571 ... ... 86, 91
Swabey *v.* Port Darwin Gold Mining Co., Re., 1 Meg. 385 ... ... 80, 220
Swan's Case (Bank of Hindustan, China and Japan, Ex parte), 10 Eq. 675; 22 L. T. 854; 18 W. R. 1017 455

PAGE

Swan, Ex parte (North British Australasian Co., Re), 7 C. B. N.S. 400 189
—— v. North British Australasian Co., 7 H. & N. 603; 2 H. & C. 175 ... ... 189, 192
Swansea Dock Co. v. Levien, 20 L. J. Ex. 477 329
Sweny v. Smith, 7 Eq. 324; 38 L. J. Ch. 446 206
Swift v. Winterbotham, L. R. 8 Q. B. 253; 42 L. J. Q. B. 111; 28 L. T. 339; 21 W. R. 562 367
Swire v. Francis, 3 App. Cas. 106; 47 L. J. P. C. 18; 37 L. T. 554 ... 109
Sydney Harbour Collieries, Ltd. v. Earl Grey, 14 Times L. R. 373 ... 72
Syers v. Brighton Brewery Co., 11 L. T. 560; 13 W. R. 220 35
Sykes' Case (European Central Rail. Co., Re), 13 Eq. 255; 41 L. J. Ch. 251; 26 L. T. 92 ... ... 105, 175
Sykes v. Beadon, 11 Ch. D. 170; 48 L. J. Ch. 522; 40 L. T. 243; 27 W. R. 464 5
Symon's Case (Asiatic Banking Corporation, Re), 5 Ch. 298; 39 L. J. Ch. 461; 22 L. T. 217; 18 W. R. 366 475

T.

Taft v. Harrison, 10 Hare, 489 19
Tahiti Cotton Co., Re. *See* Sargent, Ex parte.
Tahourdin v. Weston-super-Mare Pier Co., 4 Times L. R. 124 ... 85, 127
Tailby v. Official Receiver, 13 A. C. 523; 58 L. J. Q. B. 75; 60 L. T. 162; 37 W. R. 513 235
Tait v. Meclean, [1904] 2 Ch. 631; 74 L. J. Ch. 43; 91 L. J. 474 401
Taite's Case (Russian, &c., Ironworks Co., Re), L. R. 3 Eq. 795; 36 L. J. Ch. 475; 16 L. T. 343; 15 W. R. 891 142
Tandberg v. Strand Wood Co. (1905), unreported 409
Tarn v. Emmerson. *See* Leng, Re (Tarn v. Emmerson).
Tasker & Sons, Ltd., [1905] 2 Ch. 587; 74 L. J. Ch. 643; 93 L. T. 195; 54 W. R. 65 ... ... 265, 268
Taunton v. Royal Insurance Co., 2 H. & M. 135; 33 L. J. Ch. 406; 10 L. T. 156; 12 W. R. 549 ... ... 18, 95, 110
—— v. Sheriff of Warwickshire, [1895] 2 Ch. 319; 64 L. J. Ch. 497; 72 L. T. 712 261
Taurine Co., Re, 25 Ch. Div. 118; 53 L. J. Ch. 271; 49 L. T. 514; 32 W. R. 129... ... ... 104, 191, 197, 416
Tavarone Mining Co., Re. *See* Pritchard's Case.
Tavistock Ironworks Co. *See* Lyster's Case.
Tayler v. Great Indian Peninsular Rail. Co., 28 L. J. Ch. 285; 4 De G. & J. 559 ... ... 188, 192
Taylor, Ex parte. *See* Ambrose Lake Tin Co., Re.
——, Goldsmid, Re, 18 Q. B. D. 295; 56 L. J. Q. B. 195; 35 W. R. 148 449
—— (Railway Steel and Plant Co., Re), 8 Ch. D. 183; 47 L. J. Ch. 321; 38 L. T. 475; 26 W. R. 418 ... ... 408, 424, 483
—— v. McKeand, 5 C. P. D. 358; 49 L. J. C. P. 563; 42 L. T. 833; 28 W. R. 628 243
Taylor's Agreement Trust, [1903] 2 Ch. 737; 73 L. J. Ch. 557; 52 W. R. 602 540
Taylor, Phillips, and Rickard's Case. *See* National Bank of Wales, Re (Taylor, Phillips, and Rickard's Case).
—— v. Pilsen Joel Electric Light Co., 27 Ch. D. 268; 53 L. J. Ch. 856; 50 L. T. 480 ... ... 40, 92

PAGE

Taylor *v.* Taylor, 10 Eq. 477; 39 L. J. Ch. 676; 18 W. R. 1102 478
Tea Corporation (Soisbie *v.* Co.), [1904] 1 Ch. 12; 73 L. J. Ch. 57; 89 L. T. 516; 52 W. R. 177... 531
Teasdale's Case (County Palatine Loan Discount Co., Re), 9 Ch. 54; 43 L. J. Ch. 578; 29 L. T. 707; 22 W. R. 286 210
Teede & Bishop, Ltd., [1901] W. N. 52; 70 L. J. Ch. 409; 84 L. T. 561 ... ... 328, 339
Teign Valley Rail. Co., Re, 17 L. T. 201 526
Telegraph Construction Co., Re, 10 Eq. 384; 22 L. T. 649; 18 W. R. 729 52
Telescriptor Syndicate, [1903] 2 Ch. 174; 72 L. J. Ch. 480; 88 L. T. 389; 51 W. R. 409 427
Teme Valley Rail. Co. *See* Forbes' Case.
Tennent, Re (Grimwade, Ex parte), 17 Q. B. D. 357; 55 L. J. Q. B. 495; 3 Morrell, 166... 477
——— *v.* Glasgow Bank, 4 App. Cas. 615; 40 L. T. 694; 27 W. R. 649... 142
Thames Haven Dry Dock Co. *v.* Rose, 4 Man. & G. 552; 12 L. J. C. P. 90; 3 Rail. Cas. 177 ... ... 100, 173
Thames Plate Glass Co. *v.* Land and Sea Telegraph Construction Co., 6 Ch. 643; 25 L. T. 236; 19 W. R. 764 426
Thames Tunnel Co. *v.* Sheldon, 6 B. & C. 348 157
Theys, Ex parte. *See* Milan Tramways Co., Re (Theys, Ex parte).
Thomas Edward Brinsmead and Sons, Ltd. *See* Brinsmead (T. E.) & Sons, Ltd.
——— *v.* Patent Lionite Co., 17 Ch. D. 250; 44 L. T. 392; 50 L. J. Ch. 544; 29 W. R. 596 483
Thomas, Re (Ex parte, Poppleton), 14 Q. B. D. 379; 54 L. J. Q. B. 336; 51 L. T. 602; 33 W. R. 583 4
Thomas *v.* Patent Lionite Co. (1881), 17 Ch. 250; 50 L. J. Ch. 544; 44 L. T. 392; 29 W. R. 596 ... ... 415, 425
Thomas *v.* United Butter Cos. of France, [1909] 2 Ch. 484; 79 L. J. Ch. 14; 101 L. T. 388 517
Thompson *v.* Planet Building Society, 15 Eq. 333; 42 L. J. Ch. 364; 28 L. T. 549; 21 W. R. 474 112
——— *v.* Universal Salvage Co., 1 Ex. 694; 17 L. J. Ex. 118; 5 Dowl. & L. 380 225
——— *v.* Wesleyan Newspaper Association, 8 C. B. 849; 19 L. J. C. P. 114 225
Thomson's Case, 4 De G. J. & S. 749; 11 Jur. N. S. 574; 12 L. T. 717; 13 W. R. 958 132
Thomson *v.* Henderson Transvaal Estates, [1908] 1 Ch. 765; 77 L. J. Ch. 501; 98 L. T. 815 506
Thomson *v.* Lord Clanmorris, [1900] 1 Ch. 718; 69 L. J. Ch. 337; 82 L. T. 277; 48 W. R. 488 ... ... 368, 387
——— *v.* Trustees, Executors and Securities Corporation, [1895] 2 Ch. 454; 65 L. J. Ch. 66; 73 L. T. 149 ... ... 51, 210
Thorley's Cattle Food Co. *v.* Massam, 14 Ch. D. 763; 41 L. T. 543; 28 W. R. 295 2
Thorn *v.* City Rice Mills, 40 Ch. D. 357; 58 L. J. Ch. 297; 60 L. T. 359; 37 W. R. 398 272
——— *v.* Nine Reefs, Ltd., 67 L. T. 93 276
Thorne *v.* Heard, [1895] A. C. 495; 64 L. J. Ch. 652; 73 L. T. 291; 44 W. R. 155 356
Thurso New Gas Co., Re, 42 Ch. D. 486; 61 L. T. 351; 38 W. R. 156; 1 Meg. 330 509

PAGE

Tiessen *v.* Henderson, [1899] 1 Ch. 861; 68 L. J. Ch. 353; 80 L. T. 483; 47 W. R. 459; 6 Mans. 340 328
Tilbury Portland Cement Co., Re, 62 L. J. Ch. 814; 69 L. T. 495; 3 R. 709 235
Tilleard, Re, 3 De G. J. & S. 519; 8 L. T. 587; 11 W. R. 764 67
Tilson *v.* Warwick Gaslight Co., 4 B. & C. 962 67
Timmins (Ebenezer) & Sons, [1902] 1 Ch. 238; 71 L. J. Ch. 121 169
Titian Steamship Co., Re, 58 L. T. 178; 36 W. R. 347 427
Tomkinson *v.* South Eastern Rail. Co., 35 Ch. D. 675; 56 L. J. Ch. 932; 56 L. T. 813; 35 W. R. 758 35
Tomlin's Case (T. E. Brinsmead and Sons, Re), [1898] 1 Ch. 104; 67 L. J. Ch. 11; 77 L. T. 521; 46 W. R. 171; 14 Times L. R. 53 ... 132, 142
Tomlin Patent Horse Shoe Co., Re, 55 L. T. 314 433
Tomlinson *v.* Gilby, 54 L. J. Prob. 80; 33 W. R. 80 172
Toomer, Re. *See* Blaiberg, Ex parte.
Topham *v.* Greenside Glazed Fire Brick Co., 37 Ch. D. 281; 57 L. J. Ch. 583; 58 L. T. 274; 36 W. R. 464 ... ... 242, 257
Torbock *v.* Lord Westbury, [1902] 2 Ch. 871; 71 L. J. Ch. 845; 87 L. J. 165; 51 W. R. 133 339
Torquay Bath Co., Re, 32 Beav. 581; 9 Jur. N. S. 633; 8 L. T. 527; 11 W. R. 653 505
Torva Exploring Syndicate *v.* Kelly, [1900] A. C. 612; 16 Times L. R. 58
Tothill's Case (Llanharry Hematite Co., Re), 1 Ch. 85; 35 L. J. Ch. 120; 14 W. R. 153 139
Tottenham *v.* Swansea Zinc Ore Co., 53 L. J. Ch. 776; 51 L. T. 61; 32 W. R. 716 278
Totterdell *v.* Fareham Brick Co., 1 C. P. 674; 35 L. J. C. P. 278; 14 W. R. 919; 12 Jur. N. S. 901 ... ... 107, 226
Totty, Ex parte (Northumberland District Banking Co., Re), 1 Dr. & Sm. 273; 29 L. J. Ch. 702; 6 Jur. N. S. 849; 8 W. R. 624 480
Touche *v.* Metropolitan Warehousing Co., 6 Ch. 671; 40 L. J. Ch. 496 66
Towers *v.* African Tug Co., [1904] 1 Ch. 558; 73 L. J. Ch. 395; 90 L. T. 298; 52 W. R. 532 ... ... 46, 412
Townsend, Re. *See* Parsons, Ex parte.
Townsend's Case (Imperial Bank of Marseilles, Re), 13 Eq. 148 133
Trade Auxiliary Co. *v.* Vickers, 16 Eq. 303; 21 W. R. 836 111
Traders' North Staffordshire Carrying Co., Re (North Staffordshire Railway, Ex parte), 19 Eq. 60; 44 L. J. Ch. 172; 31 L. T. 716; 23 W. R. 205 425
Trail *v.* Baring, 4 De G. J. & S. 318; 10 L. T. 215; 12 W. R. 678; 3 N. R. 681 385
Transvaal Exploring Co. *v.* Albion (Transvaal) Gold Mines, [1899] 2 Ch. 370; 68 L. J. Ch. 670; 48 W. R. 108 167
Trench Tubeless Tyre Co., Re, [1900] 1 Ch. 408; 69 L. J. Ch. 213; 82 L. T. 247; 48 W. R. 310 419
Trent and Humber Shipbuilding Co., Re, 4 Ch. 112; 38 L. J. Ch. 38; 19 L. T. 465; 17 W. R. 181 489
Trevot *v.* Whitworth, 12 App. Cas. 409; 57 L. J. Ch. 28; 57 L. T. 457; 36 W. R. 145 ... ... 26, 40, 81, 200, 209, 210
Trimsaran Coal, Iron and Steel Co., Re, 24 W. R. 900 ... ... 423, 426
Trinity House *v.* Beadle, 13 Q. B. 175 336
Troup's Case (Electric Telegraph Co. of Ireland, Re), 29 Beav. 353 252, 255
Trower and Lawson's Case. *See* Land Credit Co. of Ireland.

PAGE

Trueman, Re (Hooke *v.* Piper), 14 Eq. 278; 41 L. J. Ch. 585; 20 W. R. 700 467
Truman's Case, [1894] 3 Ch. 272; 63 L. J. Ch. 635; 71 L. T. 328; 43 W. R. 73; 1 Mans. 359 134
Trust and Agency Co. of Australasia, Ltd., [1908] W. N. 229 20
Trust and Investment Corporation of South Africa, Re, [1892] 3 Ch. 332; 62 L. J. Ch. 22; 40 W. R. 689 459
Trust (J. P.), Ltd. *v.* Johnston Foreign Patents Co., [1904] 2 Ch. 234; 73 L. J. Ch. 617; 91 L. T. 124; 53 W. R. 189 256
Tuffnell and Ponsonby's Case (Florence Land, &c., Co., Re), 29 Ch. Div. 421; 52 L. T. 933 144
Tumacacori Gold Mining Co., Re, 17 Eq. 534; 43 L. J. Ch. 417; 22 W. R. 510 432
Tunis Railway Co., Re, 10 Ch. D. 270, n.; 30 L. T. 512; 31 L. T. 264; 22 W. R. 639 532
Tunnel Mining Co. *See* Pool's Case.
Turnbull *v.* West Riding Athletic Club, 70 L. T. 92 92
Turner's Claim. *See* Rio Grande Do Sul Steamship Co., Re.
Turquand *v.* Kirby, 4 Eq. 123; 36 L. J. Ch. 570; 16 L. T. 260; 15 W. R. 730 478
——— *v.* Marshall, 4 Ch. 376; 38 L. J. Ch. 639; 20 L. T. 765; 17 W. R. 935 ... ... 311, 361, 373
Tussaud *v.* Tussaud, 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. 633; 38 W. R. 503; 2 Meg. 120 15
Twycross *v.* Grant, 2 C. P. Div. 469; 46 L. J. C. P. 636; 36 L. T. 812; 25 W. R. 701 ... ... 58, 59, 60, 62, 64, 123, 124, 221, 373, 383, 390, 397, 401
——— *v.* ———, 4 C. P. Div. 40; 48 L. J. C. P. 1; 39 L. T. 618; 27 W. R. 87 364
Tyne Mutual Insurance Association *v.* Brown, 74 L. T. 283; 1 Com. Cas. 345 ... ... 100, 173

U.

Ulster Land Co., Re, 17 L. R. Ir. 591 460
——— Rail. Co. *v.* Bainbridge, Ir. R. 2 Eq. 190 82
Underwood *v.* London Music Hall, Ltd., [1901] 2 Ch. 309; 70 L. J. Ch. 743; 84 L. T. 759; 49 W. R. 507 ... ... 26, 153
Union Bank, Ex parte (Bank of South Australia, Re). *See* Bank of South Australia, Re.
——— Bank of Kingston-upon-Hull, Re, 13 Ch. D. 808; 49 L. J. Ch. 264; 42 L. T. 390; 28 W. R. 808 518
——— Debenture Co. *v.* Fletcher, 11 Times L. R. 472 215
——— Hill Silver Co., Re, 22 L. T. 400 506
——— Plate Glass Co., Re, 42 Ch. D. 513; 58 L. J. Ch. 767; 61 L. T. 327; 37 W. R. 792; 1 Megone, 360 50
Unionist Club, Ltd., Re, W. N. (1891) 64 418
United Club and Hotel Co., Re, 60 L. T. 665; 1 Meg. 186 436
——— English and Scottish Insurance Co., Re. *See* Hawkins, Ex parte.
——— Forty Pound Loan Club *v.* Bexton, [1891] 1 Q. B. 23, n. 240
United Ordnance and Engineering Co., Ex parte. *See* Hooley, Re.
——— Ports and General Insurance Co., Re (Etna Insurance Co., Ex parte), 46 L. J. Ch. 403; 36 L. T., 457; 25 W. R. 580 ... 493

PAGE

United Ports, &c., Insurance Co. *See* Adams' Case; Beck's Case; Brown and Tucker's Case; Wynne's Case.
—— Service Co., Re. *See* Hall's Case.
————————, 7 Eq. 76 415
—— Service Association, [1901] 1 Ch. 97; 70 L. J. Ch. 15; 84 L. J. 145; 49 W. R. 216 477
—— States Direct Cable Co., Re, 48 L. J. Ch. 665 519
—— Stock Exchange Co., Re, 51 L. T. 687 436
—— Telephone Co. *v.* London and Globe Telephone Co., 26 Ch. D. 766; 51 L. T. 187; 32 W. R. 870 109
Universal Banking Corporation, Re. *See* Gunn's Case; Harrison's Case; Rogers' Case.
—— Disinfector Co., Re, 20 Eq. 162; 44 L. J. Ch. 478; 23 W. R. 721 424
—— Drug Association, Re, 22, W. R. 675 444
—— Provident Life Association, Re. *See* Munt's Case.
Uruguay Central Rail. Co., Re, 11 Ch. D. 372; 48 L. J. Ch. 540; 27 W. R. 571 445

V.

Vale of Neath, &c. Joint Stock Co. *See* Lawes' Case.
—— —— Brewery Co., Re. *See* Walter's Case.
Valletort Sanitary Steam Laundry (Ward *v.* the Co.), [1903] 2 Ch. 654; 72 L. J. Ch. 674; 89 L. T. 60 261
Valparaiso Waterworks Co., Re. *See* Davies' Case.
Valpy, Ex parte, 7 Ch. 289; 26 L. T. 228; 20 W. R. 347 237
Van Dieman's Land Co. *v.* Cockerell, 1 C. B. N. S. 732; 26 L. J. C. P. 203; 28 L. T. O. S. 326; 5 W. R. 312 ... ... 145, 206
Vanguard Motorbus Co., [1908] W. N. 99; 24 T. L. R. 526 443
Varieties, Ltd., The, [1893] 2 Ch. 235; 62 L. J. Ch. 526; 68 L. T. 214; 41 W. R. 296 ... ... 437, 439
Venezuela Rail. Co. *v.* Kisch, L. R. 2 H. L. 99; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 821 ... ... 114, 140, 377, 379, 382
Verner *v.* General and Commercial Investment Trust, [1894] 2 Ch. 239; 63 L. J. Ch. 456; 70 L. T. 516; 1 Mans. 136 ... ... 311, 316, 317, 321
Vickers, Ex parte (British Burmah Lead Co., Re), 56 L. T. 815 ... 378, 386
Victoria Steamboats Co., Re, [1897] 1 Ch. 158; 66 L. J. Ch. 21; 75 L. T. 374; 45 W. R. 135 276
Vimbos, Ltd., Re, [1900] 1 Ch. 470; 69 L. J. Ch. 209; 82 L. T. 597; 48 W. R. 520 282
Vining's Case (Imperial Land Co. of Marseilles, Re), 6 Ch. 96; 40 L. J. Ch. 79; 19 W. R. 173 ... ... 518, 520
Vivian (H. H.) & Co., Re, [1900] 2 Ch. 654; 69 L. J. Ch. 659; 82 L. T. 674; 48 W. R. 636 ... ... 259, 261
Von Siemens *v.* Mannesmann Tube Co. *See* Mannesmann Tube Co....
Vron Colliery Co., Re, 20 Ch. D. 442; 51 L. J. Ch. 389; 30 W. R. 388 424

W.

Wainwright, Ex parte (Metropolitan Coal Consumers' Association, Re), 62 L. T. 30; 59 L. J. Ch. 281; 1 Meg. 463; 63 L. T. 429 140, 143, 380

PAGE

Wakefield Rolling Stock Co., Re, [1892] 3 Ch. 165; 61 L. J. Ch. 670; 67 L. T. 83; 40 W. R. 700 503
Wala Wynaad Gold Mining Co., 21 Ch. D. 849; 52 L. J. Ch. 86; 47 L. T. 128; 30 W. R. 915 438
Waldren, Re. *See* Odell, Ex parte.
Walford's Case (European Central Rail. Co., Re), 20 L. T. 74 ... 79
Walker's Case (Anglo-Danubian Co., Re), 6 Eq. 30; 37 L. J. Ch. 651; 16 W. R. 749... 215
——— (Overend, Gurney & Co., Re), 2 Eq. 554; 35 L. J. Ch. 826; 84 L. T. 32; 14 W. R. 1008 214
Walker, Ex parte (St. Marylebone Joint Stock Banking Co., Re), 8 De G. M. & G. 607; 26 L. J. Ch. 261; 28 L. T. 151; 2 Jur. N. S. 1216; 3 W. R. 26 ... ... 39, 358
——— *v.* Banagher Distillery Co., 45 L. J. Q. B. 134; 1 Q. B. D. 129; 33 L. T. 502 427
——— *v.* General Mutual Building Society, 36 Ch. D. 777; 57 L. T. 574; 52 L. J. Ch. 278 112
——— *v.* London Tramways Co., 12 Ch. D. 705; 48 L. J. Ch. 23; 28 W. R. 163... ... ... 26, 27, 51
Wall's Case, 15 Eq. 18; 42 L. J. Ch. 372 133
Wall *v.* London and Northern Assets Corporation, [1898] 2 Ch. 469; 67 L. J. Ch. 596; 79 L. T. 249...224, 333, 339, 502, 513, 517
———————————————————, [1899] 1 Ch. 550; 68 L. J. Ch. 248; 80 L. T. 70; 6 Mans. 312 333
Wallace's Case. *See* Scottish Petroleum Co., Re.
Wallace *v.* Evershed, [1899] 1 Ch. 891; 68 L. J. Ch. 415; 80 L. T. 523; 6 Mans. 351 ... ... 259, 261
——— *v.* Universal Automatic Machine Co., [1894] 2 Ch. 547; 63 L. J. Ch. 598; 70 L. T. 852; 1 Mans. 315 ... ... 260, 272
Wallasey Brick and Land Co., Re, 63 L. J. Ch. 415; 70 L. T. 870 51, 414
Wallis's Case (Peruvian Rail Co., Re), 4 Ch. 325, n... 133
Wallscourt's (Lord) Case, 7 Mans. 235 208
Walter and Hacking, Re, 57 L. T. 763 208
Walter's Case, 3 De G. & S. 149 194
Walton's Case, 26 L. J. Ch. 545; 3 Jur. N. S. 853; 3 W. R. 637... ... 193
Wandsworth & Putney Gas Co. *v.* Wright, 18 W. R. 728; 22 L. T. 404... 88, 333
Wanzer, Ltd., Re, [1891] 1 Ch. 305; 60 L. J. Ch. 492; 39 W. R. 343 426
Warburton *v.* Huddersfield Industrial Society, [1892] 1 Q. B. 213; 61 L. J. Q. B. 25; 65 L. T. 852 ... ... 30, 35
Ward's Case. *See* Droitwich Salt Works, Re.
Ward's Case (British, &c., Steam Navigation Co., Re), 10 Eq. 659; 22 L. T. 695; 18 W. R. 910 133
Ward and Garfitt's Case, 4 Eq. 189 488
Ward, Ex parte. *See* Dronfield Silkstone Co., Re.
——— *v.* Alpha Co., [1903] 1 Ch. 203; 72 L. J. Ch. 91; 87 L. T. 646; 51 W. R. 201 284
——— *v.* Royal Exchange Shipping Co., 58 L. T. 174 259
——— *v.* Society of Attornies, 1 Coll. 370; 8 Jur. 1021 32
——— *v.* Valletort Sanitary Steam Laundry (See Valletort Company) ... 261
Warrant Finance Co.'s Case. *See* Humber Ironworks Co., Re; Joint Stock Discount Co., Re.
Warren *v.* Lambeth Waterworks (1905), T. L. R. 685 78

PAGE

Washington Diamond Mining Co., Re, [1893] 3 Ch. 95; 62 L. J. Ch. 895; 69 L. T. 27; 41 W. R. 681 ... ... 80, 175, 449, 493
Waterhouse *v.* Jamieson, L. R. 2 H. L. (Scotch) 29 168
Waterhouse *v.* London and South Western Rail. Co., 41 L. T. 553 ... 189
Waterloo Life Assurance Co., Re. *See* Saunder's Case.
———————, 31 Beav. 589; 32 L. J. Ch. 371; 9 Jur. N. S. 291; 7 L. T. 459; 11 W. R. 159 424
Waterloo *v.* Sharp, 8 Eq. 501; 20 L. T. 902 254
Watkin, Ex parte (Anglo-Moravian Hungarian Junction Rail., Re), 1 Ch. D. 130; 45 L. J. Ch. 115; 33 L. T. 650; 24 W. R. 122 ... 467
Watkins *v.* Scottish, &c., Co., (1889) 23 Q. B. D. 285; 58 L. J. Q. B. 495; 60 L. T. 639; 37 W. R. 670 408
Watson & Sons, Re, [1891] 2 Ch. 55; 60 L. J. Ch. 473; 65 L. T. 170; 39 W. R. 633 512
Watson & Co., Re, [1899] 2 Ch. 509; 68 L. J. Ch. 660; 81 L. T. 85; 48 W. R. 40 167
Watson, Ex parte, 54 L. T. 233 136
———————, 25 Q. B. D. 27; 59 L. J. Q. B. 394; 63 L. T. 209; 38 W. R. 567 ... ...
——————— (Sheffield Building Society, Re), 21 Q. B. D. 301; 57 L. J. Ch. 609; 59 L. T. 401; 36 W. R. 829 254
——— *v.* Cave, 17 Ch. D. 19; 44 L. T. 40; 29 W. R. 433 ... 276
——— *v.* Eales, 23 Beav. 294; 46 L. J. Ch. 361; 28 L. T. O. S. 243 ... 206
——— *v.* Spiral Globe, Ltd.; In re the Co. *See* Spiral Globe, Ltd. ...
——— *v.* Spratley, 10 Ex. 222; 24 L. J. Ex. 53 180
——— *v.* Streather (1886), 2 T. L. R. 473 408
———, Walker and Quickfall, Re, W. N. (1898) 69 53
Watts *v.* Assets Co. (Bain *v.* the Company), [1905] A. C. 317; 74 L. J. P. C. 82 480
——— *v.* Atkinson, 8 Times L. R. 235 382
Wear Engine Works Co., Re, 10 Ch. 188; 44 L. J. Ch. 256; 32 L. T. 314; 23 W. R. 735 442
Webb Hale & Co. *v.* Alexandria Water Co. (1905), 93 L. T. 339 57
Webb *v.* Earle, 20 Eq. 556; 44 L. J. Ch. 608; 24 W. R. 46 322
——— *v.* Herne Bay Commissioners, L. R. 5 Q. B. 642 233
——— *v.* Shropshire Rails. Co., [1893] 3 Ch. 307; 69 L. T. 533; 63 L. J. Ch. 80; 7 R. 231 ... ... 42, 164, 251
——— *v.* Whiffin, L. R. 5 H. L. 711; 42 L. J. Ch. 161 ... ... 470, 507
Webster's Case (Russian Ironworks Co., Re), 2 Eq. 741; 14 L. T. 728 ... 141
——————— (State Fire Insurance Co., Re), 32 L. J. Ch. 135; 7 L. T. 618; 11 W. R. 226 207
Wedgwood Coal, &c., Co. *See* Anderson's Case.
———————, Re, 6 Ch. D. 627; 37 L. T. 309 ... 530, 531, 532
Week's Case. *See* Balgooley Distillery Co., Re.
Weeks *v.* Propert, 8 C. P. 427; 42 L. J. C. P. 129; 21 W. R. 676 ... 395
Weikersheim's Case, 8 Ch. 831; 42 L. J. Ch. 435; 28 L. T. 653; 21 W. R. 612 155
Weir *v.* Barnett, 3 Ex. Div. 32; 26 W. R. 147 ... ... 366, 374, 376, 384
——— *v.* Bell, 3 Ex. Div. 238; 26 W. R. 147 ... ... 366, 376, 384, 396
Weld-Blundell, Ex parte, 63 L. T. 383 474
Welland Rail. Co. *v.* Berrie, 6 H. & N. 416; 30 L. J. Ex. 163; 3 L. T. 818; 9 W. R. 385 173
Wells *v.* Bucknall, [1903] 1 Ch. 766; 72 L. J. Ch. 447; 88 L. T. 845; 51 W. R. 433; 10 Mans. 176 ... ... 125, 401
——— *v.* Estate Investment Co., 15 W. R. 762 423

PAGE

Welsbach Co. *v.* New Sunlight Co., [1902] 2 Ch. 1; 69 L. J. Ch. 546; 83 L. T. 58; 48 W. R. 595 412
Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; 73 L. J. Ch. 104; 89 L. T. 645; 52 W. R. 327 ... ... 26, 153
Welsh Flannel Co., Re, 20 Eq. 360; 44 L. J. Ch. 391; 32 L. T. 361; 23 W. R. 558 ... ... 177, 419, 479
Welsh Whisky Distillery Co., Re, 16 Times L. R. 246 563
Welton, Ex parte (Railway Time Tables Publishing Co., Re), [1899] 1 Ch. 108; 68 L. J. Ch. 50; 79 L. T. 679; 47 W. R. 133; 5 Mans. 367 489
—— *v.* Saffery, [1897] A. C. 299; 66 L. J. Ch. 362; 76 L. T. 505; 45 W. R. 508; 4 Mans. 269 ... ... 42, 479, 503
Wemborn & Co., [1905] 1 Ch. 413; 74 L. J. Ch. 283; 92 L. T. 228; 53 W. R. 332 498
Wenlock *v.* River Dee Commissioners, 19 Q. B. D. 155; 56 L. J. Q. B. 589; 57 L. T. 320; 35 W. R. 822 255
———————————————, 10 App. Cas. 354; 54 L. J. Q. B. 577; 53 L. T. 62 253
———————————————, 36 Ch. D. 674; 56 L. J. Ch. 899; 57 L. T. 401 ... ... 30, 299
West Coast Gold Fields, Ltd. (Re Rowe), [1904] 2 K. B. 489; [1905] 1 Ch. 597 ... ... 164, 179, 495
West Coast Gold Fields (Rowe's Trustees' Claim), [1906] 1 Ch. D. 1; 75 L. J. Ch. 23; 93 L. T. 609; 54 W. R. 116 ... ... 503, 504
West Cork Rail. Co., Re, Ir. Rep. 7 Eq. 96 526
West Cornwall Rail. Co. *v.* Mowatt, 17 L. J. Ch. 366; 12 Jur. 407 231, 251
West Cumberland Iron and Steel Co., Re, 40 Ch. D. 361; 58 L. J. Ch. 373; 60 L. T. 627; 37 W. R. 317 415
———————————————, [1893] 1 Ch. 713; 62 L. J. Ch. 367; 68 L. T. 751; 41 W. R. 265 ... ... 423, 424, 426, 427
West Hartlepool Iron Co., Re. *See* Gray's Case.
———————————————, 10 Ch. 618; 44 L. J. Ch. 668; 33 L. T. 149; 23 W. R. 938 ... ... 444, 445
West India and Pacific S.S. Co., Re, 9 Ch. 11, n. 51
West Jewell Tin Co. *See* Weston's Case.
West London Commercial Bank, Re. *See* Whiteley's Case.
———————————— *v.* Kitson, 13 Q. B. Div. 360; 53 L. J. Q. B. 345; 50 L. T. 656; 32 W. R. 757 395
West London Rail. Co. *v.* Bernard, 1 Dav. & Mer. 397; 13 L. J. Q. B. 68; 3 Q. B. 873 334
West of England Bank, Re (Booker, Ex parte), 14 Ch. D. 317; 49 L. J. Ch. 400; 42 L. T. 619; 28 W. R. 809 ... 45
———————————— (Branwhite, Ex parte), 48 L. J. Ch. 463; 40 L. T. 652; 27 W. R. 646 488
———————————— (Brown, Ex parte), 12 Ch. D. 823; 48 L. J. Ch. 604; 41 L. T. 27; 27 W. R. 869 ... 489
———————————— (Budden and Roberts, Ex parte). *See* Budden and Roberts, Ex parte.
———————————— (Hatcher, Ex parte), 12 Ch. D. 284; 48 L. J. Ch. 723; 41 L. T. 181; 27 W. R. 907 ... 471
West of England Paper Mills *v.* Gilbert, 61 L. J. Ch. 92 343
West Riding Building Society, Re, 45 Ch. D. 463; 59 L. J. Ch. 823; 63 L. T. 483; 39 W. R. 74 253
West Yorkshire Darracq Agency, Ltd., [1908] W. N. 236 146

PAGE
West, Ex parte (Mount Morgan (West) Gold Mine, Re), 56 L. T. 662 ... 142
Westbourne Grove Drapery Co., Re, 39 L. T. 30; 27 W. R. 37 428
Westbourne Grove Drapery Co., Re, 5 Ch. D. 248; 46 L. J. Ch. 525; 36 L. T. 439; 25 W. R. 509... ... ... 428, 483, 488
Westbury *v.* Twigg, [1892] 1 Q. B. 77; 61 L. J. Q. B. 32; 66 L. T. 225; 40 W. R. 208 509
Western and Brazilian Telegraph Co. *v.* Bibby, 42 L. T. 821 426
Western Bank of Scotland *v.* Addie, L. R. 1 H. L. (Scotch) 145 109, 140
——— *v.* Baird's Trustees, 11 Scotch Sessions Cases (3rd Series), 96 ... ... 341, 361
Western Building Society *v.* Martin, 17 Q. B. Div. 609; 55 L. J. Q. B. 382; 54 L. T. 822; 34 W. R. 630 112
Western Counties Steam Bakeries and Milling Co. (Parsons and Robjent's Case), [1897] 1 Ch. 617; 66 L. J. Ch. 354; 76 L. T. 239; 45 W. R. 418 463
Western of Canada Oil Co., Re, 17 Eq. 1; 43 L. J. Ch. 184 444
———, 6 Ch. D. 109; 46 L. J. Ch. 683; 25 W. R. 787 451
———, W. N. (1874) 148 530
Western Waggon Co. *v.* West, [1892] 1 Ch. 271; 61 L. J. Ch. 244; 66 L. T. 402; 40 W. R. 182 265
Westminster Syndicate (1909) 99 L. T. 924 279
Westmoreland Slate Co., Re, 66 L. T. 52; 40 W. R. 171 452
——— *v.* Feilden, [1891] 3 Ch. 15; 60 L. J. Ch. 680; 65 L. T. 428; 40 W. R. 23 ... ... 172, 477
Weston's Case (Cobre Copper Mining Co., Re), 5 Ch. 614; 39 L. J. Ch. 753; 23 L. T. 287; 18 W. R. 937 475
——— (Contract Corporation, Re), 6 Eq. 17 469
——— (Smith, Knight & Co., Re), 4 Ch. 20; 38 L. J. Ch. 49; 19 L. T. 337; 17 W. R. 62 ... ... 197, 506
——— (West Jewell Tin Co., Re), 10 Ch. Div. 579; 48 L. J. Ch. 425; 40 L. T. 43; 27 W. R. 310 353
Weston *v.* New Guston Co., 1 Megone, 225, 352; 62 L. T. 275; 64 L. T. 815; 60 L. T. 805 ... ... 516, 519
Wey and Arun Canal Co., Re, 4 Eq. 197; 36 L. J. Ch. 509; 16 L. T. 150 ... ... 417, 435
Weymouth Packet Co., Re, [1891] 1 Ch. 66; 60 L. J. Ch. 93; 63 L. T. 686; 39 W. R. 49; 2 Meg. 366 ... ... 40, 41, 137, 503
Whaley Bridge Calico Co. *v.* Green and Smith, 5 Q. B. Div. 109; 49 L. J. Q. B. 326; 41 L. T. 674; 28 W. R. 351 ... ... 59, 61, 351
Wheal Buller Consols, Re (Jobbing, Ex parte), 38 Ch. Div. 42; 57 L. J. Ch. 333; 58 L. T. 823; 36 W. R. 723 138
Wheatcroft's Case (Matlock Old Bath Co., Re), 42 L. J. Ch. 853; 29 L. T. 324 ... ... 132, 144
Wheatley *v.* Silkstone, &c., Coal Co., 29 Ch. D. 715; 54 L. J. Ch. 778; 52 L. T. 798; 33 W. R. 797... 259
Whinney, Ex parte (Sanders, Re), 13 Q. B. D. 476; 1 Morr. 185... ... 477
White's Case, 12 Ch. D. 511 166
———, 3 Eq. 84; 36 L. J. Ch. 121 215
White *v.* Carmarthen Rail. Co., 1 H. & M. 786 256
——— *v.* Haymen, 1 Cab. & El. 101 ... ... 124, 125, 383, 390
White *v.* Land Co., W. N. (1883) 174 408
Whitechurch (George), Ltd. *v.* Cavanagh, [1902] A. C. 117; 71 L. J. K. B. 400; 85 L. T. 349; 50 W. R. 218 190
Whitehall Court, Ltd., Re, 3 Times L. R. 402 373

PAGE

Whitehaven Joint Stock Banking Co. *v.* Reed, 54 L. T. 360 ... 252, 395
Whitehead Brothers, Re, [1900] 1 Ch. 804; 69 L. J. Ch. 607; 82 L. T. 670; 48 W. R. 585 169
Whitehouse's Case (Russian, &c., Ironworks Co., Re), L. R. 3 Eq. 790; 15 W. R. 892 142
Whitehouse & Co.'s Case, 9 Ch. D. 595; 47 L. J. Ch. 801; 39 L. T. 415; 27 W. R. 181 ... ... 161, 488
Whiteley's Case, [1900] 1 Ch. 365; 69 L. J. Ch. 250; 82 L. T. 134; 48 W. R. 440 142
——— (West London Commercial Bank, Re), 60 L. T. 807; 1 Meg. 154 144
Whiteley Exerciser Co. *v.* Gamage, [1898] 2 Ch. 405; 67 L. J. Ch. 560; 79 L. T. 20; 5 Mans. 249 428
Whitfield *v.* South Eastern Rail Co., E. B. & E. 115; 27 L. J. Q. B. 229 109
Whitley, Re. *See* Steel's Case.
Whitley Partners, Re (Callan, Ex parte), 32 Ch. Div. 337; 55 L. J. Ch. 540; 54 L. T. 912; 34 W. R. 505 ... ... 12, 136
Whittaker *v.* Kershaw, 45 Ch. D. 320; 60 L. J. Ch. 9; 63 L. T. 203; 39 W. R. 23 478
Whitevan *v.* Piercy. *See* Piercy In Re.
Whitworth's Case (Silkstone Coal Co., Re), 19 Ch. Div. 118; 51 L. J. Ch. 71; 45 L. T. 449; 30 W. R. 33 ... ... 453, 454
Wigfield *v.* Potter (1882), 45 L. T. 612 5
Wilcox & Co. *See* Hilder *v.* the Co.
Wild *v.* South Africa & Co. *See* South Africa Cold Storage Co.
Wildy *v.* Mid-Hants Rail. Co., 18 L. T. 73; 16 W. R. 409 267
Wilkinson's Case (Madrid Bank, Re), 2 Ch. 536; 36 L. J. Ch. 489; 15 W. R. 499 ... ... 141, 212
Wilkinson *v.* Cummins, 11 Hare, 337 ... ... 152, 322
Williams' Case, 9 Eq. 225, n. 195
——— ——— (Humber Iron Works and Shipbuilding Co., Re), 1 Ch. D. 576; 45 L. J. Ch. 48 ... ... 475, 476
Williams, Ex parte. *See* Madrid Bank, Re.
——— ——— (Kit Hill Tunnel Co., Re), 16 Ch. D. 590; 50 L. J. Ch. 303; 44 L. T. 336; 29 W. R. 419 495
Williams *v.* Hopkins. *See* Hopkins, Re; Williams *v.* Hopkins.
Willis, Re, 21 Q. B. D. 384; 57 L. J. Q. B. 634; 36 W. R. 793 241
Willmott *v.* London Celluloid Co., 34 Ch. D. 147; 56 L. J. Ch. 89; 55 L. T. 696; 35 W. R. 145 ... ... 259, 449
———, 52 L. T. 642 278
Wills *v.* Murray, 4 Ex. 843; 19 L. J. Ex. 209 ... ... 98, 172
Wilmer *v.* McNamara & Co., [1895] 2 Ch. 245; 64 L. J. Ch. 516; 72 L. T. 552; 43 W. R. 519 ... ... 311, 316
Wilson's Case, 8 Eq. 240; 38 L. J. Ch. 526; 21 L. T. 164; 17 W. R. 979 213
Wilson, Ex parte (Crenver, &c., Mining Co., Re), 8 Ch. 45; 42 L. J. Ch. 81; 27 L. T. 597; 21 W. R. 46 ... ... 130, 344
——— ——— (Natal Investment Co., Re), 20 L. T. 962 ... 133, 134
——— *v.* Bury, Lord, 5 Q. B. Div. 518; 50 L. J. Q. B. 90; 44 L. T. 454; 29 W. R. 269 ... ... 286, 394
——— *v.* Miers, 10 C. B. N. S. 348; 3 L. T. 780 300
——— *v.* Natal Investment Co., 36 L. J. Ch. 312; 15 L. T. 658 426
——— *v.* West Hartlepool Rail. Co., 2 De G. J. & Sm. 475 ... 226, 227
Wiltshire Iron Co., Re (Pearson, Ex parte), 3 Ch. 443; 37 L. J. Ch. 554; 18 L. T. 38; 16 W. R. 386 ... ... 113, 447
Wincham Shipbuilding Co., Re. *See* Hallmark's Case; Poole's Case.

PAGE

Winstone's Case (Albion Life Assurance Society, Re), 12 Ch. D. 239; 48 L. J. Ch. 607; 40 L. T. 838; 27 W. R. 752 144
Withernsea Brickworks Co., Re, 16 Ch. D. 337; 50 L. J. Ch. 185; 43 L. T. 713; 29 W. R. 718 ... ... 424, 482, 483
Wollaston's Case (Home Assurance Association, Re), 4 De G. & J. 437; 28 L. J. Ch. 721 207
Wood's Case (National Provident Society, Re), 15 Eq. 236; 42 L. J. Ch. 403; 21 W. R. 645; 1 Megone, 265 132
—— Ships Woodite Protection Co., 62 L. T. 760; 2 Megone, 160 80, 286
Wood, Ex parte, 3 De G. & J. 85 132
——, Re (Naden, Ex parte), 9 Ch. 670; 43 L. J. Bk. 121; 30 L. T. 743; 22 W. R. 936 485
—— *v.* Anderston, 36 W. R. 918 408
—— *v.* Odessa Waterworks Co., 42 Ch. D. 636; 58 L. J. Ch. 628; 37 W. R. 733 ... ... 219, 321
—— *v.* Woodhouse and Rawson, Ltd., W. N. (1896) 4 462
Woodgate *v.* Godfrey, 5 Ex. D. 24; 49 L. J. Ex. 1; 42 L. T. 34; 28 W. R. 88 ... ... 240, 244
Worcester, Ex parte, 37 L. J. Bank. 23; 3 Ch. 555 99
Worcester Corn Exchange Co., Re, 3 De G. M. & G. 180; 22 L. J. Ch. 593; 17 Jur. 721; 1 W. R. 171 255
Wragg, Ltd., Re, [1897] 1 Ch. 796; 66 L. J. Ch. 419; 76 L. T. 397; 45 W. R. 557 167
Wreck Recovery Co., Re, 15 Ch. D. 353; 43 L. T. 190 467
Wrexham, Mold and Connah's Quay Rail. Co., Re, [1899] 1 Ch. 440; 68 L. J. Ch. 270; 80 L. T. 130; 47 W. R. 464 255
Wright's Case (London and Mediterranean Bank, Re), 7 Ch. 55; 41 L. J. Ch. 1; 25 L. T. 471; 20 W. R. 45 ... ... 144, 209
Wright, Ex parte (Anglo-Romano Water Co., Re), 5 Ch. 435; 39 L. J. Ch. 771; 23 L. T. 130; 18 W. R. 777 ... ... 480, 515
—— —— —— (London and Birmingham Flint Glass and Alkali Co., Re), 1 De G. F. & J. 257; 28 L. J. Bk. 17; 7 W. R. 539 436
—— *v.* Horton, 12 App. Cas. 371; 56 L. J. Ch. 873; 56 L. T. 782; 36 W. R. 17 237
Wyatt *v.* Darenth Valley Rail. Co., 2 C. B. N. S. 114 162
Wye Valley Rail. Co. *v.* Hawes, 16 Ch. Div. 489; 50 L. J. Ch. 225; 43 L. T. 715; 29 W. R. 177 359
Wyley *v.* Exhall Coal Mining Co., Re, 33 Beav. 539 426
Wynne's Case (United Ports Insurance Co., Re), 8 Ch. 1002; 43 L. J. Ch. 138; 29 L. T. 381; 21 W. R. 895 ... ... 131, 137, 212
Wyoming (State of) Syndicate, In re, [1901] 2 Ch. 431; 70 L. J. Ch. 727; 84 L. T. 868; 49 W. R. 650; 91 L. T. 545 ... ... 330, 331

X.

X Company, Ltd., In re, [1907] 2 Ch. 92; 76 L. J. Ch. 529; 97 L. T. 50; 14 Mans. 227 149

Y.

Yarborough *v.* Bank of England, 16 East, 6 109
Yates, Re (Batcheldor *v.* Yates), 38 Ch. D. 112; 57 L. J. Ch. 697; 59 L. T. 47; 36 W. R. 563 241

PAGE

Yelland's Case, 4 Eq. 350 490
Yeoland Consols, Re (No. 2), 58 L. T. 922 130
——————— (Manley's Case), 2 Meg. 74 475
Yetts *v.* Norfolk Rail. Co., 3 De G. & Sm. 293 110
Yolland, Husson, & Birkett, Ltd. (Leicester *v.* The Company), [1907] 2 Ch. 471; [1908] 1 Ch. 152; 77 L. J. Ch. 43; 97 L. T. 824 248
York Glass Co., Re (Robinson, Ex parte), W. N. (1889) 79; 60 L. T. 744; 37 W. R. 471; 1 Meg. 206 ... ... 40, 58
—— and North Midland Rail. Co. *v.* Hudson, 16 Beav. 485; 22 L. J. Ch. 529; 1 W. R. 187 ... ... 347, 353, 354
—— Tramway Co. *v.* Willows, 8 Q. B. Div. 685; 51 L. J. Q. B. 257; 46 L. T. 296; 30 W. R. 624 ... ... 88, 89, 97, 324
Yorkshire Fibre Co., Re, 9 Eq. 650; 18 W. R. 541 450
Yorkshire Railway Waggon Co. *v.* Maclure, 21 Ch. Div. 309; 51 L. J. Ch. 857; 47 L. T. 290; 30 W. R. 761 ... ... 254, 298
Yorkshire Woolcombers' Association, *Re* (Houldsworth *v.* The Company), [1904], A. C. 355 259
Youl *v.* Great Western Rail. Co., 20 L. T. 74 319
Young, Ex parte (British National Life Assurance Co., Re), 27 W. R. 443 486
—— *v.* Naval, Military, &c., Syndicate of South Africa, [1905] 1 K. B. 687; 74 L. J. K. B. 302; 92 L. T. 458; 53 W. R. 447 ... 82, 347
—— *v.* Payne (David) & Co., [1904] 2 Ch. 608; 73 L. J. Ch. 849; 91 L. T. 777 ... ... 99, 251
—— *v.* South African and Australian Exploration Syndicate, [1896] 2 Ch. 268; 74 L. T. 527; 65 L. J. Ch. 638; 44 W. R. 509 328, 333
Ystalyfera Gas Co., W. N. (1887) 30; 3 Times L. R. 321 178
Yuill *v.* Greymouth, &c., Coal Co. *See* Greymouth Coal Co.
Yuruari Co., Re, 6 Times L. R. 119 194

Z.

Zoedone Co., Re, 53 L. J. Ch. 465; 49 L. T. 654; 32 W. R. 312 509
——————— (Higgins, Ex parte), 60 L. T. 383; 1 Megone, 158 137, 213
Zuccani *v.* Nacupai Gold Mining Co., 61 L. T. 176 519
Zulueta's Claim (London, Hamburgh, &c., Bank, Re), 5 Ch. 444; 39 L. J. Ch. 598; 18 W. R. 778 39

TABLE OF STATUTES.

PAGE

4 Edw. 3, c. 7 (Executor's Action of Trespass for Wrong to Testator, 1330) 364, 373
21 James 1, c. 15 (Limitation of Time, 1623-4) ... 13, 145, 184, 224, 323, 356, 365, 387, 497
s. 3 387
29 Car. 2, c. 3 (Statute of Frauds, 1677), s. 4 ... ... 168, 226, 227
4 & 5 Anne, c. 3 (Limitation of Time, 1705) 323, 356, 365, 387, 497
9 Geo. 4, c. 14 (Lord Kinterden's Act), s. 6 110
10 Geo. 4, c. 56, s. 27 112
s. 29 112
3 & 4 Will. 4, c. 42 (Amendment of Law, &c., 1833), s. 2 364
s. 3 13
s. 28 ... ... 177, 492
c. 104 (The Administration of Estates Act, 1833) 478
6 & 7 Will. 4, c. 32 (Benefit Building Societies Act, 1836) 30, 31
s. 4 112
1 & 2 Vict. c. 106 (Benefices Plurality, 1838), s. 28 84
s. 31 84
3 & 4 Vict. c. 110 (Loan Societies Act, 1840), s. 17 ... ... 30, 492
4 & 5 Vict. c. 14 (The Trading Partnerships Act, 1841) 84
7 & 8 Vict. c. 110 (Joint Stock Companies Registration, 1844) 5, 30, 58 201, 415, 417
(————————————————), s. 20 102, 223
s. 54 ... 186
c. 110 (Joint Stock Banks, 1844) 62
8 & 9 Vict. c. 16 (Companies Clauses Consolidation Act, 1845) 6, 36, 42, 174, 188, 515
s. 3 90
s. 7 180
s. 8 157
s. 9 ... ... 154, 156
s. 14 185
ss. 14-17 186
s. 15 193
s. 16 195
s. 18 ... ... 187, 199
s. 20 187
ss. 28, 29 55
ss. 29-35 205
s. 36 ... ... 3, 162, 163, 526
s. 37 162
s. 38 234
ss. 38-55 266

PAGE

8 & 9 Vict. c. 16 (Companies Clauses Consolidation Act, 1845)—*continued.*
s. 41 234
s. 45 236
s. 53 275
s. 54 275
s. 61 ... ... 47, 54
ss. 62–64 54
s. 65 ... ... 35, 67
s. 66 ... ... 324, 325
s. 67 327
s. 69 327
s. 70 330
s. 71 ... ... 327, 329
s. 72 332
s. 73 332
s. 75 335
s. 76 ... ... 336, 337
s. 77 336
s. 78 335
s. 79 335
s. 83 ... ... 90, 327
s. 85 ... ... 85, 222
s. 86 ... ... 90, 222
s. 87 ... ... 90, 222
s. 88 89
s. 89 ... ... 88, 89
s. 90 ... ... 44, 95, 98
s. 91 ... ... 78, 88, 93, 95, 328
s. 92 ... ... 96, 97
s. 95 96
s. 96 96
s. 97 226
s. 98 333
s. 99 103
s. 100 82
s. 101 327
ss. 101–108 305
s. 118 327
s. 120 327
s. 121 ... ... 36, 43, 47, 49
s. 138 329
s. 139 329
Sch. C 267, 284
Sch. F 336
c. 17 (Companies Clauses, Scotland, 1845) ... 6, 188, 266, 515
c. 18 (Lands Clauses Act, 1845) 437
s. 127 297
s. 128 298
11 & 12 Vict. c. 45 (Winding-Up Act, 1848) 62
13 & 14 Vict. c. 83 (Abandonment of Railways Act, 1850), s. 31 417
14 & 15 Vict. c. 49 (Local Acts, Preliminary Inquiries, 1851) 65
s. 7 ... 58
16 & 17 Vict. c. 34 (Income Tax Act, 1853), s. 40 354
17 & 18 Vict. c. 36 (Bills of Sale Act, 1854) 247
18 & 19 Vict. c. 111 (Bills of Lading, 1854–5) 227

PAGE

19 & 20 Vict. c. 47 (Joint Stock Companies Act, 1856) ... 5, 7, 21, 30, 415
s. 15 180
s. 20 186
c. 97 (Limitation of Time, 1856), s. 12 ... ... 365, 387
20 & 21 Vict. c. vi. (Carew Estate Act, 1857) 99
c. 14 (Joint Stock Companies Act, 1857) 7, 415
c. 49 (Joint Stock Banking Companies Act, 1857) ... 7, 415
21 & 22 Vict. c. 91 (Joint Stock Banking Companies, 1858) ... 6, 415
22 & 23 Vict. c. 35 (Law of Property Amendment Act, 1859), s. 29 ... 478
23 & 24 Vict. c. 36 (Law of Property Act, 1860) 527
24 & 25 Vict. c. 96 (Larceny Act, 1861), s. 81 ... ... 398, 399
s. 82 ... ... 398, 399
s. 83 ... ... 398, 399
s. 84 399
26 & 27 Vict. c. 118 (Companies Clauses Act, 1863), part 1 6
part 2 ... ... 6, 48
part 3 6, 234, 266, 267, 274
part 4 6
ss. 9–11 208
s. 12 337
s. 13 337
s. 14 322
s. 16 49
s. 21 ... ... 42, 164
s. 22 ... ... 252, 337
s. 23 279
s. 24 ... ... 268, 279, 303
s. 25 275
s. 28 236
s. 30 267
27 & 28 Vict. c. 121 (Railways Construction Faculties Act, 1864) 5, 58, 218
28 & 29 Vict. c. 78 (Mortgage Debenture Act) 18
c. 27 (Private Bill Costs, 1865) 65
s. 9 58
30 & 31 Vict. c. 29 (Sale and Purchase of Bank Shares Act, 1867) ... 180
c. 127 (Railway Companies Act, 1867) 527, 529
ss. 6–22 525
ss. 8–13 525
ss. 7, 9 526
ss. 14–19 526
s. 20 526
s. 24 267
s. 25 ... 53, 121, 136, 165–169, 219, 292, 472
s. 30 317
s. 31 417
s. 38 ... 65, 118, 119, 122–125, 391
31 & 32 Vict. c. 119 (Regulation of Railways Act, 1868) ss. 3–5 305
s. 13 54
32 & 33 Vict. c. 19 (Stannaries Act, 1865), s. 4 97
c. 48 (Companies Clauses Act, 1869), s. 4 254
s. 5 164
s. 6 ... ... 42, 164

PAGE

32 & 33 Vict. c. 48 (Companies Clauses Act, 1869), s. 7 42
c. 71 (Bankruptcy Act, 1869), s. 15 (5) 270
s. 31 485
s. 49 357
33 & 34 Vict. c. 20 (Mortgage Debenture (Amendment) Act, 1870) ... 18
34 & 35 Vict. c. 31 (Trade Union Act), s. 5 ... ... 4, 10, 296
c. 78 (Tramways Act, 1870) 58
s. 42 424
c. 97 (Stamp Act, 1870), s. 17 134
Indian Contract Act, 1872, s. 194 361
s. 212 360
37 & 38 Vict. c. 42 (Building Societies Act, 1874) 5, 30, 31, 302
s. 15 ... ... 231, 253
s. 25 302
s. 34 112
38 & 39 Vict. c. 60 (Friendly Societies Act, 1875) 30
s. 22 113
40 & 41 Vict. c. 77 (Supreme Court of Judicature, 1875), s. 10 235, 425, 482, 483
39 & 40 Vict. c. 45 (Industrial Societies Act, 1876) 31
40 & 41 Vict. c. 57 (Supreme Court of Judicature, Ireland, 1877), s. 28 (1) 236
41 & 42 Vict. c. 31 (Bills of Sale Act, 1878) 237, 240, 247
s. 3 243
s. 4 ... ... 241, 242, 243
s. 5 242
s. 6 241
s. 7 241
s. 9 247
s. 24 239
43 & 44 Vict. c. 39 (Partnership Act, 1890) 1
44 & 45 Vict. c. 41 (Married Women's Property (Scotland) Act, 1881) 471, 472
44 & 45 Vict. c. 41 (Conveyancing and Law of Property Act, 1881), s. 15 178
s. 19 258
s. 19 (1) 184
45 & 46 Vict. c. 43 (Bills of Sale Act, 1882) 237
s. 18 239
c. 61 (Bills of Exchange Act, 1882) 227
s. 57 492
s. 73 492
s. 89 492
c. 75 (Married Women's Property Act, 1882), s. 1 (3) ... 130
s. 1 (4) ... 130
s. 2 472
s. 5 471
s. 6 471
s. 7 471
s. 9 188
s. 19 ... 130
46 & 47 Vict. c. 52 (Bankruptcy Act, 1883), s. 4 (1) (g) 461
s. 20 (1) 199
s. 30 357
s. 30 (1) 384
s. 37 ... ... 481, 544

PAGE

46 & 47 Vict. c. 52 (Bankruptcy Act, 1883), s. 37 (1) 357
s. 37 (1) (e) 384
s. 38 ... ... 482, 492, 493
s. 44 (2) (iii) 270
s. 44 (3) 183
s. 48 448
s. 50 188
s. 54 199
s. 55 ... ... 145, 208, 478
s. 168 494
Sch. 1 (r. 10) 495
Sch. 2 (rr. 9–17) 495
(r. 19) 494, 554
(r. 20) 491
47 & 48 Vict. c. 41 (Building Societies Disputes, 1884), s. 2 112
c. 43 (Summary Jurisdiction Act) 401
50 & 51 Vict. c. 47 (Trustee Savings Bank Act, 1887), s. 3 417
51 & 52 Vict. c. 42 (Mortmain and Charitable Uses Act, 1888), s. 2 299, 303
c. 48 (Companies Clauses Consolidation Act, 1888) ... 6
c. 59 (Trustee Act, 1888), s. 1 (3) 75, 356
s. 8 ... ... 75, 356
c. 60 (Preferential Payments in Bankruptcy (Ireland) Act, 1888) 6
c. 62 (Preferential Payments in Bankruptcy Act, 1888) ... 6
52 & 53 c. 63 (Interpretation Act, 1889), s. 18 ... ... 9, 156
53 & 54 Vict. c. 5 (Lunacy Act, 1890), ss. 133, 136, 139 187
53 & 54 Vict. c. 39 (Partnership Act, 1890) 1
c. 44 (Judicature Act, 1890), s. 5 453
54 & 55 Vict. c. 35 (Bills of Sale Act, 1891), s. 1 243
c. 39 (Stamp Act, 1891) 158
s. 1 57
s. 11 170
s. 12 149
s. 14 134
s. 17 ... ... 169, 197
s. 80 336
s. 93 228
s. 107 57
s. 115 57
Sched. 1 57
c. 43 (Forged Transfers Act, 1891) 189, 269
55 & 56 Vict. c. 36 (Forged Transfers Act, 1892) 189, 269
c. 39 (National Debt (Stockholders Relief) Act, 1892), s. 6 199
56 & 57 Vict. c. 39 (Industrial and Provident Societies Act, 1893) ... 5, 30
s. 33 ... ... 225, 228
s. 35 226
s. 36 302
s. 38 302
s. 49 126
s. 58 ... ... 417, 430, 431
c. 53 (Trustee Act, 1893)... ... ... 187, 540
c. 63 (Married Women's Property Act, 1893), s. 1 130
c. 71 (Sale of Goods Act, 1893), s. 4 ... ... 129, 180, 226, 227
57 & 58 Vict. c. 16 (Supreme Court of Judicature (Procedure) Act, 1894) 446
c. 47 (Building Societies Act, 1894) 417, 430

PAGE

57 & 58 Vict. c. 12 (Indian Railways Act, 1894) 318
s. 8 30
s. 17 302
59 & 60 Vict. c. 45 (Stannaries Court (Abolition) Act, 1896) 431
60 & 61 Vict. c. 19 (Preferential Payments in Bankruptcy Amendment Act, 1897) 6
61 & 62 Vict. c. 26 (Companies Act, 1898) 169
62 & 63 Vict. c. 9 (Finance Act, 1899), s. 8 263
s. 9 134
63 & 64 Vict. c. 48 (Companies Act, 1900),
s. 33 65
s. 35 65
4 Edw. 7, c. 23 (Licensing Act, 1904) 273
6 Edw. 7, c. 58 (Workmen's Compensation Act, 1906), s. 5 500
7 Edw. 7, c. 24 (Limited Partnership Act, 1907) 1
Rules 416
8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908),
s. 1 (C. A. 1862, s. 4) 4, 5
s. 2 (C. A. 1862, ss. 6, 7; 1907, s. 37)... ... ...4, 10, 21, 22
s. 3 (C. A. 1862, s. 8) 12, 16, 23, 24, 47, 137
s. 4 (C. A. 1862, s. 9; 1900, s. 27) ... 12, 16, 22, 23, 24, 47
s. 5 (C. A. 1862, s. 10) 13, 16
s. 6 (C. A. 1862, s. 11) 13
s. 7 (C. A. 1862, s. 12) 18, 23
s. 8 (C. A. 1862, ss. 13, 20) 15, 16, 167, 337
s. 9 (Cos. (Memo. of Assoc.) Act, 1890, s. 1) 19, 20, 21, 290, 291, 337, 401, 524
s. 10 (C. A. 1862, s. 14)... 25
s. 11 (C. A. 1862, s. 15)... ... ... 7, 14, 24
s. 12 (C. A. 1862, ss. 14, 16) 24
s. 13 (C. A. 1862, s. 50)... ... ... 25, 337
s. 14 (C. A. 1862, ss. 11, 16) 13, 92, 128, 219
s. 15 (C. A. 1862, ss. 17, 174) 10, 288
s. 16 (C. A. 1862, s. 18)... ... ... 11, 299, 408
s. 17 (C. A. 1877, s. 6; 1900, ss. 1, 34) ... 11, 12, 399, 416
s. 18 (C. A. 1862, s. 19)... 401
s. 19 (C. A. 1862, s. 21)... ... ... 4, 11, 299
s. 20 (C. A. 1867, s. 23; 1907, s. 42) 4, 12, 20
s. 21 (C. A. 1900, s. 27)... 23
s. 22 (C. A. 1862, s. 22)... ... ... 155, 180, 186, 190, 191
s. 23 (C. A. 1862, s. 31)... 188
s. 24 (C. A. 1862, s. 23)... ... ... 135, 155, 171, 520
s. 25 (C. A. 1862, s. 25)... ... ... 154, 156, 162, 401, 461
s. 26 (C. A. 1862, ss. 26, 27; 1900, s. 19; 1907, ss. 7, 20, 21) 156, 200, 288, 289, 399, 401
s. 27 (C. A. 1862, ss. 26 (5), 30) 156, 187
s. 28 (C. A. 1867, s. 26) 185
s. 29 (C. A. 1862, s. 24)... ... ... 187, 199
s. 30 (C. A. 1862, s. 32; 1907, s. 50) 156, 159, 402
s. 32 (C. A. 1862, ss. 35, 36) 156, 162, 164, 193, 212-216, 290
s. 33 (C. A. 1862, s. 37)... ... ... 423, 471, 474, 475
s. 34 (C. A. (Colonial Registers) Act, 1883, ss. 2, 3; 1907, s. 43) 156, 290, 291
s. 35 (C. A. (Colonial Registers) Act, 1883, s. 3) 156
s. 36 (C. A. (Colonial Registers) Act, 1883, s. 3; Revenue Act, 1889, s. 18) 156, 157

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
s. 37 (C. A. 1867, ss. 27, 28, 29, 30, 31, 32) ... 47, 56, 86, 193
s. 38 (C. A. 1867, ss. 34, 35, 36) 399
s. 39 (C. A. 1867, s. 24)... 323
s. 40 (C. A. 1880, ss. 3, 4, 5, 6) ... 24, 53, 289, 290, 291, 337
s. 41 (C. A. 1862, s. 12; 1867, ss. 21, 22; 1877, s. 5; 1900, s. 29) 24, 47, 48, 49, 54, 55, 56, 337, 402
s. 42 (C. A. 1862, s. 28; 1907, s. 50) 24, 55, 290
s. 43 (C. A. 1862, s. 29) 24, 55
s. 44 (C. A. 1862, s. 34) 14, 24, 49, 55, 290, 402
s. 45 (C. A. 1907, s. 39) 24, 26, 47, 56, 153, 337
s. 46 (C. A. 1867, s. 9; 1877, s. 3) ... 24, 43, 47, 49, 51, 337
s. 47 (C. A. 1867, ss. 11, 12) 532
s. 48 (C. A. 1867, s. 10; 1877, s. 4) 52
s. 49 (C. A. 1867, ss. 13, 14; 1877, s. 4) 52
s. 50 (C. A. 1867, ss. 11, 12) 52
s. 51 (C. A. 1867, ss. 9, 15; 1877, s. 4) 52, 291
s. 52 (C. A. 1867, ss. 16, 18) 402
s. 53 (C. A. 1867, ss. 16, 17; 1907, s. 50) 52, 53
s. 54 (C. A. 1867, s. 19) 53, 400
s. 55 (C. A. 1877, s. 4) 54
s. 56 (C. A. 1900, s. 27) 24, 47, 49, 532
s. 57 (C. A. 1879, ss. 4, 9) 13, 23
s. 58 (C. A. 1879, s. 5; 1907, s. 50) 13, 23
s. 59 (C. A. 1879, s. 5) 23, 24, 161, 163, 235, 337
s. 60 (C. A. 1867, ss. 4, 7) 10, 13, 286, 402
s. 61 (C. A. 1867, s. 8) 23, 337, 402
s. 62 (C. A. 1862, ss. 39, 40) 16, 290, 403
s. 63 (C. A. 1862, ss. 41, 42) 16, 227, 293, 393, 403
s. 64 (C. A. 1862, s. 49; 1907, s. 24) 305, 324, 403
s. 65 (C. A. 1900, s. 12; 1907, s. 22) 169, 220, 292, 305, 308, 325, 326, 399
s. 66 (C. A. 1900, s. 13) 330
s. 67 (C. A. 1862, s. 52) 329, 331, 333, 335
s. 68 (C. A. 1907, s. 24) 336
s. 69 (C. A. 1862, s. 51, 67; 1907, ss. 25, 45) ... 7, 338, 339
s. 70 (C. A. 1862, ss. 53, 54; 1907, s. 45) ... 290, 340, 403, 507
s. 71 (C. A. 1862, s. 67) 333, 334
s. 72 (C. A. 1900, s. 2; 1907, s. 1) ... 10, 87, 116, 292, 403
s. 73 (C. A. 1900, s. 3; 1907, s. 34) ... 85, 90, 181, 198, 403
s. 74 (C. A. 1862, s. 67) 103
s. 75 (C. A. 1862, ss. 45, 46; 1900, s. 20) 290, 403
s. 76 (C. A. 1867, s. 37) 226
s. 77 (C. A. 1862, s. 47) 225
s. 79 (Companies Seals Act, 1864, ss. 2, 3, 4, 5, 6) ... 6
s. 80 (C. A. 1900, s. 9; 1907, s. 3) ... 35, 115, 116, 292, 369, 374, 403, 544, 547
s. 81 (C. A. 1900, s. 10; 1907, ss. 1, 2) 58, 65, 142, 115, 125, 169, 292, 308, 369, 389-391, 541, 545, 546, 547, 548
s. 82 (Directors Liability Act, 1890, ss. 3, 4, 5; C. A. 1907, s. 1)... ... ... 7, 70, 115, 169, 292
s. 83 (C. A. 1900, s. 11; 1907, s. 1) 115, 220
s. 84 (Directors Liability Act, 1890, ss. 3, 4, 5; 1907, s. 33) 58, 64, 115, 125, 365, 368-388, 506, 546

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
s. 85 (C. A. 1900, s. 4; 1907, s. 1) 33, 143, 146–149, 164, 212, 545
s. 86 (C. A. 1900, s. 5; 1907, s. 1) 147, 148, 212
s. 87 (C. A. 1900, s. 6; 1907, ss. 1, 4) ... 7, 11, 33, 34, 116 147, 220, 232, 292, 399, 404, 432
s. 88 (C. A. 1900, s. 7; 1907, ss. 6, 7) ... 149, 165, 166, 167, 169, 292, 399, 404, 521
s. 89 (C. A. 1900, s. 8; 1907, s. 8) ... 28, 35, 40, 66, 69, 70, 71, 72, 121, 140, 164, 517, 546
s. 90 (C. A. 1907, s. 7) 304
s. 91 (C. A. 1907, s. 9) 28, 317, 337
s. 92 (C. A. 1907, s. 5) 151, 185, 267, 271, 404
s. 93 (C. A. 1900, s. 34; 1907, ss. 10, 11) ... 238–249, 292, 293, 400
s. 94 (C. A. 1907, s. 11) 282, 292, 404
s. 95 (C. A. 1907, s. 41) 292, 400, 404
s. 96 (C. A. 1900, s. 15) 249
s. 97 (C. A. 1900, s. 16) 248
s. 98 (C. A. 1900, s. 17; 1907, s. 10) 245
s. 99 (C. A. 1900, s. 18; 1907, s. 10) 404
s. 100 (C. A. 1862, s. 43) 236, 248, 293, 404
s. 101 (C. A. 1862, s. 43; 1907, ss. 10, 17) ... 237, 248, 293, 405
s. 102 (C. A. 1907, s. 18) 264, 405
s. 103 (C. A. 1907, s. 14) 254
s. 104 (C. A. 1907, s. 15) 266
s. 105 (C. A. 1907, s. 16) 249, 265
s. 106 (C. A. 1907, s. 36) 258
s. 107 (Preferential Payments in Bankruptcy Amendment Act, 1897, ss. 3, 4, 5) 262
s. 108 (C. A. 1862, s. 44; 1907, s. 40) 293, 405
s. 109 (C. A. 1862, ss. 56, 57, 58, 59; 1907, s. 44) ... 159, 405
s. 110 (C. A. 1862, s. 60) 159, 337, 405
s. 111 (C. A. 1862, s. 61) 159
s. 112 (C. A. 1879, ss. 7, 8; 1900, ss. 21, 22; 1907, s. 19) ... 95, 305–308, 399, 463
s. 113 (C. A. 1879, ss. 7, 8; 1907, ss. 19, 50) 305–308, 399, 405, 463
s. 114 (C. A. 1907, s. 23) 304
s. 115 (C. A. 1862, s. 48; 1907, s. 37) 23, 293
s. 116 (C. A. 1862, s. 62) 408
s. 120 (Joint Stock Companies Arrangement Act, 1870, s. 2; C. A. 1900, s. 24; 1907, s. 38) ... 24, 26, 153, 296, 428, 512, 514, 527, 533
s. 121 (C. A. 1907, s. 37) 4, 7, 338
s. 122 (Companies (W.-U.) Act, 1890, s. 31) 414
s. 123 (C. A. 1862, ss. 3[3], 90, 134; 1867, s. 5) ... 79, 160, 161, 177, 452, 469, 470, 488, 507
s. 124 (C. A. 1862, s. 74) 469
s. 125 (C. A. 1862, ss. 75, 90, 134) 477
s. 126 (C. A. 1862, ss. 76, 99, 105) 472, 473, 478, 479
s. 127 (C. A. 1862, ss. 75, 77) 472, 473, 478
s. 128 (C. A. 1862, s. 78) 471
s. 129 (C. A. 1862, s. 79; 1907, s. 37) ... 4, 326, 415, 432
s. 130 (C. A. 1862, s. 80; 1900, s. 12; 1907, s. 28)... ... 433

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
s. 131 (Companies (W.-U.) Act, 1890, s. 1) ... 19, 21, 49, 430, 431
s. 132 (Companies (W.-U.) Act, 1890, s. 2) 430
s. 133 (Companies (W.-U.) Act, 1890, s. 3) 431
s. 134 (C. A. 1862, s. 81) 431
s. 135 (C. A. 1862, s. 81; 1886, s. 5) 431
s. 137 (C. A. 1862, s. 82; 1867, s. 40; Companies (W.-U.) Act, 1890, s. 14; C. A. 1900, s. 12; 1907, ss. 28, 37) ... 326, 414, 432, 435, 436, 438, 442
s. 138 (C. A. 1862, s. 82) 447
s. 139 (C. A. 1862, s. 84; Companies (W.-U.) Act, 1890, s. 32) 415
s. 140 (C. A. 1862, s. 85) 294, 296, 422
s. 141 (C. A. 1862, s. 86; 1900, s. 12; 1907, s. 29) ... 326, 442, 443
s. 142 (C. A. 1862, s. 87) 296, 409, 422, 423, 509
s. 143 (C. A. 1862, s. 88) 290
s. 144 (C. A. 1862, s. 89) 294, 427
s. 145 (C. A. 1862, s. 91) 294, 444
s. 146 (C. A. 1862, ss. 92–94; Companies (W.-U.) Act, 1890, s. 4) 418
s. 147 (Companies (W.-U.) Act, 1890, s. 7) ... 295, 405, 455, 456, 459, 511
s. 148 (Companies (W.-U.) Act, 1890, s. 8) 457, 511
s. 149 (C. A. 1862, ss. 67, 85, 92–95; Companies (W.-U.) Act, 1890, s. 4) 418, 421, 511
s. 151 (C. A. 1862, ss. 95–97, 171; Companies (W.-U.) Act, 1890, s. 12) 464, 465, 467, 507
s. 152 (Companies (W.-U.) Act, 1890, ss. 4, 6) ... 295, 418, 419, 511
s. 156 (Companies (W.-U.) Act, 1890, s. 21) 295
s. 157 (Companies (W.-U.) Act, 1890, s. 22) 534
s. 158 (Companies (W.-U.) Act, 1890, ss. 23, 24) 294, 295, 501
s. 159 (Companies (W.-U.) Act, 1890, s. 25) 421
s. 161 (Companies (W.-U.) Act, 1890, s. 5) 419
s. 162 (Companies (W.-U.) Act, 1890, s. 4) ... 278, and see Errata
s. 163 (C. A. 1862, ss. 98, 99) 177, 451, 465, 468, 470, 474, 475, 507
s. 164 (C. A. 1862, s. 100) 451
s. 165 (C. A. 1862, s. 101; 1867, s. 6) ... 161, 177, 452–488
s. 166 (C. A. 1862, s. 102) 476, 479, 502–508
s. 168 (C. A. 1862, s. 106) 477
s. 169 (C. A. 1862, s. 107) 480
s. 170 (C. A. 1862, s. 109) 68, 479, 502
s. 172 (C. A. 1862, ss. 111–113) 290, 406, 428, 534
s. 173 (Companies (W.-U.) Act, 1890, s. 13) 451, 465, 468, 474, 477, 511
s. 174 (C. A. 1862, ss. 115, 117) 452–455
s. 175 (Companies (W.-U.) Act, 1890, s. 8) 295, 455, 457, 459, 511
s. 176 (C. A. 1862, s. 118) 460
s. 177 (C. A. 1862, s. 119) 460
s. 180 (C. A. 1862, ss. 122, 123) 427, 477
s. 182 (C. A. 1862, s. 129) 338, 340, 505

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
s. 183 (C. A. 1862, s. 130) 415, 506
s. 184 (C. A. 1862, s. 131) 506
s. 185 (C. A. 1862, s. 132) 293, 507
s. 186 (C. A. 1862, ss. 133, 141) 113, 205, 421, 502, 505, 507
s. 187 (C. A. 1907, s. 26) 400, 406, 420
s. 188 (C. A. 1907, s. 27) 294, 295, 400, 420, 505
s. 189 (C. A. 1862, s. 140) 421
s. 190 (C. A. 1862, s. 135) 338, 419, 421, 505
s. 191 (C. A. 1862, ss. 136, 137) 159, 295, 296, 338, 414, 508, 527, 528
s. 192 (C. A. 1862, ss. 161, 162) 46, 300, 338, 414, 508, 512, 524, 527, 528
s. 193 (C. A. 1862, s. 138; 1900, s. 25) 295, 422, 453, 509
s. 194 (C. A. 1862, s. 139) 509
s. 195 (C. A. 1862, ss. 142, 143; 1907, ss. 31, 50) ... 290, 293, 406, 428, 537, 538
s. 196 (C. A. 1862, s. 144) 510
s. 197 (C. A. 1862, s. 145) 295, 414, 437, 439
s. 198 (C. A. 1862, s. 146) 338, 415
s. 199 (C. A. 1862, s. 147) 510
s. 200 (C. A. 1862, s. 148) 422, 510
s. 201 (C. A. 1862, s. 149) 294, 444, 510
s. 202 (C. A. 1862, s. 150) 420, 421, 510
s. 203 (C. A. 1862, s. 151; 1886, s. 6) 422, 511
s. 205 (C. A. 1862, ss. 131, 153) 294, 447, 474, 507
s. 206 (C. A. 1862, s. 158) 294, 480, 487
s. 207 (Supreme Court of Judicature Act, 1875, s. 10; Supreme Court of Judicature (Ireland) Act, 1877, s. 28) 481, 486
s. 208 (C. A. 1886, s. 4) 481
s. 209 (Preferential Payments in Bankruptcy Act, 1888, s. 1; 1897, ss. 2, 4, 5; 1907, s. 30) 262, 296, 499, 500
s. 210 (C. A. 1862, s. 164) 106, 294, 448
s. 211 (C. A. 1862, s. 163) 294, 422, 423, 509
s. 212 (C. A. 1907, s. 13) 262
s. 213 (C. A. 1886, s. 3) 294, 422
s. 214 (C. A. 1862, ss. 159, 160; Companies (W.-U.) Act, 1890, s. 12) 338, 464, 479, 480, 527, 528
s. 215 (C. A. 1862, s. 165; Companies (W.-U.) Act, 1890, s. 10) 295, 296, 307, 355, 458, 460–464, 493
s. 216 (C. A. 1862, s. 166) 400
s. 217 (C. A. 1862, ss. 167, 168) 400, 401
s. 219 (C. A. 1862, ss. 91, 149; 1886, s. 4) 294, 444
s. 220 (C. A. 1862, s. 154) 471
s. 221 (C. A. 1862, s. 156) 295, 450
s. 222 (C. A. 1862, s. 155) 538
s. 223 (C. A. 1907, s. 31) ... 290, 357, 406, 417, 428, 538
s. 224 (Companies (W.-U.) Act, 1890, s. 15) 291, 406, 535, 536
s. 229 (Companies (W.-U.) Act, 1890, s. 11) 526
s. 230 (Companies (W.-U.) Act, 1890, s. 16) 537
s. 231 (Companies (W.-U.) Act, 1890, ss. 17, 18) ... 536, 537
s. 242 (C. A. 1880, s. 7; 1900, s. 26) 413, 417, 428, 538, 540
s. 243 (C. A. 1862, s. 174; 1877, s. 6) ... 159, 288, 357
s. 245 (C. A. 1862, s. 176; 1900, s. 31) 7

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
s. 246 (C. A. 1862, s. 177) 7, 415
s. 247 (C. A. 1879, ss. 4, 5) 7
s. 248 (C. A. 1862, s. 178) 7
s. 249 (C. A. 1862, ss. 179, 180) ... 13, 14, 290, 415, 514
s. 250 (C. A. 1862, s. 181) 14
s. 251 (C. A. 1879, s. 6) 14, 286
s. 252 (C. A. 1862, ss. 183, 185) 14, 290
s. 253 (C. A. 1862, s. 184) 14, 291
s. 254 (C. A. 1862, s. 186) 14
s. 255 (C. A. 1862, s. 187) 14
s. 256 (C. A. 1862, s. 188) 14, 294
s. 257 (C. A. 1862, s. 189) 14
s. 258 (C. A. 1862, s. 190) 14
s. 259 (C. A. 1862, s. 191) 14
s. 260 (C. A. 1862, s. 193) 14
s. 261 (C. A. 1862, s. 194) 14
s. 262 (C. A. 1862, s. 195) 14
s. 263 (C. A. 1862, s. 196; 1879, s. 10; Companies (Memorandum of Association) Act, 1890, ss. 1, 2) 14
s. 264 (Companies (Memorandum of Association) Act, 1890, s. 3) 14, 19, 21, 291
s. 265 (C. A. 1862, s. 197) 14, 294, 422, 427
s. 266 (C. A. 1862, s. 198) 14, 294, 422
s. 267 (C. A. 1862, s. 199) 416, 417
s. 268 (C. A. 1862, s. 199; Trustee Savings Banks Act, 1887, s. 3) 416, 417, 432, 433
s. 270 (C. A. 1862, s. 201) 294, 422
s. 271 (C. A. 1862, s. 202; Stannaries Act, 1869, s. 25) 294, 422
s. 274 (C. A. 1907, s. 35) 8, 400, 406, 409
s. 275 (C. A. 1908, s. 1) 8
s. 276 (C. A. 1900, s. 34; 1907, s. 49) 401
s. 278 (C. A. 1862, s. 69) 409, 466
s. 279 (C. A. 1907, s. 32) 359
s. 281 (C. A. 1900, s. 28) 308, 400
s. 282 (C. A. 1907, s. 48) 407
s. 283 (C. A. 1907, s. 47) 400
s. 285 (C. A. 1862, ss. 81, 175; 1867, s. 12; Joint Stock Companies Assurance Act, 1870, s. 3; C. A. (Colonial Registers) Act, 1883, s. 2; Companies (W.-U.) Act, 1890, s. 32; 1900, s. 30) 7, 19, 21, 25, 49, 76, 115, 341, 371, 408, 415, 452, 460, 507, 514, 515, 517, 537, 538, 539, 541
s. 286 482
s. 287 (Companies (W.-U.) Act, 1890, s. 31) 482
s. 294 4
Schedule I. (Table A) ... 7, 14, 24, 25, 38, 328, 463
" Article 42 49
" " 58 337
" " 62 335
" " 65 336
" " 68 87
" " 70 85
" " 71 66

PAGE

8 Edw. 7, c. 69 (Companies (Consolidation) Act, 1908)—*continued.*
Schedule I. Article 78 90
" " 86 92
" " 87 95
" " 94 103
" " 109 307
" " 110 329
" " 111 329
" " 112 329
" " 113 ... ... 329, 330
" " 114 ... ... 329, 330
" (Form C) 293, 405
Schedule II. 38, 541
Schedule III. (Form E) 288
9 Edw. 7, c. 49 (Assurance Companies Act, 1909), s. 1 296
s. 2 296
ss. 4–8 305
s. 7 289
s. 9 307
s. 13 515
s. 15 ... ... 417, 438
s. 16 417
s. 18 438
s. 19 296
s. 23 435
s. 24 400

COMPANIES (WINDING-UP) RULES, 1909.

RULE	PAGE	RULE	PAGE
Generally	416	83	477
1	505	83–87	465
2	418, 460	84	477
5	453	86	477
27	439	88	480
28	441	88–101	480, 483
29	441	89	485
30	440	96	494
33	440, 444	97	491
34	440	98	491
35	441	100	494
36	443	102–114	484
42	460	102–108	485
42–47	431	115–138	418, 465
50–54	456	121–138	444
55	418, 431	150	500
56	419	151	504
58	419	152	295
59–62	457	154	499
62–65	458	155–160	468
66	458	166	295
67	458	177–185	497
68	464	187	467, 497, 498
69	464	188	536
72	459	189	535, 536
73	454	190	535
75	451, 465	191	535, 536
76	451, 465	196	536
77	470	197	535
77–82	468	216	483
78–82	473		

ERRATA AND CORRIGENDA.

Page 5, *line* 5, *substitute* "to" *for* "when."
" 5, " 6, *delete* comma *after* "interest."
" 7, *lines* 2 and 3. The Life Assurance Companies Acts, 1870, 1871, and 1872 have been repealed by the Assurance Companies Act, 1909.
" 31, *note* (*m*), *substitute* "A. C. 415" *for* "1 Ch. 81."
" 33, " (*l*), *substitute* "1908" *for* "1901."
" 52, " (*p*), *substitute* "1908" *for* "1900."
" 156, " (*n*), *substitute* "ss. 30, 31" *for* "s. 30."
" 156, " (*p*), *substitute* "Briton" *for* "British," *and* "39" *for* "396."
" 169, *line* 2 *from bottom, substitute* "1891" *for* "1898."
" 184, *note* (*d*), *substitute* "Hart" *for* "Mant," *and* "522" *for* "659."
" 240, " (*m*), *substitute* "A. C." *for* "1 Ch."
" 278, " (*k*), *substitute* "C. A. 1908, s. 162" *for* "C. (W. Up) A. 1890, s. 4 (6)."
" 300, " (*g*), *substitute* "decisions" *for* "decision" *and* "decidendi" *for* "decidendo."
" 399, *line* 4 *from bottom, substitute* "(n)" *for* "(m)."
" 466, *note* (*l*), *substitute* "1908, s. 278" *for* "1862, s. 69."
" 482, " (*g*), *substitute* "Leng" *for* "Long."
" 546, " (*k*), *substitute* "1908, s. 81" *for* "1900, s. 10."

TABLE OF STATUTES.

DOMINION OF CANADA.

PAGE

38 Vict. (Insolvent Act, 1875) 533c
41 Vict. c. 21 (Winding-up Act) 216m
44 Vict. c. 61 (D) 9i
45 Vict. (D), c. 23 (An Act respecting Insolvent Banks and Trading Corporations), s. 20 ... ... 533p, 533r
s. 28 D 533h
47 Vict. c. 39 (An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations), s. 4 ... ... 533r
56 Vict. 31 (Canada Evidence Act, 1893) 574, 577
62 & 63 Vict. c. 43 (The Winding-up Amendment Act, 1899), s. 3 ... 533dd
63 Vict. c. 24 or 34 (Dominion Companies Act) 9c, 569
2 Edw. 7, c. 15 (Companies Act, 1902) 574
s. 6 570
(Foreign Companies Ordinance Act, 1903), s. 3 (3) 9c
R. S. C., 1906, c. 29 (Bank Act) 533pp
c. 79 (Dominion Companies Act) 9a, 533jj, 559, 571, 572, 573
s. 5 ... ... 533ii
s. 13 574
s. 46 ... ... 533mm
Sched. A. 570
Sched. B. 570
c. 144 (Winding-up Act (Canada)) 533a, 533pp
s. 4 ... ... 533d
s. 6 ... ... 533d
Quebec Companies Act, 1907), s. 5 ... ... 9b

BRITISH COLUMBIA.

(Companies Act, 1897), s. 123... ... ... 9c
6 Edw. 7, 1906, c. 23 (Land Registry Act) 580
10 Edw. 7, c. 7 (B. C.) (The Companies Act), s. 166 580
s. 167 580

MANITOBA.

R. S. M., 1902, c. 30 (Manitoba Companies Act), s. 4 ... ... 9b
s. 68 ... ... 229b
s. 276 ... ... 533p

NORTH-WEST TERRITORIES.

PAGE
c. 20 of 1901 (Ordinances of the North-West Territories, 1901) ... 9b

NOVA SCOTIA.

R. S. Nova Scotia (1900), c. 128 ... ... 9b

ONTARIO.

12 Vict. c. 166 (Companies Incorporation Act), s. 9 ... ... 216k
62 Vict. c. 12, s. 2 (An Act Respecting Sureties) 533v
62 Vict. (2) c. 15 (An Act to Amend the Trustee Act), s. 1 (0) 533y
63 Vict. c. 24 (Extra Provincial Corporations Act) ... 581, 582, 583
7 Edw. 7, c. 34 (Ontario Companies Act) 9a, 113h, 216s, 285a, 303b, 533r, 533kk, 533mm, 533nn, 559, 561, 569, 576, 577
s. 3 ... 216a, 216b, 533ii, 533jj
s. 4 ... ... 533b, 533ii
(4) 216i
s. 5 ... ... 9b, 533n, 533q
s. 6 ... ... 533d
s. 8 ... ... 540a
s. 12 ... ... 533f
s. 13 ... ...9k, 533t
s. 17 ... 46a, 285d, 560, 562, 574
s. 18 560
s. 19 ... ... 303a, 533a, 533j
s. 20 ... ... 533c, 533m, 533w
s. 21 ... ... 9h, 533w
s. 22 ... 9h, 533l, 533n, 533p, 533q
s. 23 ... ... 533o, 533p, 533q
s. 24 ... ... 533r, 533s
s. 27 ... ... 533r, 533s
(a) 216e
s. 28 ... ... 533w, 562, 564
s. 29 ... ... 533r, 533t
s. 30 (2) 533v
s. 31 ... ... 533cc, 566
s. 32 ... ... 533m
s. 34 ... ... 533m, 533q
s. 38 ... ... 533y
s. 39 ... ... 533r
s. 41 ... ... 340c
s. 42 ... ... 340c
s. 44 563
s. 48 ... ... 216q, 533gg
s. 51 ... ... 216w
s. 55 ... ... 216k
s. 61 ... ... 533w
s. 63 ... ... 533dd
s. 64 ... ... 533dd
s. 69 ... ... 533r
s. 73 ... 216h, 285b, 285e, 285f
s. 74 ... ... 216h, 285b
s. 75 ... ... 216h, 216i

PAGE

7 Edw. 7, c. 34 (Ontario Companies Act), s. 76 ... ... 216*h*, 285*b*
s. 77 ... ... 216*h*
s. 78 ... ... 285*g*
s. 79 ... ... 46*d*
s. 81 ... ... 113*e*
(4) 113*j*
s. 82 ... ... 113*d*
s. 83 ... ... 113*i*
s. 84 ... 113*i*, 533*p*, 533*q*, 533*r*
s. 85 ... ... 113*i*
s. 87 ... ... 340*a*, 533*ll*
s. 88 ... ... 113*k*
s. 93 ... ... 113*h*
s. 94 ... ... 113*h*, 533*p*
s. 95 (7) 126*c*
s. 97 ... ... 126*c*
s. 98 ... ... 285*b*
s. 99 ... ... 126*c*, 533*oo*
s. 100 ... ... 126*c*
s. 101 ... ... 533*u*
s. 103 (3) 533*r*
s. 106 (4) 27*c*
s. 108 ... ... 27*a*, 229*a*
(2) 27*b*
(3) 27*b*
(5) 27*b*
s. 109 ... ... 27*c*
s. 110 ... ... 533*s*, 533*t*
s. 112 ... ... 533*gg*
s. 114 ... ... 567, 568
s. 115 ... ... 533*gg*
s. 116 ... ... 216*t*
s. 123 ... ... 216*f*, 216*g*, 533*k*
s. 124 ... ... 533*y*
s. 131 ... ... 9*h*
(*a*) 533*dd*
s. 133 ... ... 533*o*
s. 136 ... ... 533*ff*
s. 143 579
s. 161 578
s. 188 ... ... 540*a*
Sched. A 559
Sched. B 559

8 Edw. 7, c. 43 (An Act to amend the Ontario Companies Act) 216*g*, 285*c*, 285*f*
s. 1 (6) 285*b*
s. 8 ... 113*d*

R. S. O., 1897, c. 122 (Ontario Judicature Act, 1897), s. 121 ... ... 533*j*
c. 136 (Registry Act, 1897) 285*e*
c. 148 (The Bills of Sale and Chattel Mortgage Act, 1897) 288*c*, 285*g*
c. 156 (Ontario Wages Act, 1897) 113*i*
c. 191 (Ontario Companies Act, 1897) 126*c*
s. 16 559
s. 17 565

		PAGE
R. S. O., 1897, c. 191 (Ontario Companies Act, 1897)	s. 18	565
	s. 19	565
	s. 20	565
	s. 21	565
	s. 49	285*a*, 285*e*
	s. 102	565
	s. 106	565
c. 197 (Mining Companies Incorporation Act, 1897)		560
c. 205 (Loan Corporation Act, 1897)		46*a*
(Companies Act, 1910)		9*b*

ENGLISH.

(Statute of Mortmain)		303*a*
21 Jac. 1, c. 16 (Statute of Limitations, 1623)		216*q*, 533*kk*
25 & 26 Vict. c. 89 (Companies Act, 1862), s. 131		533*n*
	s. 191	540*a*
30 & 31 Vict. c. 3 (British North America Act, 1867)		9*c*
	s. 92	9*a*
	s. 91	9*a*

TABLE OF CASES.

Supreme Court Reports.

PAGE

Adams *v.* Bank of Montreal, 32 S. C. R. 719 ... ... 46*c*
Allan *v.* Hanson, 18 S. C. R. 667 ... ... 533*a*, 533*e*, 533*f*

Beatty *v.* Nealon, 12 A. R. 50 ... ... 126*b*
Bernardin *v.* Municipality of North Dufferin (1891), 19 S. C. R. 581 ... 229*d*, 229*e*, 285*c*
Bickford *v.* Grand Junction Railway, 1 S. C. R. 696 ... 46*c*, 285*c*, 285*d*
Bridgewater Cheese Factory Co. *v.* Murphy, 26 O. R. 327; 23 A. R. 66; 265 S. C. R. 443 ... ... 113*c*, 113*o*
Brown *v.* Dominion Salvage and Wrecking Co. (1891), 20 S. C. R. 203 216*p*
Brown *v.* Howland, 9 O. R. 48; 15 A. R. 750 ... ... 113*g*

Canada Central Railway Co. *v.* Murray (1882), 8 S. C. R. 314 ... ... 113*o*
Canadian Pacific Railway Co. *v.* Ottawa Fire Insurance Co., 39 S. C. R. 405 ... ... 9*a*, 46*a*
——— ——— ——— ——— *v.* Robinson, 14 S. C. R. 105 ... ... 533*a*
——— ——— ——— ——— *v.* Western Telegraph Co., 7 S. C. R. 151 9*c*
Cannon *v.* Toronto Corn Exchange, 6 A. R. 268 ... ... 340*a*
Carroll *v.* Pemberthy Injector Co. (1889), 16 A. R. 446 ... ... 412*a*
Castleman *v.* Waghorn, 41 S. C R. 88 ... ... 216*v*
Caston's Case, 7 O. R. 448; 12 A. R. 486; 12 S. C. R. 644 ... ... 216*d*
Central Bank, Re, Baines' Case, 16 A. R. 237 ... ... 216*v*
Charlebois *v.* Delap, 26 S. C. R. 221 ... ... 46*c*, 46*d*
Chatham National Bank *v.* McKean (or Keen), 24 S. C. R. 348 113*c*, 533*w*, 533*cc*
Clergue *v.* Humphrey, 31 S. C. R. 66 ... ... 68*a*
Common *v.* McArthur, 29 S. C. R. 239. ... ... 216*r*, 216*s*

Daniels *v.* Nixon, 17 A. R. 206 ... ... 216*q*
Dominion Salvage *v.* A.-G., 21 S. C. R. 72 ... ... 27*b*
Dominion Salvage and Wrecking Co. *v.* A.-G. of Canada, 21 S. C. R. 72... 9*j*
Donley *v.* Holmwood, 30 C. P. 240; 4 A. R. 555 ... ... 113*e*
Duff *v.* Canadian Mutual Insurance Co., 6 A. R. 238 ... ... 9*c*

Earle *v.* Burland, 27 A. R. 540; (1902), A. C. 101 ... 113*l*, 216*j*, 303*b*, 340*d*, 412*a*
Ellis *v.* Midland Railway Co., 7 A. R. 462 ... ... 113*o*

Fairchild *v.* Ferguson, 21 S. C. R. 484 ... ... 113*o*

Galloway *v.* Stobart & Sons and Co., 35 S. C. R. 301 ... ... 113*o*

Haggert Bros. Manufacturing Co., In re, Peaker & Bunion's Case, 19 A. R. 582 ... ... 216*b*, 216*q*, 533*kk*
Hamilton *v.* Grant, 30 S. C. R. 566 ... ... 216*v*

PAGE

Hardy *v.* Pickerel River Co., 29 S. C. R. 211 ... ... *9f*, *27b*
Hereford Ry. Co. *v.* R. (1894), 24 S. C. R. 1 ... ... *113c*, *113o*
Hess. Manufacturing Co., Re, Sloan's Case, 21 A. R. 66; 23 S. C. R. 644 ... ... *68b*, *216a*
Hopper *v.* Hactor, 35 S. C. R. 645 ... ... *68c*
Hovey *v.* Whiting, 13 A. R. 7; 14 S. C. R. 515 ... *46b*, *113d*, *113e*, *533c*

International M. C. Railway *v.* Welleans, 24 S. C. R. 309 ... ... *46c*

Kely *v.* Kiely, 3 A. R. 433 ... ... *113j*

Laberge *v.* Equitable Life Insurance Society, 24 S. C. R. 595 ... ... *113o*
Livingston *v.* Temperance Colonization Society, 17 A. R. 379 ... *216s*, *216t*
London Speaker Printing Co., In re, Pearce's Case, 16 A. R. 508 ... *216b*, *533a*, *533hh*, *533jj*, *533kk*

McCausland *v.* Hill, 23 A. R. 738 ... ... *113o*
McCracken *v.* McIntyre (1877), 1 S. C. R 479 ... ... *216g*, *216x*
MacKenzie *v.* Kittridge, 27 C. P. 674; 4 S. C. R. 368 ... ... *216g*
MacSorbey *v.* St. John (Mayor), 6 S. C. R. 531 ... ... *412a*
Madden *v.* Cox, 5 A. R. 473 ... ... *113g*
Magog Textile & Print Co. *v.* Price, 14 S. C. R. 664 ... ... *216b*
Michigan Central Rail. Co. *v.* Wealleans, 24 S. C. R. 309 ... ... *46c*
Milburn *v.* Wilson, 31 S. C. R. 481 ... ... *68a*
Minister of Railways *v.* Quebec Southern Railway, 12 Ex. C. R. 11 *68c*, *113k*
Montreal Street Ry. *v.* Ritchie, 16 S. C. R. 622 ... ... *216k*

North-West Electric Co. *v.* Walsh, 29 S. C. R. 33 ... *46d*, *46e*, *216g*

Page *v.* Austin, 30 C. P. 108; 7 A. R. 1; 10 S. C. R. 132 ... *216g*, *216q* *216x*
Parish *v.* McFarlane, 14 S. C. R. 738 ... ... *285e*
Petrie *v.* Guelph Lumber Co., 11 S. C. R. 450 ... ... *126a*, *126b*, *216i*
Provincial Insurance Co. *v.* Worts, 9 A. R. 56 ... ... *216l*, *216m*, *216o*

Rainy Lake Lumber Co., Re, 11 P. R. 314; 15 A. R. 749 *533m*, *533x*, *533bb*

Shaber *v.* Cotton, 23 A. R. 426 ... ... *533gg*
Shoolbred *v.* Clark, 17. S. C. R. 265 ... ... *533s*, *533u*
——— *v.* Union Fire, 14 S. C. R. 624 ... ... *533r*, *533t*
Sloan's Case, 23 S. C. R. 644 ... ... *216f*
Smith *v.* Bank of Nova Scotia, 8 S. C. R. 558 ... ... *216u*
——— *v.* Walkerville Malleable Iron Co., 23 A. R. 95 ... ... *216y*
Standard Fire Insurance Co., Re, Kelly's Case, 12 A. R. 486; 12 S. C. R. 644 ... ... *216c*

Thames Navigation Co., Ltd. *v.* Reid, 13 A. R. 303 ... ... *113g*
Thompson *v.* Brantford Electric Co., 25 A. R. 340 ... *113e*, *229a*, *229f*
Trust and Loan Co. *v.* Hamilton, 7 G. R. 98 ... ... *285e*

Vote *v.* Stadacona Insurance Co., 6 S. C. R. 193 ... ... *216d*

Wade *v.* Kendrick, 37 S. C. R. 32-58 ... ... *68c*, *113c*, *113e*, *216a*
Waterous Engine *v.* Town of Palmerston (1892), 21 S. C. R. 556 ... *285c*
Welch *v.* Ellis, 22 A. R. 255 ... ... *113i*
Wright *v.* Incorporated Synod of the Diocese of Huron, 29 G. R. 348; 9 A. R. 411; 11 S. C. R. 95 ... ... *46e*, *340c*

Young *v.* McNider, 25 S. C. R. 272 ... ... *285e*

Zoological Society, Re, 16 A. R. 543 ... ... *533mm*

ALBERTA.

PAGE

Barthels *v.* Winnipeg Cigar Co., 2 Alta., L. R. 21 ... ... 285*b*

Red Deer Milling Co., Re, 1 Alta. L. R. 538 ... ... 216*c*
——————————— 1 Alta. L. R. 237 ... ... 229*c*, 229*f*

Semi-Ready, Limited *v.* Hawthorne, 2 Alta. L. R. 201 ... ... 9*d*

Wade (D.) Co., Re, 2 Alta. L. R. 117 ... ... 216*r*, 533*pp*

BRITISH COLUMBIA.

Anglo-American Lumber Co. *v.* McLellan, 14 B. C. R. 93 ... ... 216*e*

British Columbia Tie and Timber Co., In re, 14 B. C. R. 81, 204 533*n*, 533*q*

Kendale *v.* Webster, 15 B. C. R. 268 ... ... 533*y*
Kootenay Brewing Co., Re (1898), 6 B. C. R. 131... ... ... 533*g*

Lilly (Charles H.) Co. *v.* Johnston, 14 B. C. R. 174 ... ... 9*e*

North Western Construction Co. *v.* Young, 13 B. C. R. 247 ... ... 9*e*

Waterous Engine Co. *v.* Okanagan, 15 B. C. R. 238 ... ... 9*e*

GRANT'S REPORTS.

A.-G. *v.* Niagara Falls International Bridge Co., 20 Gr. 34 ... ... 46*c*

Boulton *v.* Church Society, 14 Gr. 123; 15 Gr. 450 ... ... 412*c*
Brock *v.* Toronto Ry. Co., 17 Gr. 425 ... ... 285*e*

Canada Life Assurance Co. *v.* Peel General Manufacturing Co., 26 Gr. 477 ... ... 46*b*
Cayley *v.* Cobourg Ry. Co., 14 Gr. 571 ... ... 540*a*
Conant *v.* Mail, 17 Gr. 574 ... ... 113*e*

Davidson *v.* Grange (1854), 4 Gr. 377 ... ... 113*j*, 216*d*, 303*b*, 340*c*
Dickson *v.* McMurray, 28 Gr. 553 ... ... 113*j*, 340*c*

Galt *v.* Erie Ry. Co. (1868), 14 Gr. 499 ... ... 285*c*
Glass *v.* Hope (1869), 14 Gr. 484; 16 Gr. 429 ... ... 216*r*
Gott *v.* Gott, 9 Gr. 165 ... ... 285*e*
Greenstreet *v.* Paris Hydraulic Co., 21 Gr. 229 ... ... 113*e*, 285*d*

Hamilton and Port Dover Ry. Co. *v.* Gore Bank (1873), 20 Gr. 190 113*e*, 113*o*
Hamilton Canal Co., 1 Gr. 1 ... ... 412*c*
Harris *v.* Dry Dock Co. (1869), 7 Gr. 450 ... ... 216*p*
Hinckley *v.* Gildersleeve, 19 Gr. 212 ... ... 46*c*
Howland *v.* McNab, 8 Gr. 47... ... ... 27*b*

Lindsay Petroleum Co. *v.* Pardee, 22 Gr. 18 ... ... 9*i*
Louth *v.* Western of Canada Oil Co., 22 Gr. 557 ... ... 533*j*

Macdonald *v.* Upper Canada Mining Co., 15 Gr. 179 ... ... 46*b*, 46*c*
McNeil *v.* Reliance Mutual Fire Insurance Co., 26 Gr. 567 ... ... 533*e*
Marsh *v.* Huron College, 27 Gr. 605 ... ... 340*a*, 412*c*

National Insurance Co. *v.* Egleson, 29 Gr. 406 ... ... 216*o*, 216*p*
Nellis *v.* Second Mutual Building Society of Ottawa, 29 Gr. 399 ... 216*r*

PAGE

Peto *v.* Welland Ry. Co., 9 Gr. 455 ... ... 285*c*, 285*d*

Walmsley *v.* Rent Guarantee Co., 29 Gr. 484 ... ... 113*g*, 113*o*, 285*a*
Western Assurance Co. *v.* Taylor, 9 Gr. 471 ... ... 46*b*

MANITOBA.

Bank of Hochelaga *v.* Garth, 2 M. L, R. 201 ... ... 533*gg*

Commercial Bank, Re, 13 C. L. T. 381; 9 M. L. R. 342... ... ... 533*u*

Gilman *v.* Robertson (1884), 7 L. N. 353; 1 M. L. R. S. C. 5 ... ... 216*r*
——— *v.* Royal Canadian Ins. Co. (1884), 7 L. N. 352; 1 M. L. R. S. C. 1 216*r*

Harris *v.* Sumner, 39 M. B. R. 204 ... ... 113*h*

Ideal House Furniture, Ltd., In re, 18 Man. L. R. 650 ... ... 533*r*

Jones and Moore Electric Co., In re, 18 Man. L. R. 549 ... ... 533*oo*

Lake Winnipeg, Re, 7 M. L. R. 602... ... ... 533*p*
———————, T. L. *v.* P. Co., Re (1891), 7 M. R. 255 ... 533*b*, 533*c*, 533*d*

McArthur *v.* Town of Portage La Prairie (1893), 9 M. R. 588 ... ... 285*c*
MacEdwards *v.* Ogilvie, 4 Man. 6 ... ... 285*a*, 303*b*
Montgomery *v.* Mitchell, 18 Man. R. 37 ... ... 216*q*
Muldowan *v.* German Canadian Land Co., 19 Man. R. 667 ... ... 113*f*

Norden Woollen Mills Co. *v.* Heckels, 17 Man. L. R. 557 ... ... 216*b*
Northern Constructions, Ltd., Re, 19 Man. R. 528 ... ... 533*oo*

Qu'Appelle Valley Farming Co., In re (1888), 5 Man. L. R. 160 533*b*, 533*c*

Rapid City, Re, 10 M. R. 681 ... ... 533*d*
———— Farmers' Elevator Co., Re, 9 Man. L. R. 574 533*a*, 533*b*, 533*c*, 533*d*

NEW BRUNSWICK.

Empire Cream Separator *v.* Maritime Dairy Co., 38 N. B. R. 319 ... 9*f*
European and N. A. Ry. Co. *v.* McLeod [1875], 16 N. B. 3 ... ... 216*l*

Harris *v.* Sumner, 39 N. B. R. 204 ... ... 113*b*

St. Stephen Branch Ry. Co. *v.* Black (1870), 13 N. B. 139 ... ... 216*p*

NOVA SCOTIA.

Almon *v.* Law (1894), 26 N. S. 340 ... ... 113*o*
A.-G. *v.* Bergen, 29 N. S. 135 ... ... 9*j*

Bank of Liverpool *v.* Bigelow (1880), 12 N. S. 3; Russ. and Ches. 236 216*o*
Bank of Nova Scotia *v.* Forbes (1883), 16 N. S. 4; Russ. and Geld. 295 216*n*

Cann *v.* Eakins, 23 N. S. R. 475 ... ... 285*d*
Central Bank, Re, Ex parte Harrison and Standing, 30 C. L. T. 271 533*pp*
Commercial Bank, Re, 13 C. L. T. 381 ... ... 533*u*

Farrell *v.* Caribou Gold Mining Co. 30 N. S. R. 199 ... ... 46*c*

Halifax *v.* Jones, 28 N. S. 454 ... ... 9*d*
——— *v.* Western Insurance Co., 18 N. S. R. 387 ... ... 9*d*

PAGE

North Sydney Mining and Transportation Co. *v.* Greener (1898), 31 N. S 41 ... ... 216*k*

Rockwood Agricultural Society (1899), 20 C. L T. 25 ... ... 285*c*
Ross *v.* Converse (1883), 27 L. C. J. 143 ... ... 216*o*

Silliker Car Coy., Ltd. *v.* Donohue, 44 N. S. R. 315 ... ... 126*b*
Sydney Land and Loan Co. *v.* Rountree, 42 N. S. R. 49 ... ... 113*m*

Victor Wood Works, Ltd., Re, 7 E. L. R. 55; 43 N. S. R. 308 ... 216*l*, 533*oo*, 540*b*

ONTARIO.

Abbott-Mitchell, &c., Co., Re, 2 O. L. R. 143 ... ... 533*c*, 533*d*, 533*i*
Alger and Sarnia Oil Co., Re, 21, O. R. 440 ... ... 533*cc*
Algoma Commercial Co., Re, 3 O. W. R. 140 ... ... 533*i*
Allen *v.* Ontario and Rainy River Ry. Co., 29 O. R. 510 ... ... 68*a*
Alpha Oil Co., Re, 12 P. R. 298 ... ... 533*j*, 533*u*
American Tyre Co., Re, 2 O. W. R. 29 ... ... 113*i*
Army and Navy Clothing Co of Toronto, Ltd., In re, 3 O. L. R. 37 ... 533*v*
Arnold, Re, 2 O. L. R. 671 ... ... 533*g*
Atlas Loan Co., Re, 9 O. L. L. 468 .. .. 216*k*
A.-G. *v.* Toronto Junction Recreation Club, 8 O. L. R. 440 ... ... 9*j*
Austin Mining Co. *v.* Gemmell (1886), 19 O. R. 696 ... ... 340*b*

Bain *v.* Anderson, 27 O. R. 369 .. .. 229*b*
Balding Lumber Co., Ltd., Re, 23 O. L. R. 255 ... ... 533*g*
Bank of Hamilton *v.* Johnston, 7 O. W. R. 111 ... ... 126*b*, 216*d*
——— Montreal *v.* Bethune, 4 O. S. 341 ... ... 9*c*
——— Toronto *v.* Coburg Ry. Co., 7 O. R. 1 ... ... 285*e*
——— *v.* ———, 10 O. R. 376 ... ... 113*b*
——— ——— *v.* Quebec Fire Ins. Co., 18 P. R. 41 ... ... 533*aa*
Barber's Case, 7 O. R. 448 ... ... 216*d*
Bartram *v.* Birtwistle, 11 O. W. R. 315 ... ... 113*m*
Baxter *v.* Central Bank of Canada, 20 O. R. 214 ... ... 533*o*, 533*aa*
Beaudry *v.* Reid, 10 O. W. R. 622 ... ... 46*f*, 113*k*, 340*d*, 412*c*
Beecher *v.* Woods, 16 C. P. 29 ... ... 303*a*
Bennett *v.* Havelock, 1 O. W. N. 352; 21 O. L. R. 375 ... ... 113*a*
——— *v.* ———, 16 O. W. R. 19 ... ... 68*c*
Benor *v.* Canadian Mail Order Co., 10 O. W. R. 899 ... 113*k*, 113*n*, 113*m*
Bessemer Gas Engine Co. *v.* Mills, 4 O. W. R. 325 ... ... 9*d*
Birney *v.* Toronto Milk Co., 5 O. L. R. 1; 1 O. W. R. 736 113*k*, 113*l*, 113*m*, 229*f*
Bolt and Iron Co., Re, 10 P. R. 437 ... ... 533*bb*, 533*cc*, 533*gg*
Boultbee *v.* Willis, 15 O. L. R. 227 ... ... 216*x*
Boyd *v.* Dominion Cold Storage Co., 17 P. R. 468 ... ... 533*z*
Boyle *v.* Rothschild, 10 O. W. R. 696 ... ... 113*g*
Briton Medical, Re, 11 O. R. 478 ... ... 533*c*, 533*d*
Brooke *v.* Bank of Upper Canada, 4 P. R. 162 ... ... 9*i*
Buffalo, Brantford and Goderich Ry. Co. *v.* Parke (1855), 12 U. C. R. 607 ... ... 216*n*, 216*o*
Burner *v.* Currie, 36 U. C. R. 411 ... ... 216*h*

Campbell *v.* Community General, 20 O. L. R. 467 ... ... 229*e*
——— *v.* National Life Ins., 24 C. P. 133 ... ... 9*c*
Canada Car and Manufacturing Co. *v.* Harris (1874), 24 C. P. 380 216*g*, 216*p*

PAGE
Canadian McVicar Engine Co., Re, 13 O. W. R. 916 ... ... 533*ll*
——— Tin Plate Co., Re, 8 O. W. R. 531; 10 O. L. E. 591 216*e*, 216*f*, 533*hh*
——— Woollen Mills, Ltd., In re, Long's Appeal, 9 O. L. R. 367 533*bb*, 533*ee*
Caston's Case, 7 O. R. 448; 12 A. R. 486; 12 S. C. R. 644 ... ... 216*g*
Cement, Stone and Building Co., Re, McBean's Case, 8 O. W. R. 264... 533*kk*
Central Bank, Re, 30 C. L. T. 275; 15 O. R. 309 ... 46*e*, 533*s*, 533*u*, 533*ff*
——— ——— Henderson's Case, 17 O. R. 110 ... ... 533*x*, 533*gg*
———, In re, Lyle's Claim, 22 O. R. 247 ... ... 533*ee*
———, Re, Nasmith's Case, 16 O. R. 293... ... ... 533*bb*
——— ——— *v.* Hogg, 19 O. R. 7 ... ... 216*b*
——— ——— and Yorke, Re, 15 O. R. 625 ... ... 533*a*
Chisholm's Case, 7 O. R. 448... ... ... 216*d*
Christopher *v.* Noxon, 4 O. R. 672 ... ...113*a*, 216*l*, 216*r*, 340*a*, 340*b*, 340*d*
City of Toronto *v.* Toronto Electric Light Co., City of Toronto *v.* Incandescent Light Co. of Toronto, and the Toronto Electric Light Co., 6 O. L. R. 187 ... ... 540*b*
Clarke *v.* Union Fire Insurance Co., Gaston's Case, 10 P. R. 339, 342 113*n*, 533*p*
——— and Union Fire Ins. Co., Re (No. 2), 14 O. R. 618; 16 A. R. 161; sub nom. Shoolbred *v.* Clarke, 17 S. C. R. 265 ... ... 533*a*
——— *v.* Sarnia Street Railway Co., 42 U. C. R. 45 ... ... 46*c*
Clarkson *v.* Toronto Stock Exchange, 13 O. R. 213 ... ... 46*f*
Clinton Thresher Co., Re, 15 O. W. R. 645 ... ... 216*g*
Cole and Canada Fire and Marine Insurance Co., Re, Close's Case (1885), 8 O. R. 92 ... ... 216*x*
Commercial National Bank of Chicago *v.* Corcoran, 6 O. R. 527 ... 9*c*
Cornwall Furniture Co., Re, 18 O. L. R. 101; 14 O. W. R. 352; 15 O. W. R. 614 ... ... 533*gg*, 533*mm*
Cramp Steel Co., Re, 11 O. W. R. 133 ... ... 533*a*, 533*d*, 533*f*
Crawford *v.* Provincial Insurance Co., 8 C. P. 263 ... ... 216*v*

David Ryan, 1 O. W. N. 322 ... ... 412*c*
Davidson *v.* St. Anthony Gold Mining Co., 15 O. W. R. 446 ... ... 229*b*
Davis (Charles H.), Ltd., In re, McNichol's Case, 18 O. L. R. 240 ... 533*mm*
Dominion Oil Co., Re, 2 O. W. R. 826 ... ... 216*t*, 216*x*
Drury Nickel Co., Re, 16 P. R. 525... ... ... 533*dd*
Duke *v.* Ulrey, 14 O. W. R. 932 ... ... 533*n*

Elgin Loan and Savings Co.; et al, *v.* National Trusts Co., Ltd., 10 O. L. R. 41... ... ... 533*y*
Ellis *v.* Norwich Broom Co., 8 O. W. R. 25 ... ... 113*b*, 412*b*
Enterprise Hosiery Co., Re, 4 O. W. R. 56... ... ... 533*i*
Essery *v.* Court Pride of the Dominion, 2 O. L. R. 596... ... ... 412*b*
Estates, Ltd., Re, 8 O. L. R. 564 ... ... 533*h*
Evendin *v.* Standard Art Co., 8 O. W. R. 392 ... ... 68*a*
Ewart Carriage Works, Ltd., In re, 8 O. L. E. 527 ... ... 533*i*, 533*b*

Farmers' Bank *v.* Sunstrum, 14 O. W. R. 288 ... ... 216*f*
Farmer's Loan Co., Re, 30 O. R. 337; 2 O. W. R. 854; 3 O. W. R. 837 285*c*, 285*g*, 533*x*, 533*ee*
Fayne *v.* Langley, 31 O. R. 254 ... ... 113*i*, 229*c*
Fell *v.* South, 24 U. C. R. 196 ... ... 229*c*
Fellows *v.* Ottawa Gas, 19 C. P. 174 ... ... 285*h*
Field *v.* Galloway, 5 O. R. 502 ... ... 216*h*
First Natchez Bank *v.* Coleman, 2 O. W. R. 358 ... ... 113*d*

PAGE

Fischer *v.* Borland, 8 O. W. R. 579 ... ... 216*e*
Foley *v.* Barber, 14 O. W. R. 699; 16 O. W. R. 607 ... ... 229*b*, 533*hh*
Freeman's Case, 12 O. L. R. 149 ... ... 216*d*
French (J. A.), Co., In re, 1 O. W. N. 864 ... ... 216*t*
Fuchs *v.* Hamilton Tribune, 10 O. R. 497; 10 P. R. 409 46*b*, 533*d*, 533*q*

Galloway's Case, 12 O. L. R. 100 ... ... 216*c*, 533*ll*, 533*nn*
Gardner *v.* Canadian Publishing Co., 31 O. R. 488 ... ... 113*l*
Garland *v.* Clarkson, 9 O. L. R. 281 ... ... 533*aa*
Garland Manufacturing Co. *v.* Northumberland Paper Co. (1899), 31 O. R. 40 ... ... 229*d*, 229*e*, 229*f*
Garvin *v.* Edmonson, 14 O. W. R. 435; 15 O. W. R. 210 ... ... 68*c*
Gas Co. *v.* Russell, 6 U. C. R. 657 ... ... 216*l*, 216*m*
Geddes *v.* Toronto St. Ry. Co., 14 C. P. 513 ... ... 285*e*
Genesee Mutual Life Ins. Co. *v.* Westman, 8 U. C. R. 487 ... ... 9*c*
George *v.* Strong, 1 O. W. N. 350 ... ... 113*i*
Georgian Bay Ship Canal and Power Aqueduct Co., In re, 29 O. R. 358 533*h*
Gildersleeve *v.* Balfour, 15 P. R. 293 ... ... 68*a*
Gilpin *v.* Greene, 7 U. C. R. 586 ... ... 68*a*
Gold Leaf Mining Co. *v.* Clark, 6 O. W. R. 1035 ... ... 229*f*
Goodwin *v.* Ottawa and Prescott Ry., 13 C. P. 254; 22 U. C. R. 186 27*b*, 216*u*
Gowganda Mines *v.* Smith, 16 O. W. R. 709 ... ... 216*c*
Great Western Railway *v.* Preston, 17 U. C. R. 113*o*
Grills *v.* Farah, 21 O. L. R. 457 ... ... 412*d*
Grundy Stove Co., Re, 7 O. L. R. 252 ... ... 533*h*
Guelph Linseed Oil, Re, 2 O. W. R. 1151 ... ... 533*s*, 533*t*, 533*w*
Guillot *v.* Sandwich Road Co., 26 U. C. R. 246 ... ... 216*u*

Hall (Joseph) Manufacturing Co., Re, 10 P. R. 485 ... ... 533*i*, 533*cc*
Hamilton (William) Mfg. Co., Re, 1 O. W. N. 61; 1 O. W. N. 421 ... 533*x*
——— Manufacturing Co. *v.* Hamilton Steel and Iron Coy., 23 O. L. R. 270 ... ... 533*o*
Hamilton *v.* Hamilton Steel and Iron Co., 16 O. W. R. 694 ... ... 533*z*
Hammond *v.* Bank of Ottawa, 15 O. W. R. 536 ... ... 285*b*
Harris Maxwell, etc., Co., In re, 1 O. W. N. 984 ... ... 533*a*
Harte *v.* Ontario Express and Transportation Co., Kirk and Marling's Case, 24 O. R. 340 ... ... 216*t*
Henderson Roller Bearing Co., Re, 11 O. W. R. 526 ... ... 216*f*
Herman *v.* Wilson, 32 O. R. 60 ... ... 113*i*
Higginbotham's Case, 12 O. L. R. 100 ... ... 533*nn*
——— ———, 12 O. L. R. 112 ... ... 216*c*
Highway Advertising Co. *v.* Ellis, 7 O. L. R. 504 ... ... 68*b*, 68*c*
Hill's Case, 10 O. L. R. 501 ... ... 533*hh*, 533*ll*, 533*mm*
Hope *v.* Glass, 23 U. C. R. 86 ... ... 46*c*
Houlton *v.* Hugel, 35 U. C. R. 402 ... ... 216*u*
Howard Stive *v.* Dingman, 10 O. W. R. 127 ... ... 68*a*
Howe Machine Co. *v.* Walker, 35 U. C. R. 37 ... ... 9*c*
Hudson's Case, 6 O. W. R. 574 ... ... 216*x*

Imperial Starch Co., Re, 10 O. L. R. 22 ... ... 216*q*, 216*t*, 216*w*
International Wrecking Co. *v.* Murphy, 12 P. R. 423 ... ... 412*c*
Iron Clay Brick Manufacturing Co., Re, Turner's Case, 19 O. R. 113, 123 ... ... 113*a*, 533*e*

Johnson *v.* Hamilton, 13 U. C. R. 211 ... ... 68*a*
Johnston *v.* Wade, 11 O. W. R. 598 ... ... 113*f*, 285*f*, 285*g*

PAGE

Keating *v.* Graham, 26 O. R. 361 ... ... 533*o*, 533*p*
Kelly *v.* Electrical Construction Co., 10 O. W. R. 704 ... 46*f*, 113*j*, 34 *ka*, 340*b*, 412*b*
Kerlin Bros. *v.* Ontario Pipe Line Co., 11 O. W. R. 797 ... ... 9*d*, 46*a*
Kinver *v.* Phœnix Lodge, 1 O. O. F.; 7 O. R. 377 ... ... 411*a*
Kuntz *v.* Silver Spring Co., 15 O. W. R. 826 ... ... 113*b*

Lake Ontario Navigation Co., In re, 20 O. L. R. 191 ... ... 533*oo*
Lake Superior Native Copper Co., Re, 9 O. R. 277 ... ... 533*p*
——— ——— Navigation Co. *v.* Morrison, 22 C. P. 217... ... ... 216*m*
Lamb (William) Manufacturing Co., Re, 32 O. E. 243 ... ... 533*g*
Lincoln *v.* St. Catherines Ry. Co., 19 O. R. 106 ... ... 285*d*
——— Paper Mills *v.* St. Catherines Ry. Co. (1890), 19 O. R. 106 ... 285*c*
Lindsay *v.* Imperial Steel and Wire Co., 21 O. L. R. 375 ... ... 216*h*
Livingstone's Case, 14 O. R. 211 ... ... 113*k*
London and Canadian Loan Co. *v.* Graham, 6 O. R. 329 ... ... 303*a*
——— Gas *v.* Campbell, 14 U. C. R. 143... ... ... 216*n*
Long *v.* Guelph Lumber Co., 31 C. P. 129... ... ... 216*i*
Lundy *v.* Dixon, 6 J. L. 92 ... ... 9*c*

McCallum *v.* Sun Savings and Loan Co., 1 O. W. R. 226 ... ... 126*b*
McCann Know Milling Co., Re, 1 O. W. R. 579 ... ... 533*bb*
McCord's Case (1891), 21 O. R. 264 ... ... 216*v*
McDiarmid *v.* Hughes, 16 O. R. 570 .. .. 303*a*
McDonald *v.* Mail Printing Co., 6 P. R. 309 ... ... 216*u*
McDougall *v.* Lindsay, 10 P. P. 247 ... ... 229*b*
McDowell *v.* Macklem, 4 O. W. R. 482 ... ... 216*c*
McGregor *v.* Currie, 26 C. P. 55 ... ... 216*q*
McKain *v.* Canadian Birkbeck Co., 7 O. L. R. 341 113*j*, 216*w*, 229*c*, 285*a*, 285*e*, 303*b*
Mackenzie *v.* Maple Mountain Mining Co., 20 O. L. R. 615 ... 46*e*, 113*k*
Mackenzie *v.* Monarch Life Assur. Co., 23 O. L. R. 342 ... ... 216*u*
McMurrich *v.* Bondhead Harbour Co. (1852), 9 U. C. R. 333 ... 216*q*, 216*u*
McNeill's Case, 10 O. L. R. 219 ... ... 216*d*
Manes Tailoring, In re, 18 O. L. R. 572 ... ... 216*g*
——— ——— ——— Co. *v.* Wilson, 14 O. L. R. 89, 96 ... 46*c*, 113*f*, 216*a*
Maple Leaf Dairy Co., Re, 2 O. L. R. 590 ... ... 533*g*
Maritime Bank *v.* Stewart, 13 P. R. 86 ... ... 533*j*
Markle *v.* Ross, 13 P. R. 135 ... ... 533*u*
Marmara Foundry Co. *v.* Dougal, 1 C. P. 194 ... ... 216*m*
——— ——— ——— ——— *v.* Jackson, 9 U. C. R. 509 ... ... 216*p*
——— ——— ——— *v.* Murney, 1 C. P. 1 ... ... 216*m*
Martin *v.* Gibson, 10 O. W. R. 66 ... ... 113*h*, 126*c*
Meller *v.* Ontario Investment Association, 17 O. R. 129 ... ... 126*b*
Merchants Bank *v.* Hancock, 6 O. R. 285 ... ... 113*d*, 113*e*, 285*d*
Meyers *v.* Cain, 6 O. W. R. 297 ... ... 113*m*, 412*b*
——— *v.* Lucknow Elevator Co., 6 O. W. R. 291 ... ... 216*x*
Michie *v.* Erie and Huron Ry. Co., 26 C. P. 566 ... ... 113*f*
Milne *v.* Ontario Marble Quarries, Ltd., 13 O. W. R. 1137 ... ... 113*n*
Mimio Sewer Pipe and Brick Manufacturing Co., Pearson's Case, 26 O. R. 289 ... ... 113*m*
Modern Bedstead Co. *v.* Tobin, 12 O. W. R. 22 ... ... 533*kk*
Monarch Life *v.* Brophy, 14 O. L. R. 1; 9 O. W. R. 151 ... 46*b*, 113*f*
Montreal Mining Co. v. Cuthbertson (1852), 9 U. C. R. 78 ... ... 216*p*
Moore and Port Bruce Harbour, Re, 14 U. C. R. 365 ... ... 113*j*
Moore *v.* Ontario Investment Association, 16 O. R. 269... ... ... 412*a*

PAGE

Morton *v.* Cowan, 25 O. R. 529 ... . 216*v*
Morton's Case, 12 O. L. R. 594 ... ... 533*nn*

National Casket Co. *v.* Eckhardt, 10 O. W. R. 74 ... ... 9*k*
National Malleable Castings Co. *v.* Smith's Falls, 14 O. L. R. 22 46*d*, 113*n*, 229*a*, 229*b*, 229*d*
Nelles *v.* Windsor Ry. Co., 11 O. W. R. 463 ... ... 216*u*, 216*x*
Nelson Coke Co. *v.* Pellatt, 4 O. L. R. 481 ... ... 216*c*, 216*f*
Niagara Falls Hand & S. Co., Re, 15 O. W. R. 326 ... ... 216*h*
Nipissing Planing Mills, Ltd., In re, 18 O. L. R. 80 ... ... 216*c*, 583*kk*
North Bay Supply Co., Re, 6 O. W. R. 85... ... ... 216*f*
North Simcoe Ry. Co., Re, 36 U. C. R. 104 ... ... 113*f*
Northern Railway Co. *v.* Lister, 27 U. C. R. 57 ... ... 46*c*
Nutter Brewery Co., 1 O. W. R. 400 ... ... 113*e*, 216*f*

Ontario Express and Transportation Co., Re (1893), 24 O. R. 216 ... 216*l*
——— ——— ——— ——— ——— ——— Director's Case, 25 O. R. 587 ... ... 113*k*, 113*l*
Ontario Forge and Bolt Co., Re, 25 O. R. 407 ... ... 533*e*
——— ——— ——— ——— ——— ——— *v.* Comet Cycle Co., 17 P. R. 156 ... ... 533*s*
——— Ins. Co. *v.* Ireland [1855], 5 C. P. 139 ... ... 216*k*
——— Investment Co. *v.* Sippi, 20 O. R. 440 ... ... 216*m*
——— Ladies' College *v.* Kendry, 10 O. L. R. 324 ... ... 216*d*
——— Western Lumber Co. *v.* Citizens' Telephone Co. (1896), 32 C. L. J. 237 ... ... 229*b*, 229*f*
O'Sullivan *v.* Clarkson, 9 O. W. R. 46 ... ... 68*b*
Ottawa Porcelain Co., Re, 38 O. R. 670, 679 ... ... 533*r*

Packenham Pork Packing Co., Galloway's Case, 12 O. L. R. 100 ... 216*d*
Pakenham Pork Packing Co., Re, 6 O. L. R. 582 ... 126*b*, 533*o*, 533*kk*
Panton and Cramp Steel Co., Re, 9 O. L. R. 3 ... ... 216*t*, 216*w*
Paton's Case, 5 O. L. R. 392 ... ... 216*v*
Patterson *v.* Brown, 6 O. W. R. 204 ... ... 68*a*
——— *v.* Turner, 3 O. L. R. 373 ... ... 216*b*
People's Loan & Deposit Co., Re, 7 O. W. R. 253 ... ... 533*f*
Perrin Plow Co., Re, 11 O. W. R. 186 ... ... 216*f*
Perrins *v.* Algoma Table Work Co., 8 O. L. R. 634 ... ... 533*aa*
Peterboro' Cold Storage Co., Re, 9 O. W. R. 850 ... ... 113*g*, 216*v*
Peterborough Shovel and Tool Co., Re, 14 O. W. R. 821 ... ... 533*c*
Phelps *v.* St. Catherine's Ry. Co., 19 O. R. 501 ... ... 285*g*
Port Dover and Lake Huron Ry. Co. *v.* Grey [1875], 36 U. C. R. 425 216*n*
Provident Life Assurance Co. *v.* Wilson (1866), 25 U. C. R. 53 ... 216*l*
Provincial Grocers, Re, Calderwood's Case, 10 O. L. R. 705 ... 216*c*, 216*e*
——— ——— ——— ——— Hill's Case, 80 O. L. R. 501 ... ... 216*e*
——— ——— Insurance Co. *v.* Cameron (1880). 31 C. P. 523 216*l*, 216*m*, 216*n*, 216*o*, 216*r*
Purden *v.* Ontario Loan and Debenture Co. [1892], 22 O. R. 597 285*d*, 303*b*, 412*b*

Queen *v.* Bank of U.C., 5 U. C. R. 338 ... ... 113*j*
——— *v.* Hespeler, 11 U. C. R. 222 ... ... 113*j*
Queen City Plate Glass Co., In re, 16 O. W. R. 336 ... ... 113*k*
——— ——— Refining Co., In re, 10 O. R. 264 ... ... 533*jj*, 533*kk*

Rielle *v.* Reid, 28 O. R. 497 ; reversed, 26 A. R. 54 ... ... 412*c*
R. *v.* Garvin, 18 O. L. R. 49 ... ... 126*c*

PAGE

Real Estate Co. *v.* Metropolitan Building Society, 3 O. R. 476 ... 113*o*
Redpath Vehicle Co., Re, 4 O. W. R. 515 ... ... 533*i*
Ritchie *v.* Vermilion Mining Co., 1 O. W. R. 627 ... ... 46*b*
——— Hearn Co., Re, 6 O. W. R. 474 ... ... 113*i*
Rodney Casket Co., Re, 12 O. L. R. 409 ... ... 113*i*, 533*g*
Rose (or Ross) *v.* Machar, 8 O. R. 417, 432 ... 216*b*, 216*m*, 216*o*, 216*v*
Rubber Co. *v.* Hibbard, 6 C. P. 77 ... ... 9*c*
Ruethel Mining Co. *v.* Thorpe, 9 O. W. R. 942 ... ... 68*b*
Ryckman *v.* Toronto Type Foundry Co., 3 O. W. R. 434 ... ... 46*d*

Sandusky Coal Co. *v.* Walker, 27 O. R. 677 ... ... 68*b*
Sarnia Oil Co., 14 P. R. 335 ... ... 533*z*, 533*aa*
——— Agricultural Implement Manufacturing Co. *v.* Hutchinson, 17 O. R. 676... ... ... 533*z*
Saskatchewan Land Co. *v.* Leadley, 4 O. W. R. 39 ... ... 412*c*
Seiffert *v.* Irving, 15 O. R. 173 ... ... 68*a*
Selkirk *v.* Windsor, 21 O. L. R. 109... ... ... 113*f*, 229*b*
Shantz, Re, 15 O. W. R. 534; affirmed 16 O. W. R. 30; 21 O. L. R. 153 216*w*
Shepperd *v.* Bonanza Nickel Co., 25 O. R. 305 ... 46*b*, 229*c*, 285*a*, 285*e*, 303*b*
Simpson *v.* Carr, 5 U. C. R. 326 ... ... 68*a*
Smith *v.* Canada Car. Co., 6 P. R. 107 ... ... 216*u*, 216*w*
——— *v.* Port Dover Ry. Co., 12 Ont. App. 288 ... ... 285*h*
——— *v.* Rogers (1899), 30 O. R. 256 ... ... 216*u*
——— *v.* Spencer, 12 C. P. 277 ... ... 113*c*
Sovereen Mitt Co. *v.* Whiteside, 12 O. L. R. 638 ... ... 113*c*
Standard Bank *v.* Stephens, 11 O. W. R. 582 ... ... 216*c*
——— Cobalt Co., Re, 16 O. W. R. 501 ... ... 533*i*
——— Fire Insurance Co., Copp, Clark and Co. Case, Caston's Case, 12 A. R. 486; 7 O. R. 448 ... ... 216*d*, 533*bb*, 533*ii*
——— Mutual Fire Insurance Co., In re, Musson's Case, 1 O. W. N. 974 ... ... 533*hh*
Stark (Charles) Co. (No. 2), 15 P. R. 471 ... ... 533*dd*
Stephens *v.* Riddell, 21 O. L. R. 484 ... ... 533*hh*
Stephenson *v.* Vokes, 27 O. R. 691, 696 ... ... 46*f*, 113*i*, 340*b*
Stevens *v.* London Steel Works, 15 O. R. 75 ... ... 216*c*
Stickney *v.* Bucknel, 6 O. W. R. 751 ... ... 113*j*, 113*m*, 412*b*
Stratford *v.* Mooney, 16 O. W. R.; 21 O. L. R. 426 ... ... 540*b*
Strathy Wire Fence Co., Re, 8 O. L. R. 186 ... ... 133*c*, 533*f*, 533*g*
Struthers *v.* MacKenzie, 28 O. R. 381 ... ... 27*a*, 46*b*, 113*g*, 285*d*
Sun Lithographing, Re, 24 O. R. 200 ... ... 533*dd*
Sylvester *v.* McCuaig, 28 C. P. 443 ... ... 68*b*

Temperance Colonization Co. *v.* Fairfield, 16 O. R. 544... ... ... 126*a*
Temple *v.* Toronto Stock Exchange, 8 O. R. 705 ... ... 46*f*
Tench *v.* G. W. Ry. Co., 32 U. C. R. 452 ... ... 412*a*
Thomas *v.* Standard Bank, 25 O. W. R. 188 ... ... 113*n*, 113*o*
——— *v.* Walker, 16 O. W. R. 751... ... ... 229*b*, 285*b*
Thompson *v.* Canada Fire Insurance Co., 9 O. R. 284, 286 113*a*, 216*q*, 340*b*
Thomson *v.* Feeley, U. C. R. 224 ... ... 68*a*
Thornton *v.* Sandwick Plank Road Co., 25 U. C. R. 591... ... ... 113*o*
Thorpe *v.* Tisdale, 13 O. W. R. 1044... ... ... 113*d*
Tierman *v.* People's Life Insurance Co., 26 O. R. 596; 23 A. R. 342 113*n*, 113*o*
Tilsonberg Agricultural Mfg. Co. *v.* Goderich, 8 O. R. 565 ... ... 216*b*
Titterington *v.* Distributors Co., 8 O. W. R. 328 ... ... 533*n*
Tobique Gypsum Co., In re, 6 O. L. R. 515 ... ... 533*l*

PAGE

Toronto Brewing and Malting Co. *v.* Blake, 2 O. R. 175, 184 113*d*, 113*i*, 113*j*, 340*c*, 340*d*, 412*a*
Toronto Cream and Butter Co., In re, 14 O. W. R. 81 ... ... 533*o*
Towner *v.* Hiawatha Gold Mining Co. (1899), 30 O. R. 547. ... ... 9*h*
Trusts and Guarantee Co *v.* Abbot Mitchell Co., 11 O. L. R. 403. 285*a*, 285*d*, 303*b*,
——— ——— ——— *v.* Munro, 19 O. L. R. 480 ... ... 533*oo*
Turner's Case, 7 O. R. 488 ... ... 216*d*
Twin City Oil Co. and Christie, 18 O. L. R. 324 ... ... 216*d*

Union Fire Insurance Co. *v.* Fitzsimmons, 32 C. P. 602 ... 216*o*, 216*p*
——— ——— ——— *v.* Lyman, 46 U. C. R. 453 ... ... 216*c*
——— ——— ——— *v.* O'Gara, 4 O. R. 359 ... ... 216*n*
——— ——— ——— *v.* Wilson, 4 O. R. 359 ... ... 216*l*

Victor Mutual *v.* Thompson, 32 C. P. 476 ... ... 113*l*

Waddle *v.* Ontario Canning Co., 18 O. R. 41 ... ... 340*a*
Wakefield Mica Co., Re, 7 O. W. R. 104 ... ... 113*f*, 533*kk*
Wakefield Rattan Co. *v.* Hamilton Whip Co., Ltd., 24 O. R. 107 ... 533*g*
Walterton Binder Twine Co. *v.* Higgins, 1 O. W. R. 403 ... ... 216*q*
Warren Gzowski *v.* Peterson Lake, 1 O. W. N. 211 ... ... 216*a*
Washington County Mutual Life Insurance Co. *v.* Henderson, 6 C. P. 146 ... ... 9*c*
Wheeler *v.* Wilson, 6. O. R. 421 ... ... 216*s*
Whiteside *v.* Bell Chamber, 22 C. P. 241 ... ... 285*e*
Wiarton Beet Sugar Co., Re, 3 O. W. R. 393 ... ... 533*h*
——— ———, In Re, Freeman's Case, 12 O. L. R. 149 216*a*, 216*f*, 533*gg*
Williams *v.* Crawford Tug Co., 11 O. W. R. 321 .. .. 46*e*
Wilson *v.* Hotchkiss, 2 O. L. R. 261 ... ... 68*a*
Wingate *v.* Enniskillen Oil Refining Co. (1864), 14 C. P. 379 ... ... 229*d*
Wood *v.* Ontario & Quebec Ry. Co., 24 U. C. C. P. 344. ... ... 68*a*
Woodhill *v.* Sullivan, 14 C. P. 265 ... ... 229*c*
Woodruff *v.* Colwell, 8 O. W. R. 302 ... ... 412*c*
——— *v.* Harris, 11 U. C. R. 490 ... ... 216*v*

PRINCE EDWARD ISLAND.

Stadicona *v.* Hodgson, 2 P. E. I. R. 480 ... ... 216*g*

QUEBEC.

Amyot *v.* Dom. Cotton Mills Co., Q. R. 36; S. C. 35 ... ... 303*b*
A.-G. *v.* Cie. de Che. de Fer M. & O., 4 Q. L. R. 255 ... ... 9*j*

Bacon *v.* Robertson, 18 Howard, 580; (1845), 7 Q. B. 385 ... ... 9*i*
Banque de St. Jean, In re, 10 Q. P. R. 223 ... ... 533*gg*
Bessette *v.* Equitable, 10 Q. P. R. 260 ... ... 113*o*

Commercial Rubber Co. *v.* St. Jerome, Q. B. 17, K. B. 274 ... ... 285*b*

McDougall *v.* Montreal Warehousing Co., 3 L. N. 64 ... ... 46*c*
McKay *v.* L'Association Coloniale, 13 R. L. 383 ... ... 533*b*
Montreal City Club, Re, 8 R. J. Q. (S. C.), 527 ... ... 533*f*

National Insurance Co. *v.* Hulton (1879), 2 L. N. 238; 24 L. C. J. Q. B. 26 216*l*

PAGE

Robertson *v.* Hochelaga Bank (1881), 4 L. N. 315 ... ... 216*r*
Ross *v.* Perras, 5 R. J. Q. 470 ... ... 533*z*

School Commissioners *v.* Montreal Abattoir, 3 M. L. R. (Q. B) 116 ... 533*r*
Scott *v.* Hyde, 5 E. L. R. 573; 10 Q. P. R. 164 ... ... 9*d*
Standard Sanitary Mfg. Co. *v.* Standard Ideal Co., 37 Que. S. C. 33 ... 9*d*

Watzel *v.* Oriental Silk, 9 Q. P. R. 289 ... ... 533*b*

SASKATCHEWAN.

Canadian Co-operative Co. *v.* Trauniczek, 1 Sask. L. R. 143 ... ... 9*f*
Nelson Ford Lumber Co., In re, 1 Sask. L. R. 108, 503 ... ... 9*e*, 533*a*

WESTERN LAW REPORTER.

Armstrong *v.* Tyndall Quarry Co., 16 W. L. R. 111 ... ... 113*n*

Canadian Bank of Commerce *v.* Smith, 17 W. L. R. 135 ... ... 285*c*
Claudet *v.* Golden Giant Mines, 13 W. L. R. 348 ... ... 113*k*
Crew *v.* Dallas, 9 W. L. R. 598 ... ... 533*p*

Jones *v.* North Vancouver, 11 W. L. R. 220 ... ... 216*r*

London Fence, Ltd., Re, Brown's Case, Merchants' Bank of Canada's Case, 17 W. L. R. 387 ... ... 533*aa*

Northern Constructions, Ltd., Re, 12 W. L. R. 618 ... ... 216*h*

Semi-Ready, Ltd. *v.* Semi-Ready, Ltd., 15 W. L. R. 321 .. ... 9*a*, 9*k*

MISCELLANEOUS.

Anthony *v.* American Glucose Co., 146 N. Y. 407 ... ... 412*c*

Boehmer Erb Co., Re (*unreported*), November, 1907 ... ... 533*m*
Brock *v.* Ruttan, 1 C. R. 218... ... ... 216*v*

Canada Cork Co., Re (1905) (*unreported*) 533*o*
Churchill Manufacturing Co., Re (*unreported*), December, 1907 ... 533*c*

Kearns Ink and Wax Co., In re (1907), (*unreported*) 533*g*
Kurtz *v.* McLean, Ltd. (*unreported*), January 24, 1908 ... ... 533*n*, 533*o*

Moore and Port Bruce Harbour Co., Re, 14 H. C. R. 365 ... ... 340*d*

Volcanic Reef Co., Re (*unreported*), October 16, 1906 ... ... 533*m*

ENGLISH.

Australian Royal Mail Steam Navigation Co. *v.* Marzetti (1855) 11 Exch. 228 ... ... 229*d*

Bank of Toronto *v.* Lamb, 12 A. C. 575 ... ... 9*c*
Bradford *v.* Briggs (1886), 12 App. Cas. 29 ... ... 216*q*
Burland *v.* Earle, [1902] A. C. 83 ... ... 216*j*

Catholic Publishing Co., Re, 2 D. J. S. 116 ... ... 533*d*
Citizens *v.* Parsons, 7 A. C. 96 ... ... 9*c*

PAGE

Finlay *v.* Bristol and Exeter R. W. Co. (1852), 7. Ex. 409 229*d*, 229*e*, 229*f*
France *v.* Clark, 26 Ch. D. 257 .. .. 216*v*

Great North-West Central Railway *v.* Charlebois, [1899] A. C. 114 46*d*, 113*o*

London and Western Trusts Co. *v.* National Trust 533*y*

North Assam Tea Co., Re, 5 Ch. 664 ... ... 533*u*
North-West Transportation Co. *v.* Beatty, 12 A. C. 589 (reversing, 6 O. R. 300 and 12 S. C. R. 598), (restoring, 11 A. R. 203) 113*c*, 113*o*, 340*d*

Redfern *v.* Polson 533*n*
Royal British Bank *v.* Turquand, 5 E. & B. 248 ... ... 229*b*
——————— *v.* ———, 6 Q. B. 327 ... ... 229*b*, 285*a*

South of Ireland Colliery Co. *v.* Waddle, L. R. 3 C. P. 463; 4 C. P. 617 .. .. 229*d*, 229*e*

Taylor, In re, Railway Steel and Plant Co., Ex parte (1878), 8 Chy. Div. 183 ... ... 533*p*
Tennant *v.* Union Bank, [1894] A. C. 31 ... ... 9*c*

COMPANY LAW.

CHAPTER I.

INTRODUCTORY.

Associations of persons for the purposes of trade are divisible into two classes—unincorporated and incorporated. The principal unincorporated trading associations are partnerships (*a*), where the liability of each partner for all debts and obligations of the firm is unlimited, and limited partnerships (*b*), where the liability of one or more of the members of the partnership is unlimited, and the liability of the remaining partners is limited to the amount of the capital they respectively agree to contribute. This work deals only with incorporated associations, and such associations are herein generally referred to under the name of companies.

1. A corporation is a body created by law, composed of individuals united under a common name, capable of indefinite duration, and invested with powers and rights, and subject to duties and liabilities.

The extent and nature of the capacities, powers, rights, duties, and liabilities of a corporation created by or under any statute are such as are conferred or imposed upon it, expressly or by necessary implication, by the terms of its incorporation or subsequently. The nature of a corporation has been well described in the following language:—"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed to be best calculated to effect the object for which it is created. Among the most important are immortality [in the legal sense that it

(*a*) Partnership Act, 1890. (*b*) Limited Partnerships Act, 1907.

may be made capable of indefinite duration], and, if the expression may be allowed, individuality—properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacy, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being" (*c*).

A corporation differs from a partnership in many respects, *e.g.*,

(1) It is capable of indefinite duration.

(2) It is a legal, not a physical, entity.

It is a creature of law, and has no existence in the material world. Lord Coke says, "As touching corporations, the opinion of Manwood, Chief Baron, was this: they were invisible, immortal, having no conscience or soul." An action for defamation can be maintained by a trading corporation, but only in respect of a libel or slander calculated to injure its reputation in the way of business, and it is not necessary in such a case to prove damage either general or special (*d*).

(3) It is distinct from the persons who from time to time constitute its members.

It remains the same although its members change,—all of its members, past and present, constituting in law but one person. It is not affected by the death, bankruptcy, lunacy, or other disability of a member, or the alienation of his interest in it.

(4) Unless otherwise provided by statute a member of a corporation can neither sue nor be sued upon its contracts.

(5) Unless otherwise provided by statute, the property of a corporation, together with the sums, if any, which its members are bound to contribute to its assets, are alone available for payment of its debts.

(*c*) *Dartmouth College* v. *Woodward* (1819), 4 Wheat. 636, per Marshall, C. J.

(*d*) *Metropolitan Saloon Co.* v. *Hawkins* (1859), 4 H. & N. 90, Pollock, C. B.; *Thorley's Cattle Food Co.* v. *Massam* (1880), 14 C. D. 763; *South Hetton Coal Co.* v. *North Eastern News Assn.*, [1894] 1 Q. B. 133, 148. Cf. *Corporation of Manchester* v. *Williams*, [1891] 1 Q. B. 94.

A creditor of a company has no remedy for his debt against any of its members or his property, unless expressly given by statute (*e*). This is so even although by the law of the foreign country in which the company carries on business its shareholders are personally liable on its contracts (*f*). A member cannot be made to contribute any sum towards the capital of the corporation exceeding that which he has agreed to pay. Thus, if a person is the holder of a certain share in a company having a stated capital, he is not liable to pay more to the company than the amount unpaid upon his share. A person may agree with a corporation to contribute a certain sum to its funds in the event of its being wound up, or that his liability for its debts shall be unlimited; and such an agreement is implied where, by statute or the constitution of a corporation, its members are declared to be so liable. A creditor of a company formed under the Companies Acts can only enforce the liability of its members to contribute to its assets the sums unpaid on their shares by means of a winding up. By sect. 36 of the Companies Clauses Act, 1845, an unsatisfied judgment creditor of a company, incorporated by a special Act, can with the leave of the Court obtain execution against a shareholder of the company for the amount unpaid upon his shares.

(6) The property of a corporation is vested in it, and not in its members.

Thus, the property of a corporation, *e.g.* a land company, may consist entirely of land, and yet the members' interest in the corporation is personal estate.

(7) A corporation can only act through its agents, and can only be made a party to a deed by such agents duly affixing its common seal thereto.

(8) A corporation cannot be guilty of treason or felony, or offences against the person (*g*), but may be convicted of certain misdemeanours (*h*).

Thus, a corporation may be indicted for nonfeasance, *e.g.* breach of duty imposed on it by law (*h*), or for a misfeasance, *e.g.* obstructing a highway (*g*).

(9) A corporation other than a common law corporation has only such powers and rights as are conferred upon it,

(*e*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325.

(*f*) *Risdon Iron, &c. Works* v. *Furness*, [1906] 1 K. B. 49.

(*g*) *R.* v. *Gt. North of England Ry.* (1846), 9 Q. B. 315.

(*h*) *R.* v. *Birmingham, &c., Railway Co.* (1842), 3 Q. B. 223; *R.* v. *Tyler*, [1891] 2 Q. B. 588; *Pearks Gunstone & Lee, Limited*, v. *Ward*, [1902] 2 K. B. 1.

expressly or by necessary implication, by the terms of its incorporation, or by statute.

Therefore all its members cannot authorize or ratify an act *ultra vires* of the company.

(10) A corporation can only be dissolved in the mode indicated by the terms of its incorporation, or by statute.

(11) A corporation cannot be incorporated under the Companies Act, 1908, unless there are at least seven members (*i*), or in the case of private companies (*k*) two members (*k*), and if the number at any time falls below seven or two, as the case may be, it may be wound up (*l*).

(12) A corporation may consist of any number of members (not being less than seven or two as above mentioned in the case of a company incorporated under the Companies Acts), while every partnership, association, or company, consisting of more than ten persons in the case of a banking business or twenty persons in any other case, formed after the 2nd Nov., 1862 (*m*), to carry on business having for its object the acquisition of gain, is illegal unless it is registered under that Act, or is formed in pursuance of some other Act or of letters patent, or is a mining company working within and subject to the jurisdiction of the Stannaries (*n*), or is a Trade Union (*o*).

By implication s. 1 of the Companies Act, 1908, does not apply to any association formed for the purpose of promoting commerce, art, science, religion, or any other like object not involving the acquisition of gain by its individual members (*p*), or to any society which might be registered under the Friendly Societies Acts (*q*), but it does apply to Mutual Insurance Associations (*r*).

An illegal association cannot sue upon any contract entered into for the purpose of carrying out the objects of the association (*s*), or be wound up

(*i*) C. A. 1908, s. 2.

(*k*) See C. A. 1908, s. 121, as to what are private companies.

(*l*) *Ibid.* s. 129 (4).

(*m*) *Shaw* v. *Simmons* (1883), 12 Q. B. D. 117.

(*n*) C. A. 1908, s. 1.

(*o*) Trade Union Act, 1871, s. 5, C. A. 1908, s. 294.

(*p*) C. A. 1908, ss. 19, 20; *Ex parte Hargrove & Co.* (1875), 10 Ch., p. 545.

(*q*) *Mares* v. *Thompson*, [1902] L. T. 579.

(*r*) *Ex parte Hargrove & Co., supra; Padstow, &c., Assn.* (1882), 20 C. D. 137.

(*s*) *Shaw* v. *Benson* (1883), 11 Q. B. D. 563. Cf. *Re Thomas* (1884), 14 Q. B. D. 379.

by the Court (*t*), or obtain an order for payment of a debt due to it (*u*). One of its members can, however, be convicted of embezzling its moneys (*x*), and an order has been made for the administration of the funds of such an association upon the application of a creditor (*y*). Section 1 of the Companies Act, 1908, does not apply when trustees of shares held in trust to apply the income in payment of interest, and principal payable in respect of certificates representing amounts subscribed by different persons for the purchase of investments, and subject thereto in trust for the holders of deferred coupons, even although the trustees have power to sell the shares and invest the proceeds of the sale (*z*), nor to a land society formed to purchase land, lay it out for building purposes and sell the land to its members (*a*).

In the United Kingdom incorporated trading associations are divisible into classes, according to the mode in which they are created, viz.:—

Companies incorporated by royal charter.

Companies incorporated by special Act of Parliament.

Companies incorporated by execution and registration of a deed of settlement under 7 & 8 Vict. c. 110.

Companies incorporated by subscription and registration of a memorandum of association under the Joint Stock Companies Act, 1856.

Companies incorporated by subscription and registration of a memorandum of association under the Companies Act, 1908, and the Companies Act, 1862, thereby repealed and having articles of association.

Companies incorporated by the certificate of the Board of Trade under the Railways Construction Facilities Act, 1864.

Societies incorporated under the Building Societies Acts, 1874 to 1894.

Societies incorporated under the Industrial and Provident Societies Act, 1893, or the Act of 1876 thereby repealed.

As frequent reference is made in this work to the Companies Clauses Acts and the Companies Acts, it is desirable to state to what companies

(*t*) *South Wales Atlantic SS. Co.* (1876), 2 Ch. D. 763; *Padstow, &c., Assn.* (1882), 20 C. D. 137.

(*u*) *Jennings* v. *Hammond* (1882), 9 Q. B. D. 225; *Shaw* v. *Benson* (1883), 11 Q. B. D. 563.

(*x*) *Re Tankard*, [1894] 1 Q. B. 548.

(*y*) *Hume* v. *Record, &c., Syndicate*, [1899] 80 L. T. 404. See also *One and All Sickness, &c., Assn.*, [1909] 25 T. L. R. 674, and *Mares* v. *Thompson*, [1902] 86 L. T. 759.

(*z*) *Smith* v. *Anderson* (1879), 15 C. D. 247.

(*a*) *Wigfield* v. *Potter* (1882), 45 L. T. 612; *Re Siddall* (1885), 29 C. D. 1.

they respectively relate. No company can be incorporated under the Companies Clauses Acts, but these Acts were passed to prevent the necessity of inserting in special Acts, authorizing the execution of certain undertakings of a public nature by companies, a number of provisions which were common to all such special Acts. All the provisions of the Companies Clauses Acts, 1845, 1888, and 1889, apply to all English and Irish joint stock companies incorporated by any special Act passed after the 8th May, 1845, for the purpose of carrying on such undertakings, save so far as such provisions are expressly varied or excepted by such Act. The Companies Clauses Act, 1863, is divided into four parts, viz., I. Cancellation and surrender of shares; II. Additional capital; III. Debenture stock, and IV. Change of name. No part of this Act applies to any company whether incorporated either before or after the passing of the Act unless its special Act incorporates such part. Parts II. and III. require also that the company must be authorized by a special Act passed since the 28th July, 1863, to issue the class of capital or create and issue the debenture stock referred to in the general Act, and Part IV. also requires the passing of a special Act since that date authorizing a change of name. The Companies Clauses Act, 1869, simply amends some of the provisions of the Act of 1863. The Companies Clauses Act, 1845, does not apply to Scotland, but the Companies Clauses (Scotland) Act, 1845, contains almost identical provisions.

The Companies Act, 1862, the Companies Seals Act, 1864, the Companies Act, 1867, the Joint Stock Companies Arrangement Act, 1870, the Companies Acts, 1877, 1879 and 1880, the Companies (Colonial Registers) Act, 1883, the Companies (Memorandum of Association) Act, 1890, the Directors' Liability Act, 1890, and the Companies Acts, 1898, 1900, 1907 and 1908, applied to every company incorporated under the Companies Act, 1862, in any part of the United Kingdom, and, with certain exceptions, to every company not incorporated but registered under the Act of 1862, Part VII., and also (except Table A.) to joint stock companies formed and registered under the Joint Stock Companies Acts, 1856 or 1857, or the Joint Stock Banking Companies Act, 1857 or 1858. The Companies (Winding-up) Acts, 1890 and 1893, and the Preferential Payments in Bankruptcy Act, 1888, applied to the same companies, but only when the registered office of the company was situate in England or Wales. The Preferential Payments in Bankruptcy (Ireland) Act, 1889, applied to the same companies, but only when the registered office of the company was situate in Ireland. The Preferential Payments in Bankruptcy Amendment Act, 1897, amended both the before-mentioned Acts relating to preferential payments. The Companies Act, 1886, only applied to the winding-up of companies in Scotland. All the Acts above mentioned have been repealed and replaced by the Companies Act, 1908, except that the Preferential Payments Acts,

1888 and 1889, have only been repealed so far as they apply to Companies. There are also Acts which apply solely to life assurance companies, viz., the Life Assurance Companies Acts, 1870, 1871, and 1872.

The Companies governed by the Companies Act, 1908, include every company formed and registered under the Joint Stock Companies Acts, 1856 or 1857, or the Joint Stock Banking Companies Act, 1857, or the Companies Act, 1862, or the Companies Act, 1908 (*b*).

The Table A. scheduled to the Companies Act, 1862, contains regulations for the management of a company, and such regulations, except in so far as they are not excluded or varied by its articles of association, apply to every company limited by shares incorporated under that Act (*c*), while that Table remained in force. It was revised in 1906 (*d*), and as revised it applies, except as aforesaid, to all such companies so incorporated between 1st October, 1906, and the 1st April, 1909, when the Companies Act, 1908, came into operation. The Table A. scheduled to that Act applies, except as aforesaid, to all such companies registered under that Act (*e*). In most companies Table A. is excluded altogether, and a complete set of articles is registered. Table A. does not apply to any companies incorporated before the passing of the Companies Act, 1862, but registered under Part VII. of that Act, unless such Table is adopted by a special resolution (s. 263).

Since the 30th June, 1907, companies formed under the Companies Acts are divisible into two classes, viz. private and public (*f*). A private company is a company which by its articles restricts the right to transfer its shares, limits the number of its members to fifty (excluding its employees, and reckoning two or more persons holding shares jointly, as only one member), and also prohibits any invitation to the public to subscribe for any of its shares, debentures, or debenture stock. Subject to its memorandum and articles, a private company may convert itself into a public company by passing a special resolution (*g*), and filing with the registrar a statement in lieu of prospectus (*h*), together with a statutory declaration similar to that which a public company must file before commencing business (*i*).

A company incorporated under the Companies Acts is a public company within the meaning of that term as used in an investment clause (*k*), or as used in the Apportionment Act, 1870, so that as between a tenant for life and a remainderman, dividends on its shares accruing at the time of the testator's death are apportionable

(*b*) See C. A. 1908, ss. 245–248 and 285.
(*c*) C. A. 1862, s. 15.
(*d*) See [1906] W. N. 233.
(*e*) C. A. 1908, s. 11.
(*f*) C. A. 1908, s. 121.
(*g*) C. A. 1908, s. 69. See *post*, p. 337.
(*h*) C. A. 1908, s. 82. See *post*, p. 33.
(*i*) C. A. 1908, s. 87. See *post*, p. 33.
(*k*) *Re Sharpe*, [1890] 45 C. D. 286; but it is not a company incorporated by Act of Parliament: *Re Smith*, [1896] 2 Ch. 590.

unless the will otherwise directs (*l*), notwithstanding that the articles provide for payment to the members on the register on the date when each dividend is declared (*m*). The rights and liabilities of a member of a company *qua* member are governed by the law of the country in which the company is incorporated, although such member may be domiciled in another country (*n*).

A foreign company, that is a company incorporated outside the United Kingdom, cannot be registered in this country under the Companies Act, 1908 (*o*). The following provisions apply to any other foreign company which after the 1st April, 1909, establishes a place of business including a share transfer or share registration office within the United Kingdom (*p*). It must within one month of its establishment file with the registrar of companies (1) a certified copy (*q*) of the instrument constituting or defining the constitution of the company, and if written in a foreign language a certified translation (*q*) thereof; (2) a list of the directors of the company; and (3) the names and addresses of some one or more persons resident in the United Kingdom and authorized to accept on behalf of the company service of process and any notice required to be served on the company. If any alteration is made in the instrument, or in the directors, or in the names and addresses, the company must within one month thereafter file with the registrar a notice of the alteration.

It must in every year file with the registrar a statement in the form of a balance sheet similar to that which is required under the Companies Act, 1908, to be included in the annual summary of a company having a share capital (*r*). If it uses the word "limited" as part of its name it must state the country in which it is incorporated, in every prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any of its shares, debentures, or debenture stock. It must also conspicuously exhibit in every place where it carries on business in the United Kingdom, its name and the name of the country in which it was incorporated, and have such name and country mentioned in legible characters in all its billheads, letter-paper, notices, advertisements, and other official publications. Service of any process or notice required to be served on the company may be effected by addressing the

(*l*) *Re Lysaght*, [1898] 1 Ch. 115.

(*m*) *Re Oppenheimer*, [1907] 1 Ch. 399.

(*n*) *Bank of Australasia* v. *Harding* (1850), 9 C. B. 661.

(*o*) *Bulkeley* v. *Schutz* (1871), L. R. 3 P. C. 764.

(*p*) C. A. 1908, s. 274. As to penalty for non-compliance with the section, see *post*, p. 406; and as to penalty for making false statements for the purposes of this section, see s. 281, *post*, p. 399.

(*q*) See Order of Board of Trade, dated 29th March, 1909. Forms Nos. 1 to 7 F.

(*r*) See *post*, p. 289.

same to any person whose name has been filed, and by leaving it or sending it by post to the address on the file. A company incorporated in a British possession (*s*), which has filed with the registrar the particulars (1), (2), and (3) above referred to, has the same power to hold lands in the United Kingdom as if it were a company incorporated under the Companies Act, 1908 (*t*).

(*s*) "British Possessions" means any part of His Majesty's dominions exclusive of the United Kingdom [s. 18 (2) Interpretation Act, 1889].

(*t*) C. A. 1908, s. 275. As to powers of Foreign Companies to hold land, see *post*, p. 303.

INTRODUCTORY.

CANADIAN NOTES.

Companies may be incorporated under Dominion or Provincial charter. The Dominion Parliament alone can incorporate companies with powers to carry on business throughout the Dominion. Section 92 of the British North America Act gives to the provinces exclusive power to incorporate companies "with provincial objects." This does not, however, imply that a provincial company cannot enter into a valid contract outside of the province. *Canadian Pacific Railway Company* v. *Ottawa Fire Insurance Company*, 39 S. C. R. 405. The fact that a company incorporated under a Dominion statute chooses to confine the exercise of its powers to the province cannot affect its status as a corporation, if the Act incorporating the company was originally within the legislative power of the Dominion Parliament. Unless the business of the Dominion company is such that power to make laws in relation to it is exclusively in the Dominion Parliament by Section 91 of the British North America Act, the Dominion Parliament cannot empower it to carry on business in any province otherwise than subject to the laws of the particular province. A Dominion company must, for example, take out an extra-provincial licence before it can do business in the particular province. When once a company is incorporated under a Dominion Act with a particular name the field is exclusively occupied so far as that name is concerned, and the onus is on a provincial company subsequently incorporating itself with that identical name to justify its position and show that it is not committing a fraud to the public and a wrong against the existing company. *Semi-Ready, Ltd.* v. *Semi-Ready, Ltd.*, 15 W. L. R. 321.

Companies may be incorporated in Canada or in Ontario in two ways, by special Act, or by letters patent. In Canada the incorporation of general companies is governed by the Companies Act, R. S. C. 79, and in Ontario by the Ontario Companies Act, 7 Ed. VII. c. 34. This latter Act refers to and prescribes the

method of incorporation for all companies which may be incorporated by the Provincial Legislature, except insurance, telegraph, railway, loan corporations, corporations for the construction of roads and other works, and immigration aid societies.

In the provinces of Alberta, Saskatchewan and British Columbia, a memorandum of association is necessary for incorporation. Companies in Alberta and Saskatchewan are incorporated under the Companies Ordinance, Chapter 20 of the Ordinances of the Northwest Territories 1901, as amended by the various Acts of the provinces of Alberta or Saskatchewan since their creation in 1905. Section 5 of the Act reads as follows:—Any three or more persons associated for any lawful purpose to which the authority of the Legislative Assembly extends, may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this ordinance in respect of registration, form an incorporated company with or without limited liability.

In British Columbia the incorporation of companies is governed by the Companies Act of 1910, "Any five or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company with or without limited liability."

In Manitoba companies are incorporated by letters patent under the provisions of the Revised Statutes of Manitoba, 1902, chap. 30, sect. 4. The procedure is similar to that of Ontario.

In New Brunswick, Prince Edward Island and Quebec, companies are incorporated by letters patent. In Nova Scotia, "Any three or more persons associated for any lawful purpose, except the formation of a banking, loan or trust company, may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this chapter in respect of registration, form an incorporated company with or without limited liability," R. S. Nova Scotia (1900), chap. 128.

In Quebec the incorporation of companies is governed by the Quebec Companies Act, 1907. By sect. 5 thereof it is provided that the Lieutenant-Governor may, by letters patent, grant a charter to any number of persons, not less than five, who petition therefor, constituting such persons and others who have become subscribers to the memorandum of agreement hereinafter mentioned . . . a body corporate for any of the purposes or objects to which the legislative authority of the province extends, except the construction and working of railways or the business of insurance.

Extra Provincial Corporations.

A foreign corporation cannot exercise any of its privileges or functions outside of the state or province where it is created, except by the comity of the state within which it wishes to carry on its business.

Though it has long been established as a principle of the English law that a foreign corporation may sue or be sued in its corporate name in an English Court, there are some early Canadian authorities against such right being afforded. See *Genesee Mutual Life Ins. Co.* v. *Westman*, 8 U. C. R. 487; *Bank of Montreal* v. *Bethune*, 4 O. S. 341; *Union Rubber Co.* v. *Hibbard*, 6 C. P. 77, but, however, the principle, as above established, has been followed in the later Canadian cases. See *Howe Machine Co.* v. *Walker*, 35 U. C. R. 37; *Commercial National Bank of Chicago* v. *Corcoran*, 6 O. R. 527; *Duff* v. *Canadian Mutual Insurance Co.*, 6 A. R. 238; and *C. P. R.* v. *Western Telegraph Co.*, 7 S. C. R. 151.

Companies incorporated by the Dominion Parliament would seem to have a different status from strictly foreign companies in regard to their rights to carry on business within the limits of a province of the Dominion. Under the B. N. A. Act the Dominion has undoubted power to incorporate companies to carry on business throughout the Dominion. Such companies, when incorporated by the Dominion, and carrying on business within a province, must act in conformity with the laws of that province. *Citizens* v. *Parsons*, 7 A. C. 96; *Tennant* v. *Union Bank* (1894), A. C. 31; *Bank of Toronto* v. *Lamb*, 12 A. C. 575. The province may impose a licence and exact a fee for such companies for the purpose of raising a revenue, but it is submitted that the province could not prohibit a Dominion company from carrying on business within its limits so long as the powers of the company are those which the Dominion alone can authorize.

Ministers of Justice have objected to provincial Acts which make companies incorporated under the laws of the Dominion take out a provincial licence before doing business in the province, and have disallowed acts which contained express prohibitory provisions prohibiting the carrying on of business without a provincial licence, see Hodgins' Provincial Legislation, 2nd ed. p. 315; *Campbell* v. *National Life Ins.*, 24 C. P. 133; *Lundy* v. *Dixon*, 6 L. J. 92; *Washington County Mutual Life Insurance Co.* v. *Henderson*, 6 C. P. 146. It has been held, however, that a province can impose a

licence fee on companies not incorporated by or under the authority of the Provincial Legislature.

In *Halifax* v. *Jones*, 28 N. S. 454, the defendants were agents of the Mississippi and Dominion Steamship Co., a body incorporated in England with a head office at Liverpool, and carried on business at Halifax through their agents. It was held that as the company carried on business at Halifax they were liable to be taxed the licence fee imposed on companies doing business in Nova Scotia, and it was also held that the Act imposing the licence fee was *intra vires*. See also *Halifax* v. *Western Insurance Co.*, 18 N. S. R. 387. This was not an Act requiring a foreign company to take out a licence before doing business within the province, but merely imposing a fee on all companies for the carrying on the business within the province.

The Provincial Legislature, with the exception of that of Prince Edward Island, have forbidden extra provincial corporations carrying on business without a provincial licence. Where a sale was made by a resident agent who was authorized in writing to sell the goods at fixed prices upon commission, the Court held that there was a contract made orally in Ontario and completed by delivery of the goods in part payment, and that the vendors could not maintain an action, having taken out no licence. *Re Bessemer Gas Engine Co.* v. *Mills*, 4 O. W. R. 325. See also *Kerlin Bros.* v. *Ontario Pipe Line Co.*, 11 O. W. R. 797.

A company was incorporated under the laws of West Virginia, with head office in New York, the main undertaking being to carry on business in Quebec. About four or five years after it ceased to do business in Quebec a winding-up petition was presented to the Superior Court of Quebec. Held that the Superior Court had jurisdiction. *Scott* v. *Hyde*, 5 E. L. R. 573; 10 Q. P. R. 164. It has been held in Quebec that the consequence of failure to comply with the provisions of the statute with respect to licences to extra-provincial corporations is confined to the incurring of penalty therein prescribed, and that such a company is not debarred from exercising its rights and applying for redress of its wrongs under the law. *Standard Sanitary Mfg. Co.* v. *Standard Ideal Co.*, 37 Que. S. C. 33

In *Semi-Ready Limited* v. *Hawthorne*, 2 Alta. L. R. 201, the plaintiff, an unregistered foreign company, brought an action against a merchant in Alberta to recover the price of goods sold. It was shown that the plaintiff had made contracts with different merchants who purchased its goods, giving exclusive rights in respect thereof and reserving privileges to the plaintiff. It was shown that

the plaintiff advertised its goods throughout the province, and designated its customers as "exclusive agents" for its goods. It was also shown that the customers who purchased plaintiff's goods for retail were entitled to use plaintiff's trade-mark. Held that although the plaintiff's customers took full responsibility as to the sales of plaintiff's goods, and were not strictly agents for sale, but themselves were merchants and sellers, they were the representatives of the plaintiff within the meaning of sub-sect. 3 of sect. 3 of the Foreign Companies Ordinance Act, 1903, and the company, under the circumstances, was carrying on part of its business within the meaning of and contrary to the provisions of the ordinance. Action dismissed with costs.

A company incorporated under the Dominion Companies Act, but not licensed in British Columbia, entered into an agreement in British Columbia, through their resident agent, to supply certain machinery to defendant company, a British Columbia corporation. The machinery was rejected for defects, and also because it was not delivered within the time agreed. Held that the plaintiffs were carrying on business within the province as contemplated by the Companies Act, 1897, and should have taken out a licence to do so. Held further that sect. 123 of the Companies Act, 1897, is not in conflict with the Dominion Companies Act. The latter gives a company the capacity or status to carry on business in the various provinces of the Dominion consistently with the laws thereof, and in British Columbia the requisite to doing business is the receiving of a licence. *Waterous Engine Co.* v. *Okanagan*, 15 B. C. R. 238.

An unlicensed extra-provincial company carrying on business within the province of British Columbia sued for a balance due on contract to deliver building stone entered into within the province. The defence advanced was that by reason of sect. 123 of the Companies Act (B. C.) the contract was illegal and void. Held that as the act to be done was prohibited by statute, the contract was therefore unenforceable. *North-Western Construction Co.* v. *Young*, 13 B. C. R. 247.

A foreign company is not precluded by any provision in the Companies Act, 1897 (British Columbia), compelling registration before it can transact any of its business within the province, from access to the Courts of the province in the capacity of an ordinary suitor. *Charles H. Lilly Co.* v. *Johnston*, 14 B. C. R. 174.

In re Nelson Ford Lumber Co., 1 Sask. L. R. 108, it was held that a foreign corporation not registered under the Foreign Companies Ordinance cannot maintain an action or institute

proceedings unless it be shown by such corporation that the contract in respect of which such action is brought arose from an order given to a traveller in the province or by correspondence, and that the corporation have not any place of business in the province.

The sale in Saskatchewan of the capital stock of a foreign company not registered in Saskatchewan is not a transaction in the course of or in connection with the business of the company, and such a company may maintain an action there to recover the price of the stock sold. *Canadian Co-Operative Co.* v. *Trauniczek*, 1 Sask. L.R. 143.

In New Brunswick it has been held that a writ of summons issued by an unlicensed extra-provincial corporation as the commencement of an action or a contract made in part within New Brunswick may be set aside on summary application. *Empire Cream Separator* v. *Maritime Dairy Co.*, 38 N.B.R. 319.

Licences to Extra-Provincial Corporations.

The requirements of the various provinces are in a general way similar.

The application must in general be by petition addressed to the Lieutenant-Governor in Council and signed by the executive officers of the company, and executed under the company's common seal. This petition must state material facts, such as the name of the kingdom, dominion, state, province, or other jurisdiction under the laws of which the applicant company was incorporated and is working.

Evidence must also be filed showing that the corporate name of the company is not on any public ground objectionable and that it is not that of any known company incorporated or unincorporated, or of any partnership or individual doing business in the province, or a name under which any known business is being carried on in the province, or so nearly resembling the same as to deceive, also,

The date and manner of its incorporation.

The place where its head office is situated.

Whether its existence is limited by statute or otherwise, and if so, the period of its existence yet to elapse, and whether its existence may be lawfully extended.

Whether it has capacity to carry on its business in the province affected.

Whether it has capacity to hold land, and if so, the conditions, if any, under which such land is to be held.

Its authorized powers set out in full.

The powers which it desires to exercise in the province.

The amount of its authorized capital, and whether such capital is divided into shares, and if so, how.

The amount of its subscribed capital.

The amount of its paid up capital.

Its head office or other chief place of business in the province.

The name, description and place of residence of its chief agent or representative in the province.

That the company has authorized the making of the application and has duly appointed an attorney.

The name, description and place of residence of such attorney, and evidence as to the present status of the company, *e.g.*, that the copy of the original letters patent filed represent the present status of the company.

Such further and other information as the provincial secretary may require.

The contents of, the signatures to, and the impression of the seal upon the petition must be verified.

If the application be on behalf of a company incorporated under the laws of the Dominion of Canada, a copy of its charter or of the Act incorporating it, certified by the Deputy Registrar-General, or by the clerk of the Parliaments, respectively, must be produced with the application. A similar observation will apply to a company incorporated under the laws of any of the provinces of the Dominion of Canada, regard being had to the proper officers in that behalf for the purposes of certification.

If the application be on behalf of a company incorporated under the laws of Great Britain and Ireland, the copy of the memorandum and articles of association produced must be certified to be a true copy by the registrar of joint stock companies at London, Edinburgh, or Dublin, as the case may be.

If the application be on behalf of a company incorporated under the laws of one of the United States of America, the evidence of incorporation must consist of a duly certified copy of the papers originally, and if any, subsequently, filed in the department of the Secretary of State, or other proper officer having the custody of the papers, and duly verified by such officer.

A person resident in the province or a company having its head office in the province, must be appointed by the applicant company

to be its attorney and representative in the province, and a power of attorney, duly executed for that purpose, under the seal of the company, must be transmitted with the papers. This must be done even when the company is incorporated under the laws of the Dominion, and has its head office in Ontario. The power itself may contain any provision not inconsistent with the duties of the attorney to be exercised under the laws of the province, but it must include words expressly authorizing the attorney to act as such, and to sue and be sued, plead or be impleaded in any Court in the province, and generally on behalf of the company, and within the province to accept service of process and to receive all lawful notices, and for the purposes of the company to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney. The power must also provide that until due lawful notice of the appointment of another and subsequent attorney has been given to and accepted by the provincial secretary, service of process, or of papers and notices upon the person or company mentioned in the original or other power last filed with the provincial secretary shall be accepted by the company as sufficient service in the premises.

Annual Returns.

See sect. 131 Ontario Act.

"Duplicate" is a document which is the same in all respects as some other instrument from which it is indistinguishable in its essence and its operation. It is, perhaps, a more exact word than copy or even than the term true copy, for in these there are more or less variation from the original. *Towner* v. *Hiawatha Gold Mining Co.* (1899), 30 O. R. 547.

Where the name of a shareholder was contained in the list transmitted to the provincial secretary, but not in the list posted up in the head office of the company, the lists were not regarded as duplicates and that the company were liable to the penalty. *Towner* v. *Hiawatha Gold Mining Co., supra.*

Revocation and Forfeiture of Charter.

Sections 21 *&* 22 *Ontario Act.*

If a corporation incorporated by letters patent does not go into actual operation within two years after incorporation or for two

consecutive years does not use its corporate powers, such powers, except so far as is necessary for the winding up of the corporation, shall be forfeited.

The letters patent by which a corporation is incorporated and any supplementary letters patent amending or varying the same, may at any time be declared to be forfeited and may be revoked and made void by an order of the Lieutenant-Governor on sufficient cause being shown in that behalf.

Where a corporation has ceased to exist by forfeiture or cancellation of its charter it becomes necessary to determine what becomes of its property. The common law on the subject appears to be, in such cases, that the lands revert to the grantor and his heirs. It has been apparently settled, in the United States, that this rule is obsolete and useless and that corporation property is deemed to be trust fund for the benefit of its creditors and stockholders. *Bacon* v. *Robertson*, 18 Howard 480 (1845), 7 Q. B. 385.

No right is recognized in the corporators. This principle was approved of in the Ontario case of the *Lindsay Petroleum Co.* v. *Pardee*, 22 Gr. 18.

Where it was provided in the charter of a bank that a suspension of specie payment for sixty days or an excess of debts of the bank of three times the paid-up stock and deposits should operate as forfeiture of the charter, it was held that total annihilation of the bank was not contemplated by those provisions, and that it did not follow from the loss of the charter that there must be a dissolution for all purposes. Some formal process is necessary to finally determine and put an end to the functions of a corporation. *Brooke* v. *Bank of Upper Canada*, 4 P. R. 162.

The appellant company, by its Act of Incorporation, 44 Vict. c. 61 (D.), was authorized to carry on business provided $100,000 of its capital stock was subscribed for and thirty per cent. paid thereon within six months after the passing of the Act, and the Attorney-General of Canada having been informed that only $60,500 had been *bonâ fide* subscribed prior to the commencing of the operation of the company, the balance having been subscribed for by G. in trust, who subsequently surrendered a portion of it to the company, and that the thirty per cent. had not been truly and in fact paid thereon, sought at the instance of a relator by proceedings in the Superior Court of Lower Canada to have the company's charter set aside and declared forfeited. This being a Dominion statutory charter, proceedings to set aside were properly taken by the Attorney-General of Canada. Such proceedings taken

by the Attorney-General of Canada under Articles 997 *et seq.* C.C.P., if in the form authorized by these articles, are sufficient and valid though erroneously designated in the pleadings as a *scire facies*. The *bonâ fide* subscription of $100,000 within six months from the date of the passing of the Act of Incorporation, and the payment of the thirty per cent. thereon, were conditions precedent to the local organization of the company with the power to carry on business, and as these conditions had not been *bonâ fide* and in fact complied with within six months, the Attorney-General of Canada was entitled to have the company's charter declared forfeited. *Dominion Salvage and Wrecking Co.* v. *Attorney-General of Canada*, 21 S. C. R. 72.

Non-compliance with a condition does not *ipso facto* extinguish the company, but such extinction is only to be procured by special action by the Attorney-General. *R.* v. *Cie. de Ch. de Fer M. & O.*, 4 Q.L.R. 255. Also in *Attorney-General* v. *Bergen*, 29 N. S. 135, it was held that the Attorney-General could maintain the action for an injunction restraining the defendants from exercising the powers of the company as the provisions precedent contained in their charter had not been fulfilled.

Where the Act contained a condition precedent that the company complete its works within a certain period or forfeit its powers, it was held that the non-compliance within the specified time afforded ground for a proceeding by the Attorney-General to have forfeiture declared. *Hardy* v. *Pickerel River Co.*, 29 S. C. R. 211.

The procedure is by writ of *scire facias* against the corporation. The proceeding is to be brought in the name of the Attorney-General, whose fiat must be obtained. The granting of the fiat is discretionary with the Attorney-General, and the exercise of this discretion and the conduct of the action is not subject to the control of the Courts wherein the proceeding takes place.

Whether the right of cancellation of letters patent be now only statutory or merely a power, not a duty, or whether the prerogative right still submits, the bringing of an action by the Attorney-General for the forfeiture of letters patent does not clothe the Court with jurisdiction to restrain the Crown from the exercise of its power of cancellation. *Attorney-General* v. *Toronto Junction Recreation Club*, 8 O. L. R. 440.

Supplementary Letters Patent.

Supplementary letters patent may be obtained amending the original letters patent in any particular.

By this means the company's capital may be increased or decreased, its powers extended, its name changed, its shares re-divided, and in case of preference stock created by charter, the terms may be varied, sect. 13 Ontario Act.

Name of Company.

There is no property in a name, but it is not permitted to a company to represent itself as carrying on a business which is in reality carried on by another, nor to use a name so similar as to be liable to deceive the public. *National Casket Co.* v. *Eckhardt*, 10 O. W. R. 74; but see *Semi-Ready, Ltd.* v. *Semi-Ready, Ltd.*, 15 W. L. R. 321.

CHAPTER II.

INCORPORATION AND CONSTITUTION OF COMPANIES UNDER THE COMPANIES ACTS.

Companies formed under the Companies Acts may be divided into the following classes :—

(1) Limited companies, the liability of whose shareholders for the debts of the company is limited either (i) to the amount for the time being remaining unpaid on the shares respectively held by them, or (ii) to the amount they respectively undertake to contribute to the assets of the company in the event of the same being wound up, or (iii) partly in the one way and partly in the other.

(2) Unlimited companies, where the liability of each shareholder for the debts of the company is unlimited.

(3) Partly limited and partly unlimited companies, where the liability for the debts of the company is as to shareholders limited, and as to directors or managers or managing director unlimited (*a*).

Any seven or in the case of a private company (*b*) two or more persons associated 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, form an incorporated company (*c*). A Trade Union cannot be registered under the Act (*d*). The memorandum duly stamped and the articles (if any) so subscribed, the signatures being attested by at least one witness, must be delivered to the registrar of joint stock companies, who retains and registers them (*e*), and upon such registration certain fees have to be paid. On any application for registration of a company not being a private company (*b*), the applicant must deliver to the registrar a list of the persons who

(*a*) C. A. 1908, s. 60.
(*b*) See *ante*, p. 7.
(*c*) C. A. 1908, s. 2.
(*d*) Trade Union Act, 1871, s. 5.
(*e*) C. A. 1908, s. 15.

have consented to be directors of the company, and if the list contains the name of any person who has not so consented, the applicant is liable to a fine not exceeding 50*l*. (*f*).

Upon such registration the registrar issues a certificate signed by him, stating that the company is incorporated, and in the case of a limited company that the company is limited, and from the date of incorporation mentioned in the certificate, the subscribers to the memorandum of association, together with such other persons as may from time to time become members of the company, become a body corporate by the name contained in the memorandum of association, and capable forthwith (*g*) of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, and with power to hold lands (*h*), except that a company formed for the purpose of promoting art, science, religion, charity, or other like object not involving the acquisition of gain by the company, or its members, cannot hold more than two acres of land without the licence of the Board of Trade, but the Board may by licence empower any such company to hold lands in such quantity and subject to such conditions as the Board think fit (*i*). The registrar has discretion to refuse to register a company (*k*), but if he refuses, the proper course of procedure is to apply for a rule *nisi* for a mandamus to compel him to register (*l*). The certificate is conclusive evidence that all the requirements of the 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 the Act (*m*). By sect. 243, sub-sect. 7, of the Act, a copy of or extract from any document kept and registered at any of the offices for the registration of companies certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it is not necessary to prove), is in all legal proceedings admissible in evidence as of equal validity with the original document. This section applies to certificates of incorporation. The registrar is authorized to accept a statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of a company, or by a person named in its articles as a director or secretary of the company,

(*f*) C. A. 1908, s. 72.

(*g*) Subject to C. A. 1908, s. 87.

(*h*) *Ibid.* s. 16.

(*i*) *Ibid.* s. 19. There is no difficulty in obtaining this licence.

(*k*) *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176.

(*l*) *R.* v. *Registrar of Joint Stock Companies*, [1891] 2 Q. B. 598.

(*m*) C. A. 1908, s. 17, which applies to all certificates, whether given before or after the passing of that Act. See *post*, p. 52.

of compliance with such requirements as sufficient evidence of compliance, and such a declaration must be produced to the registrar in order to obtain the certificate (*n*). Signature of the memorandum of association by any of the following persons is good—viz. an agent verbally authorized (*o*), an infant (*p*), an alien (*q*), and *semble* a corporation, if empowered by its constitution to hold shares in another company (*r*). It is sufficient if the subscribers only hold one share each, or if in all of them but one hold their shares upon trust for him, so that there is nothing to prevent the incorporation of what are termed "one man" companies (*s*).

A company may be formed in England, although its principal operations are intended to be carried on abroad, provided that it has in this country a registered office, with or without a board of directors in this country, and many of such companies are in existence (*t*).

The memorandum of association of a company limited by shares must state (*u*):—

(1) The name of the company, with the addition of the word "Limited" as the last word in such name (*x*).
(2) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate.
(3) The objects of the company is to be established.
(4) That the liability of the members is limited; and
(5) The capital of the company, divided into shares of a certain fixed amount.

In the case of a company limited by guarantee, the memorandum of association must state (*y*) the particulars (1), (2), (3), and (4) before stated, and also state—

> That each member undertakes to contribute to the assets of the company in the event of the same 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,

(*n*) C. A. 1908, s. 17.

(*o*) *Whitley Partners* (1886), 32 C. D. 337.

(*p*) *Nassau Phosphate Co.* (1876), 2 C. D. 610; *Laxon & Co.*, [1892] 3 Ch. 555.

(*q*) *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176.

(*r*) *Barned's Banking Co.* (*Contract Corporation, Ex parte*) (1867), 3 Ch. 105.

(*s*) *Salomon* v. *A. Salomon & Co.*, [1897] A. C. 22.

(*t*) *Madrid and Valencia Ry. Co.* (1848), 2 Mac. & G. 169; *Princess of Reuss* v. *Bos*, *supra*.

(*u*) C. A. 1908, s. 3.

(*x*) A company not formed for the purpose of gain may, however, under the C. A. 1908, s. 20, be registered by licence of the Board of Trade without the word "Limited."

(*y*) C. A. 1908, s. 4.

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 a specified amount.

If a company limited by guarantee has a share capital it must contain also the particular (5) before stated, and each subscriber of the memorandum must take at least one share, and write opposite to his name the number of shares he takes.

In the case of an unlimited company, the memorandum of association must contain the particulars (1), (2) and (3) before stated, and if the company has a share capital, each subscriber must take not less than one share, and write opposite to his name the number of shares he takes (*z*).

In the case of a company with limited liability as to shareholders, and unlimited liability as to directors or managers, or managing director, the memorandum of association must state that the liability of the directors or managers, or managing director of such company is unlimited (*a*).

An incorporated unlimited company, whether incorporated (*b*) under the Companies Acts or not (*c*), may be registered under these Acts as a limited liability company.

The memorandum and the articles of association must be stamped as if each of them were a deed, and must be signed by each subscriber in the presence of, and attested by, one witness at least (*d*), but the same witness may attest the signatures of all the subscribers. When registered, the memorandum and articles bind the company and its members to the same extent as if each member had signed and sealed them, and covenanted for himself, his heirs, executors and administrators, to observe all the provisions thereof, subject to the provisions of the Act (*e*). All money payable by any member to the company under the memorandum or articles is a debt due from him to the company, and in England and Ireland is of the nature of a specialty debt (*f*). A specialty debt may be sued for at any time within twenty years after it becomes payable, while a simple contract debt may be barred by the lapse of six years (*g*).

(*z*) *Ibid.* s. 5. The liability of a member of an unlimited company can only be enforced in winding up proceedings, but in such proceedings he is jointly and severally liable for all the debts and liabilities of the company.

(*a*) *Ibid.* s. 60 (1).

(*b*) *Ibid.* ss. 57 and 58.

(*c*) C. A. 1908, s. 249. See *Fountain's Case* (1864), 4 De G. J. & S. 699.

(*d*) C. A. 1908, s. 6.

(*e*) C. A. 1908, s. 14 (1).

(*f*) *Ibid.* s. 14 (2).

(*g*) 21 Jac. I. c. 16; 3 & 4 Will. IV. c. 42, s. 3.

A memorandum of association may be written, but the articles must be printed.

Part VII. of the Companies Act, 1908, ss. 249–266, empowers (with the exception and subject to the provisions therein mentioned) any company consisting of seven or more members, which was in existence on the 2nd November, 1862, or formed after that date, being duly constituted by law (*h*), to register under this Act as an unlimited company, or as a company limited by shares or by guarantee, even although it has taken place with a view to the company being wound up. A company having the liability of its members limited by Act of Parliament or letters patent cannot register as an unlimited company, or as a company limited by guarantee, nor at all, unless it is a joint stock company as defined by s. 250 of the Act, nor can any other company, not being a joint stock company as so defined, register under Part VII. A company registered under the Companies Act, 1862, or under the Act of 1908, cannot re-register under the latter Act.

A company limited by shares may be registered without articles of association, as the articles contained in Table A. of the first schedule to the Act of 1908 apply to every such company, except in so far as they are modified or excluded by registered articles (*i*). Sometimes articles are used which modify without excluding altogether those in Table A., but as it is most inconvenient to have to refer to articles which are contained partly in registered articles and partly in Table A., it is usual to register a complete set of articles which expressly excludes altogether Table A., except so far as its provisions are incorporated in the registered articles.

The articles of a company limited by guarantee generally limit the number of members for the purpose of the fee payable on registration, and empower the directors to register an increase of members. Notice of increase must be given to the registrar (*j*).

Name of Company.

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 the same as to be calculated to deceive, except where the

(*h*) See *R.* v. *Registrar of Joint Stock Companies* (*Ex parte Johnston*), [1891] 2 Q. B. 598.

(*i*) C. A. 1908, s. 11.

(*j*) *Ibid.* s. 44. As to penalty on default, see *post*, p. 402.

company in existence is in the course of being dissolved, and consents, and any company so registered without consent may, with the sanction of the registrar, change its name (*k*).

A company can obtain an injunction to restrain the registration of an intended company intended to carry on a similar business to its own, and to bear a name so like its own as to be calculated to deceive the public (*l*); and if such a company has been registered, to restrain it from carrying on business under that name (*m*). An individual can obtain an injunction to restrain a company carrying on a similar business to his own under the same name as that by which his business is known (*n*). When a company has been fraudulently registered for the purpose of appropriating the benefit of another trader's goodwill, an injunction may be against the signatories of its memorandum of association who were the only directors and members restraining them from using the trader's name in connection with the company's business and from allowing the company to remain registered under that name (*o*). A company cannot, however, prevent individuals carrying on business under their own names or under a true description, although the business and names or description are similar to those of the company (*p*). Injunctions were refused in cases where an attempt had been made to obtain a monopoly of well-known words like "Colonial," "London and Provincial," "Aerators" (*p*), or of descriptive words (*q*). It must be shown that there is a reasonable probability that the plaintiff's business will be damaged: mere similarity of name is not enough (*r*).

The name of the company may be important in construing the object clause of its memorandum of association (*s*).

(*k*) *Ibid.* s. 8.

(*l*) *Hendriks* v. *Montagu* (1881), 17 C. D. 638; *Tussaud* v. *Tussaud* (1890), 44 C. D. 678.

(*m*) *Merchants' Banking Co. of London* v. *Merchants' Joint Stock Bank* (1878), 9 C. D. 560; *Guardian Fire and Life Assce. Co.* v. *Guardian and General Insce. Co.* (1880), 50 L. J. Ch. 253; *The Accident Insce. Co., Ltd.* v. *The Accident, Disease and General Insce. Co., Ltd.* (1884), 54 L. J. Ch. 104; *Manchester Brewery Co.* v. *North Cheshire and Manchester Brewery Co.*, [1898] 1 Ch. 539.

(*n*) *Hoby* v. *Grosvenor Library Co., Ltd.* (1880), 28 W. R. 386; *Fine Cotton Spinners'* v. *Harwood, Cash & Co.*, [1907] 2 Ch. 184.

(*o*) *La Société Anonyme Panhard et Levassor* (a French company) v. *Panhard Levassor Motor Co.*, [1901] 2 Ch. 513.

(*p*) *Colonial Life Assce. Co.* v. *Home and Colonial Assce. Co.* (1864), 33 B. 548; *London and Provincial Law Assce. Socy.* v. *London and Provincial Joint Stock Life Assce. Co.* (1847), 17 L. J. Ch. 37; *Aerators, Ltd.* v. *Tollitt*, [1902] 2 Ch. 319.

(*q*) *British Vacuum Cleaner Co.* v. *New Vacuum Cleaner Co.*, [1907] 2 Ch. 312; *Electro Mobile Co.* v. *British Electro Mobile Co.*, [1907] 98 L. T. 258.

(*r*) *The General Reversionary and Investment Co.* v. *General Reversionary Co.* (1888), 1 Meg. 65.

(*s*) *Crown Bank* (1890), 44 C. D. 634.

The use of a trade name by a company, although not its own name, may be protected, notwithstanding such use contravenes 63 of the Companies Act, 1908 (*t*), which provides that the name of a limited company shall be published as therein mentioned (*u*).

Change of Name.

2. Any company may, by special resolution and with the approval of the Board of Trade, signified in writing, change its name, but such alteration does not in any way alter its rights or obligations or affect or prejudice any pending or future legal proceedings by or against the company (*x*).

The change of name must be registered and a new certificate of incorporation issued before the change is completed (*y*). When this has been done in the case of a company which is the registered owner of a trade mark, the Comptroller must, at the request of the company, substitute the new name for the old name on the register (*z*). The Court has frequently made its sanction of special resolutions altering the objects of a company conditional upon the company changing its name (*a*).

As to when the words "and reduced" are to be added to the name of the company, see *post*, p. 52.

Registered Office.

3. A company registered under the Companies Acts must have a registered office to which all communications and notices may be addressed (*b*).

A company is liable to a penalty of 5*l.* for each day it carries on business without a registered office, or without giving notice of the situation of such office or any change therein to the registrar of companies (*b*). The memorandum of association must state in what part of the United Kingdom—whether England, Scotland, or Ireland—the registered office is to be situate (*c*), and the situation of the registered office determines

(*t*) *H. E. Randall, Ltd.* v. *British and American Shoe Co.*, [1902] 2 Ch. 354.

(*u*) See *post*, p. 403.

(*x*) C. A. 1908, s. 8 (4) and (5).

(*y*) C. A. 1908, s. 8 (2) and (3); *Shackleford, Ford & Co., Ltd.* v. *Dangerfield* (1868), L. R. 3 C. P. 407.

(*z*) *New Ormonde Cycle Co.* (1896), 2 Ch. 520.

(*a*) See *post*, p. 20.

(*b*) C. A. 1908, s. 62.

(*c*) *Ibid.* ss. 3, 4 and 5.

where the company is to be registered and whether it is to be sued or wound up in England, Scotland, or Ireland (*d*).

Objects of Company.

4. A company incorporated under the Companies Acts is limited as to all its powers by the purposes or objects of its incorporation as defined in its memorandum of association.

The memorandum, "as it were, defines the limitation of the powers of the company to be established under the Act. With regard to the articles of association, those articles play a part subsidiary to the memorandum. They accept the memorandum of association as the charter of the company, and so accepting it, the articles proceed to define the duties, the rights, and the powers of the governing body as between themselves and the company at large, and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made" (*e*). It therefore follows that a provision in contemporaneous articles of association, that an extension of the company's business beyond or for other than the objects or purposes expressed or implied in the memorandum of association shall take place only in pursuance of a special resolution, is nugatory (*e*). A statement that the objects of a company are to carry on any business that the company may think profitable does not satisfy the Act and is therefore inoperative (*f*).

A company limited by shares cannot by its memorandum or article lawfully provide that in an event a member shall either submit to a liability in excess of the liability on his shares or be dispossessed of his status as member (*g*).

The objects of a company incorporated under the Companies Acts for purposes of a public nature, *e.g.* to supply electric energy, gas, etc., are subject to any restrictions imposed by any special Act or provisional order it may obtain for carrying into effect its objects (*h*).

For some years after the passing of the Companies Act, 1862, it was the practice in settling the object clause of a memorandum of association to specify only the main objects of the company. This practice was, however, found inconvenient, because if only a slight enlargement of the

(*d*) *Jones* v. *Scottish Accident Insce. Co.* (1886), 17 Q. B. D. 421; *Scottish Joint Stock Trust*, [1900] W. N. 114.

(*e*) *Ashbury Railway Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653.

(*f*) *Crown Bank* (1890), 44 C. D. 634, 644.

(*g*) *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743.

(*h*) *A. G.* v. *Metropolitan Electric Supply Co.*, [1905] 1 Ch. 757.

objects of a company was required it was necessary either to reconstruct the company or to obtain a special Act. Company draftsmen, therefore, in order to avoid the necessity of taking such expensive proceedings, settled the object clause so as to include every conceivable object which might at some time or other be useful to the company. The object clause usually contains special powers to carry on different kinds of businesses and general powers exercisable for the purposes of the company. Many of the general powers expressly given by the object clause include powers which are incidental to the main objects of the company (*i*), but it is necessary to remember that some of the general powers can only be exercised by the company if expressly conferred upon it by the memorandum of association, *e.g.* powers to issue perpetual debenture stock (*k*), to take shares in other companies (*l*), to promote other companies, to sell the whole of the undertaking and property of the company (*m*), to act as trustee, to obtain special Acts of Parliament or provisional orders, and, in the case of non-trading companies, to issue negotiable instruments (*n*). The object clause generally concludes by empowering the company to do all such other things as are incidental or conducive to the attainment of the objects before specified (*o*).

The important question as to what acts and dispositions of the company are within or beyond the powers of the company is dealt with in Chapter III.

Alteration of Powers.

5. A company cannot alter or extend its objects as stated in its memorandum of association, except in the cases and in the mode and to the extent for which express provision is made by statute (*p*).

Under the Mortgage Debenture Acts, 1865 and 1870, a mortgage company may, for the purpose of acquiring the powers thereby given,

(*i*) See as to importance of distinguishing between principal and subsidiary objects *Stephens* v. *Mysore Reefs*, [1902] 1 Ch. 745; distinguished in *Pedlar* v. *Road Block Gold Mines*, [1905] 2 Ch. 427; *Butler* v. *Northern Territories Mines, &c.*, [1907] 96 L. T. 241.

(*k*) *Southern Brazilian, &c., Ry. Co.*, [1905] 2 Ch. 78.

(*l*) *Barned's Banking Co.* (1867), 3 Ch. 105; *Financial Corporation* (1880), 28 W. R. 760.

(*m*) See *New Zealand Gold Extraction Co.* v. *Peacock*, [1894] 1 Q. B. 622.

(*n*) *Peruvian Rys. Co.* v. *Thames, &c., Marine Insce. Co.* (1867), 2 Ch. 617.

(*o*) As to the effect of such a clause, see *Baglan Hall Co.* (1870), 5 Ch. 356; *Simpson* v. *Westminster Palace Co.* (1860), 8 H. L. 712; *Taunton* v. *Royal Insce. Co.* (1864), 2 H. & M. 135; *Peruvian Rys. Co.* v. *Thames, &c., Co.* (1867), 2 Ch. 617.

(*p*) C. A. 1908, s. 7; *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653; *Guinness* v. *Land Corporation of Ireland* (1882), 22 C. D. 349.

limit its objects to those specified in the Acts (*q*), and under the Companies Act, 1908, any company governed by the Companies Acts may in certain cases (*r*) alter its objects in the way prescribed and with the sanction of the Court. Frequently the object clause of the memorandum contains powers which are merely ancillary to the real objects of the company, *e.g.* powers of investment and borrowing and mortgaging powers, and these may either be extended or restricted by the articles either as originally framed or as altered by special resolution. Any other alteration of objects can only be effected by obtaining a special Act of Parliament.

Subject to the provisions of s. 9 of the Companies Act, 1908, a company may alter the provisions of its memorandum with respect to the objects of the company so far as it may be required to enable it

(1) To carry on its business more economically or more efficiently (*s*); or

(2) To attain its main purpose (*t*) by new or improved means; or

(3) To enlarge or change the local area of its operations; or

(4) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company (*u*); or

(5) To restrict or abandon any of the objects specified in its memorandum of association or deed of settlement (*x*).

The procedure required by the section is :—

(1) The passing of a special resolution making the desired alteration;

(2) The giving of sufficient notice to every holder of debentures or debenture stock 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, unless the Court for special reasons dispenses with such notice in the case of any person or class;

(3) The consent of every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court to the proposed alteration, or proof that

(*q*) C. A. 1908, s. 292.

(*r*) The Act does not authorize alterations which merely amplify the description of objects clearly comprised in the original memorandum of association (*Consett Iron Co.*, [1901] 1 Ch. 236. See also *D. & D. H. Fraser, Ltd.*, [1903] W. N. 73).

(*s*) See *Cyclists' Touring Club*, [1907] 1 Ch. 269.

(*t*) In construing the words "main purpose," regard may be had to the name of the company. No alteration will be sanctioned unless it falls within one or more of the above-mentioned heads; *Government Stock Investment Co.*, [1891] 1 Ch. 649.

(*u*) The Court should regard as convenient or advantageous what experience and the opinion of traders reasonably show to be of that character: *National Boiler Insce. Co.*, [1892] 1 Ch. 306.

(*x*) *Jewish Colonial Trust*, [1908] 2 Ch. 287.

his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court;

(4) The confirmation of the alteration with or without amendment by an order of the Court made upon the petition of the company.

The order is obtained by a procedure analogous to that necessary to obtain an order of the Court confirming a reduction of capital (*y*).

The Court in exercising its discretion under this section is to have regard to the rights and interests of the members of the company or any class of members, as well as to the rights and interests of the creditors, and may 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 directions and make orders for facilitating or carrying into effect any such arrangement provided that no part of the capital of the company is to be expended in any such purchase (sub-s. 5).

The Court may confirm wholly or in part any such alteration, and may impose such terms and conditions, and make such order as to costs as it deems proper (sub-s. 4). Thus the Court has frequently required the company to change its name when the alteration was of such a nature as to be calculated, if the old name were retained, to deceive the public as to the nature of the company's business, *e.g.* when the main business of the company (*z*), or the local area of its operation (*a*) is denoted by its name, and power to carry on other businesses or to enlarge such area is sought.

The Court, too, frequently limits or modifies the nature of the alterations as specified in the special resolution (*b*).

The Court will not confirm the alterations in the case of a company registered without the word "limited" (*c*) until the alteration has been sanctioned by the Board of Trade (*d*); or a material alteration where the views of the vast majority of the shareholders cannot be ascertained (*e*).

It is not now the practice to direct the advertisement of the order sanctioning the alteration (*f*).

(*y*) See *post*, p. 51, and as to the procedure, see *Palmer's Precedents*, 9th edition, vol. i. p. 1151, *et seq.*

(*z*) *Foreign and Colonial Government Trust Co.*, [1891] 2 Ch. 395; *Government Stocks Investment Co.*, [1892] 1 Ch. 597; *National Boiler Insce. Co.*, [1892] 1 Ch. 306; *Alliance Marine Insce. Co.*, [1892] 1 Ch. 300; *Oriental Telephone Co.*, W. N. (1891), 153.

(*a*) *Indian Mechanical Gold Extracting Co.*, [1891] 3 Ch. 538. See *Contra Trust v. Agency Co. of Australasia*, [1908] W. N. 229.

(*b*) *Spiers & Pond, Ltd.*, W. N. (1895), 135; *Fleetwood Estate Co.*, W. N. (1897), 20.

(*c*) C. A. 1908, s. 20.

(*d*) *St. Hilda's Incorporated College*, [1901] 1 Ch. 556; *Munster and Leinster Bank*, [1907] 1 Ir. Rep. 237.

(*e*) *Jewish Colonial Trust*, [1908] 2 Ch. 287.

(*f*) *Lancaster Banking Co.*, W. N. (1897), 3.

There is power under the Act to substitute a memorandum and articles of association for a deed of settlement, contract of copartnery, or other instrument constituting or regulating the company not being an Act of Parliament, a royal Charter, or letters patent, either with or without any such alteration as aforesaid (*g*); and to alter a deed of settlement so as to empower the company to issue debentures and debenture stock (*h*).

An office copy of the order confirming the alteration, together with a printed copy of the altered memorandum or of the substituted memorandum and articles of association, as the case may be, must be delivered by the company to the registrar within fifteen days of the making of the order (*i*), but the time limited by the Act may be extended (*k*). The registrar has to register the order and printed copy, and to certify under his hand the registration thereof, and his certificate is conclusive evidence (*l*) that the requisitions of the Act with respect to the confirmation and alteration have been complied with (*i*).

The Courts having jurisdiction under section 9 are the Courts having jurisdiction to wind up the company (*m*) and the Chancery Division Courts (*n*). An order may be made by the winding-up Court although the petition ought to have been presented in a County Court (*o*). A company registered only under the Joint Stock Companies Act, 1856, is within section 9 (*p*), and so is a registered unlimited company although it has no shares or capital (*q*), and a company limited by guarantee (*r*).

Limited Liability.

6. The liability of every member of a limited company is limited, in the case of (*s*) a company limited by shares, to the amount, if any, unpaid on his

(*g*) C. A. 1908, s. 264.

(*h*) *Reversionary Interest Soc.*, [1892] 1 Ch. 615.

(*i*) C. A. 1908, ss. 9 (6) and 264. As to penalty on default, see *post*, p. 401.

(*k*) Sect. 9 and *Brin's Oxygen Co.*, W. N. (1899), 44.

(*l*) See *post*, p. 52.

(*m*) C. A. 1908, s. 285. The Courts having such jurisdiction are the High Court of Justice, the Chancery Courts of the Counties Palatine of Lancaster and Durham, the County Courts, and the Courts exercising the Stannaries jurisdiction. *Ibid.* s. 131, see *post*, p. 430.

(*n*) *Islington and General Electric Supply*, W. N. (1892), 81. This jurisdiction is not affected by the C. A. 1908; *Essex and Suffolk Equitable Insurance Society*, [1909] W. N. 102.

(*o*) *Ibid.* s. 131 (7); *Rugeley Gas Co.*, W. N. (1899), 127.

(*p*) C. A. 1908, s. 285; *Copiapo Mining Co.*, W. N. (1899), 25 (1); *Euphrates, &c., Navigation Co.*, [1904] 1 Ch. 360.

(*q*) *North of England Steamship Assn.*, [1900] 1 Ch. 481.

(*r*) *Monmouthshire, &c., Indemnity Society*, [1909] W. N. 6.

(*s*) C. A. 1908, s. 2.

shares, and (*t*) in the case of a company limited by guarantee to the amount which, by the memorandum of association of the company, he undertakes to contribute to the assets of the company in the event of the company being wound up.

Where a company is limited by guarantee without having a capital divided into shares, the security for the creditors of the company may be very small, as in case of a winding-up members of the company are only liable for the amount which they have agreed to guarantee, which may be any sum, and frequently does not exceed 1*l.*, and even that can only be demanded from the persons who are members of the company at the time of the winding-up, or who were members thereof within the year immediately preceding the winding-up. Companies limited by guarantee and not having a capital divided into shares, are mostly companies formed for the purpose of promoting commerce, art, science, religion, charity, or some other useful object not involving the acquisition of gain by the company or its members, and who register under the 20th section of the Companies Act, 1908, without the addition of the word "limited" to their names.

The sum guaranteed or unpaid on shares is not necessarily the limit of a member's liability as between the members themselves, *e.g.* in the case of a mutual marine insurance company they may be liable for their proportion of losses in respect of other insured vessels (*u*), or, in the case of other companies, they may have agreed to pay money for preliminary expenses (*x*), but it is the limit of their statutory liability as contributories in the winding-up of the company (*y*). A shareholder cannot be sued in this country by a creditor of the company, even although by the law of the foreign country in which it carries on business its shareholders are personally liable for its debts (*z*). A company limited by guarantee and registered after the 31st December, 1900, cannot have a capital divided into shares unless the memorandum of association so provides and specifies the amount of its capital, subject to increase or reduction, in accordance with the Companies Acts, and the number of shares into which the capital is divided (*a*). Every provision in any memorandum or articles of association, or resolution of a company, limited by guarantee and registered after the 31st December, 1900, purporting to divide the undertaking of the company into shares or interests, is for the purposes

(*t*) C. A. 1908, s. 2.

(*u*) *Lion Mutual Insurance Co.* v. *Tucker* (1883), 12 Q. B. D. 176.

(*x*) *McKewan's Case* (1877), 6 C. D. 447.

(*y*) *Baird's Case*, [1899] 2 Ch. 593.

(*z*) *Risdon Iron, &c., Works* v. *Furness*, [1906] 1 K. B. 49.

(*a*) C. A. 1908, s. 4. As to the law before 1901, see *Malleson* v. *General Mineral Patents Syndicate*, [1894] 3 Ch. 538.

of the provisions of the Act of 1908 relating to such a company and of this section, treated as a provision for a share capital notwithstanding that the nominal amount or the number of the shares or interests is not thereby specified (*b*). In the case of a company limited by guarantee and not having a share capital and registered after such date, every provision in the memorandum or articles of association, or in any resolution of the company, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void (*b*). Any limited company may by special resolution, if authorized so to do by its regulations as originally framed or as altered by special resolution, from time to time alter its memorandum of association so as to render unlimited the liability of its directors, managers, or managing director (*c*). A copy of the special resolution must be embodied in or annexed to every copy of the memorandum issued after the resolution was passed (*d*). Any unlimited company may be registered as a limited company, but so as not to affect its debts, liabilities, obligations, or contracts subsisting at the date of registration (*e*).

If the liability of the members of a company is limited, the word "limited" must be added to its name as the last word in such name, and a declaration that the liability of the members is limited must be inserted in its memorandum of association (*f*), but in the case of a company not formed for the purpose of pecuniarily benefiting its members, the word "limited" may be omitted from the name of the company with the licence of the Board of Trade, and such licence may be revoked by the Board of Trade at any time after giving to the company written notice of their intention and the opportunity of being heard in opposition (*g*). A company limited by shares may by special resolution create reserved capital by prohibiting any portion of its uncalled capital being called up, except in the event and for the purpose of the company being wound up (*h*).

A member of a limited company may incur unlimited liability by the company carrying on business for more than six months after the number of its members has been to his knowledge reduced to less than seven or (in the case of private companies) two (*i*).

Capital.

7. No alteration can be made in the share capital of a limited company, or in the number and denomination of its shares as fixed by the memorandum of association, except in the cases provided for by statute (*k*).

(*b*) C. A. 1908, s. 21.
(*c*) *Ibid.* s. 61.
(*d*) *Ibid.* As to penalty on default, see *post*, p. 402.
(*e*) C. A. 1908, s. 57.
(*f*) *Ibid.* ss. 3 and 4.
(*g*) *Ibid.* s. 20.
(*h*) *Ibid.* ss. 58, 59.
(*i*) *Ibid.* s. 115.
(*k*) *Ibid.* s. 7.

The total amount of the capital and the number and amount of the shares of a company limited by shares, or of a company limited by guarantee registered after the 31st December, 1900, and having a share capital, must be stated in its memorandum (*l*). It is not necessary to state the rights attached to the shares or the classes into which they are divided.

A company limited by shares may, if authorized so to do by its articles for the time being in force, by an ordinary resolution increase or consolidate its share capital or convert its paid-up shares into stock, or reconvert such stock into paid-up shares of any denomination, or reduce its share capital by cancelling any shares not taken or agreed to be taken by any person (*p*); and by a special resolution subdivide its shares (*p*), return undivided profits to its shareholders in reduction of paid-up share capital (*q*), or declare that any part of its uncalled share capital shall not be capable of being called up except in the winding-up of the company (*r*), and by special resolution, with the sanction of the Court, reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may extinguish or reduce the liability on any of its shares not paid up $\frac{\text{and}}{\text{or}}$ cancel any paid-up share capital which is lost or unrepresented by available assets $\frac{\text{and}}{\text{or}}$ pay off any paid-up share capital which is in excess of the wants of the company (*s*), and re-organise its share capital by the consolidation of shares of different classes, or by the division of its shares into shares of different classes (*t*).

As to increase or reduction of share capital (if any) of companies limited by guarantee, see *post*, pp. 48 and 49.

Articles of Association.

8. Articles of association must be printed, divided into paragraphs numbered consecutively, stamped as if they were a deed, and signed by each subscriber of the memorandum of association in the presence of at least one witness and attested by him (*u*).

Every company incorporated under the Companies Acts has articles of association. A company limited by shares may be registered without articles, but in that case the articles of the company are those contained in Table A (*v*). If such a company were so registered before the

(*l*) C. A. 1908, ss. 3 and 4.
(*p*) *Ibid.* ss. 41–44.
(*q*) *Ibid.* s. 40.
(*r*) *Ibid.* s. 59.
(*s*) *Ibid.* ss. 46, 56, *post*, p. 49.
(*t*) *Ibid.* s. 45. See also s. 120.
(*u*) *Ibid.* s. 12.
(*v*) *Ibid.* s. 11.

1st October, 1906, its articles are those contained in Table A in the first schedule of the Companies Act, 1862. If registered on or after that date, and before the 1st April, 1909, its articles are those contained in the revised Table A (*x*), which are in substance the same as those contained in Table A in the first schedule to the Companies Act, 1908. No other company can be registered under the Act of 1908 unless the memorandum of association is accompanied by printed articles of association signed by the subscribers to the memorandum (*y*). Where unsigned articles had been registered and acted upon for nineteen years they were held to be valid (*z*). The construction of articles may be determined by the Court upon an originating summons (*a*). When the rights of different classes of shareholders are not fixed by the memorandum they may be defined by the articles (*b*).

Alteration of Articles.

9. Articles of association of a company may, by special resolution, be altered, added to, or replaced by other articles, subject to the provisions of the Companies Act, 1908, and to the conditions contained in its memorandum (*c*).

The power given by sect. 13 (1) of the Companies Act, 1908, to alter articles is unlimited in terms. An unlimited company formed and registered under the Joint Stock Companies Acts (*d*), may alter its regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum (*e*). It has been decided that articles of association may be altered so as to give the company a lien upon the shares of a member which, but for the alteration, would not have been subject to a lien (*e*). The London Stock Exchange Committee requires as a condition precedent to granting a quotation of the shares of a company that the article as to lien shall contain an exception in favour of fully-paid shares, and in *Allen* v. *Gold Reefs of West Africa, Ltd.* (*e*), the alteration made was by striking out the words "except fully-paid shares" from the article creating a lien, so that the fully-paid shares of a member of the company who was indebted to the company thereby became subject to a lien for

(*x*) See [1906] W. N., p. 233.
(*y*) *Ibid.* C. A. 1908, s. 10.
(*z*) *Ho Tung* v. *Man On Insurance Co.*, [1902] A. C. 232.
(*a*) *Morgan's Brewery Co.* v. *Croskell*, [1902] 1 Ch. 898.
(*b*) *Simes* v. *Coates* (1908), S. C. 751.
(*c*) C. A. 1908, s. 13.
(*d*) See C. A. 1908, s. 285 (Interpretation).
(*e*) *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1900] 1 Ch. 656.

the amount of the debt. It is submitted that a company can alter its articles so as to vary the voting rights of members (*f*). A company cannot bind itself by contract (*g*) or its articles (*h*) not to make any modification of or addition to its articles.

Where the memorandum of association is silent as to the respective rights of shareholders, the articles may be altered so as to confer upon the company a power to issue preference shares (*i*). It has been decided by the Court of Appeal that the rights of shareholders, when defined by the memorandum of association, cannot be varied (*k*), unless it also provides that the rights may be modified (*l*). The Court has no jurisdiction to rectify a mistake in articles (*m*). A company cannot, by altering its articles, justify a breach of contract (*n*).

Invalid Articles.

10. Any article of association which is repugnant to, or inconsistent with, any statute, or is *ultra vires* of the company, is invalid.

The following articles have been held to be invalid:—Articles purporting to take away or qualify the right of a member to petition for the winding-up of a company (*o*); or to confer powers upon a liquidator similar to those conferred by sect. 161 of the Companies Act, 1862, but depriving dissentient members of their rights under that section (*p*); or to empower a limited company to purchase its own shares otherwise than out of profits (*q*), or upon a reduction of capital duly sanctioned by the Court (*r*); or to extend the powers of the company beyond those

(*f*) See *James Colmer, Ltd.*, [1897] 1 Ch. 524.

(*g*) *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506; but see *Baily* v. *British Equitable Co.*, [1904] 1 Ch. 374.

(*h*) *Walker* v. *London Tramways Co.* (1879), 12 C. D. 705; *Malleson* v. *National Insce. Corp.*, [1894] 1 Ch. 200.

(*i*) *Andrews* v. *Gas Meter Co.*, [1897] 1 Ch. 361, overruling *Hutton* v. *Scarborough Hotel Co.* (1865), 2 Dr. & Sm. 521.

(*k*) *Ashbury* v. *Watson* (1885), 30 C. D. 376. See also *Collins* v. *Birmingham Breweries Co.*, [1899] 15 T. L. R. 180.

(*l*) *Underwood* v. *London Music Hall*, [1901] 2 Ch. 309; *Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87. But the rights may be varied under s. 45 or s. 120 of the C. A. 1908.

(*m*) *Evans* v. *Chapman*, [1902] W. N. 78.

(*n*) *Baily* v. *British Equitable Co.*, *supra*.

(*o*) *Peveril Gold Mines, Ltd.*, [1898] 1 Ch. 122.

(*p*) *Payne* v. *Cork Co.*, [1900] 1 Ch. 308. See also *Bisgood* v. *Henderson Transvaal Estates*, [1908] 1 Ch. 743.

(*q*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409. *Secus*, in the case of an unlimited company; *Borough Building Soc.*, [1893] 2 Ch. 242.

(*r*) *British, &c., Finance Corp.* v. *Couper*, [1894] A. C. 399; *Denver Hotel Co.*, [1893] 1 Ch. 495.

specified in its memorandum of association (*s*); or to limit the powers of a company to vary its articles (*t*); or articles inconsistent with the obligations imposed upon auditors by statute (*u*), or providing that the shares for which the subscriber signs the memorandum may be issued as fully paid (*x*).

(*s*) *Ashbury Railway Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 672.

(*t*) *Walker* v. *London Tramways Co.* (1879), 12 C. D. 705; *Mallison* v. *National Insce. Corp.*, [1894] 1 Ch. 200.

(*u*) *Newton* v. *Birmingham Small Arms Co.*, [1906] 2 Ch. 378.

(*x*) *Dent's Case* (1873), 8 Ch. 768.

COMMENCEMENT OF BUSINESS.

CANADIAN NOTES.

A private company may in Ontario commence business immediately upon incorporation, that is to say upon the date of the letters patent. Where there is an invitation to the public to subscribe for shares, the company cannot commence business until certain conditions have been complied with. See sect. 108, Ontario Companies Act. In the meantime all moneys received by the company or by a promoter, director, officer or agent are to be held in trust until the same are deposited in a chartered bank to the credit of the company. If the conditions of sect. 108 have been complied with, the Provincial Secretary may certify that the company is entitled to commence business, and his certificate is conclusive evidence that the company is so entitled, unless it is shown that such certificate was obtained by means of fraud.

A contract made by a company requiring a certificate of this kind before it is entitled to commence business is provisional only and not binding on the company. Every person who is responsible for a contravention of the section is liable to a penalty of $50 per day by virtue of the statute, and would also be liable as in case of an *ultra vires* Act. See *Struthers* v. *MacKenzie*, 28 O. R. 381.

Ontario Act (*sect.* 108). "*Commencing Business.*"

Commencing business means commencing the exercise of the powers conferred upon the company to trade, manufacture, etc. Borrowing would be an act incidental to carrying on its business. The Legislature, however, has made it doubly clear that no company offering shares for public subscription can create any liabilities or dispose of any of its funds until it has filed the required declaration.

It would seem, however, that the company may at least issue

a prospectus, allot stock and enter into provisional contracts of various kinds, which contracts become binding on the company the moment it is entitled to receive the official certificate. See *Howland* v. *McNab*, 8 Gr. 47; *Goodwin* v. *Ottawa and Prescott Ry.*, 13 C. P. 254; *Dominion Salvage* v. *Attorney-General*, 21 S. C. R. 72; *Hardy* v. *Pickerel River Co.*, 29 S. C. R. 211.

Public Companies.

Prior to the passage of this Act every company incorporated under the Ontario Companies Act could allot shares, commence business, and create liabilities immediately after its incorporation. Many abuses arose owing to the fact that directors frequently proceeded to allotment on a subscription that was obviously insufficient for the ordinary purposes of the company, but which was large enough to afford a means of reimbursing them for their preliminary expenses. In other cases an allotment was made where the subscription was inadequate and the moneys taken to make a payment on account of some option on property subsequently let to the company through its inability to meet the succeeding payments. These abuses will now, in a measure, be obviated.

Quare as to other provinces.

Official Certificate.

The Provincial Secretary may on the filing of this statutory declaration certify that the company is entitled to commence business. Sect. 108 (2).

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. Sect. 108 (3).

The penalty for commencing business in contravention of this section is $50 a day. Sect. 108 (5).

Moneys to be Held in Trust.

All sums received by the company or by any promoter, director, officer, or agent thereof shall be held in trust by the company or such promoter, director, officer, or agent until the same may be

deposited in a chartered bank to the credit and shall there remain in trust until the issue of the aforesaid certificate by the Provincial Secretary. Sect. 109.

This provision would appear to be a salutary one and necessary to fully effectuate the purposes of this part of the Act. In many cases moneys might be collected on account of stock subscriptions and used by the promoters for preliminary expenses and other purposes notwithstanding the fact that the company was not authorized to commence business. A remedy is given by sect. 106, sub-sect. 4, which provides that if the conditions of the Act have not been complied with on the expiration of 90 days after the first issue of the prospectus, all moneys shall be repaid to the applicants, and the directors of the company shall be jointly and severally liable to repay the money. If, however, the directors were not men of substance, this provision would be of little benefit to the subscribers.

CHAPTER III.

ACTS AND DISPOSITIONS ULTRA VIRES OF THE COMPANY.

THE acts or dispositions which directors of a company purport to do or make on its behalf fall within one of the three following classes:—(1) Those within the powers of the company and of its directors; (2) those within the powers of the company but not of its directors; and (3) those not within the powers of the company. Acts and dispositions of the second class are said to be *ultra vires* of the directors, and of the third class *ultra vires* of the company.

The powers of directors are either express or implied. Powers are expressly conferred upon directors by the special Act, charter, bye-laws, rules, deed of settlement, articles of association, or other regulations of the company, or by resolutions passed at general meetings of the company. The powers of directors which are not conferred upon them expressly are such as are implied by law from the nature of their office and of the company. Even where powers are expressly granted to directors of companies governed by the Companies Acts by their articles of association, it is not safe to assume that they are at liberty to exercise all such powers. Articles sometimes purport to give to directors powers which are *ultra vires* of the company, and this is more frequently the case with those companies which were incorporated before the doctrine of *ultra vires* had been much discussed before the Courts, *e.g.* powers to pay interest upon shares otherwise than out of profits, (*a*) to purchase the shares of the company out of capital, to return capital to shareholders otherwise than upon a reduction of capital duly sanctioned by the Court, to issue shares at a discount (*b*), and to issue shares to the subscribers of the memorandum of association as fully paid up. Then, too, the powers given by the articles of association of a company may be larger than, or inconsistent with, the objects

(*a*) See now C. A. 1908, s. 91, *post* p. 317. (*b*) See C. A. 1908, s. 89.

of the company as defined by its memorandum of association, or inconsistent with some statutory provisions.

The law of *ultra vires* in its relation to companies arises from the fact that a corporation is created by law, and except in the case of a common law corporation can only have such rights and powers as are expressly or by necessary implication conferred upon it by law. If the agents of a corporation purport to do acts on its behalf in excess of its powers, such acts are not illegal, but are, *qua* the corporation, null and void, that is, they are not the acts of the corporation.

The question whether an act which directors propose to do is within or beyond the powers of the company, as distinguished from the powers of the directors, is extremely important, having regard to the serious liability which they may incur from acting *ultra vires* of the company (*c*). If directors exceed their own powers, but not the powers of the company, they, as a rule, can procure a ratification of their acts by the company, and are protected by the rule in the case of *Foss* v. *Harbottle* (*d*) against hostile litigation by dissenting shareholders. On the other hand, if the act done is *ultra vires* of the company, and by such act any property of the company is parted with, then the directors who are parties thereto are jointly and severally liable to make good to the assets of the company any loss thereby caused to the company; and it is impossible for them to procure from the company, even with the consent of every member, a discharge from such liability, or a ratification of the unauthorized act. It is also open to any shareholder, even in a minority of one, to commence legal proceedings against the directors in respect of such an act (*e*).

It is not within the province of this chapter to minutely examine the whole doctrine of *ultra vires*. It deals only with the general principles upon which the law as to acts *ultra vires* of the company is based. The cases illustrating the result of the application of these principles to the different kinds of power with which a company may be invested, and the law as to acts *ultra vires* of the directors but not of the company, will be dealt with in the several chapters relating to the powers of directors.

The following are the leading principles of law with respect to acts and dispositions *ultra vires* of a corporation:—

1. A company, society, or association incorporated by or

(*c*) See *post*, p. 342.
(*d*) (1843), 2 Ha. 461. See *post*, p. 342.
(*e*) *Salomons* v. *Laing* (1849), 12 B. 339.

under a statute, is limited, as to all its powers, by the purposes or objects of its incorporation.

Such purposes or objects are defined in—(a) The Act of Parliament by which a company is incorporated. (b) The memorandum of association of a company incorporated under the Joint Stock Companies Act, 1856, or the Companies Acts, 1862 or 1908. (c) The deed of settlement of a company incorporated under the Act 7 & 8 Vict. c. 110. (d) The rules of societies respectively registered under the Building Societies Acts, 1874 to 1894, and the Industrial and Provident Societies Act, 1893, or the Act thereby repealed. The powers of a company incorporated by a royal charter are not limited to those expressly or by necessary implication conferred by the charter. It can incur liabilities or dispose of its property, although prohibited by its charter from doing so, and the only result of so doing is to expose it to the risk of forfeiting its charter (*f*). Such a company is a common law corporation, and has the power to do with its property all such acts and bind itself to all such contracts as an ordinary person can do and bind himself to (*f*). A charter cannot authorize anything to be done which is inconsistent with the laws of the realm.

The powers of a company incorporated by a special Act of Parliament cannot exceed those expressly or by necessary implication conferred by such Act and the Acts incorporated therewith; and can only be extended or limited by an Act of Parliament.

The powers of a company governed by the Companies Acts cannot exceed those expressly or by necessary implication conferred by its memorandum of association or deed of settlement, and such powers can only be extended, altered, or restricted by virtue of the Companies Act, 1908, or by an Act of Parliament (*g*).

The powers of a society incorporated under the Building Societies Acts, 1874 to 1894, or the Industrial and Provident Societies Act, 1893 (*h*), cannot exceed those expressly or by necessary implication conferred by its rules. A building society established under the Act 6 & 7 Will. 4, c. 32, and not registered under the Act of 1874, a loan society established under the Act 3 & 4 Vict. c. 110, or a society registered under the Friendly Societies Act, 1875, was not a corporate body, and its members could, if they all consented (being legally capable of consenting), authorize its directors to do acts not authorized by its rules or by the Act under which it is established. The rules of an incorporated society cannot authorize anything to be done which is inconsistent with the Act under which it was incorporated.

(*f*) *Riche* v. *Ashbury Carriage Co.* (1874), L. R. 9 Ex. at p. 263; *Wenlock* v. *River Dee Co.* (1883), 36 C. D. at p. 685.

(*g*) See *ante*, p. 18.

(*h*) *Warburton* v. *Huddersfield Industrial Soc.*, [1892] 1 Q. B. 213, decided under the Act of 1876.

2. A corporation cannot do any acts or make any contracts or dispositions which are foreign to the purposes or objects of its incorporation, and any such acts, contracts, or dispositions are *ultra vires* of the company and void *ab initio*.

The following are examples of the application of this rule to companies incorporated by special Act of Parliament:—

A railway company cannot guarantee the capital and profits of a steamboat company, although the latter has been formed for the purpose of working with and increasing the traffic of the railway company (*i*); nor can a railway company carry on the business of coal merchants (*k*); or that of a shipping company or brewers (*l*) or omnibus proprietors (*m*); nor purchase shares in another railway company (*n*). A canal company cannot use one of its reservoirs for the purpose of letting boats for hire (*o*). A water company authorized to supply water within certain limits cannot supply water outside those limits (*p*).

The following are cases in which the above rule has been applied to companies incorporated under the Companies Acts, and to other corporations. A company having for its objects the making and dealing in railway carriages cannot purchase a concession for making a foreign railway (*q*). A building society, incorporated under the 1874 Act, cannot carry on the business of a freehold land society (*r*). So, too, a joint stock company, constituted by a deed of settlement, cannot embark on a business unauthorized by such deed; *e.g.* a life assurance society cannot undertake marine assurance (*s*).

In order to invalidate a deed under the seal of an incorporated company it must appear that the subject-matter of the deed was prohibited by the Act or instrument incorporating the company, or is so foreign from or inconsistent with the purposes for which the company

(*i*) *Colman* v. *Eastern Counties Rail. Co.* (1846), 10 B. 1; *Macgregor* v. *Deal and Dover Rail. Co.* (1852), 18 Q. B. 618; 22 L. J. Q. B. 69.

(*k*) *Att.-Gen.* v. *Great Northern Rail. Co.* (1860), 1 Dr. & Sm. 154.

(*l*) *Lyde* v. *Eastern Bengal Rail. Co.* (1866), 36 B. 10.

(*m*) *A. G.* v. *Mersey Railway Co.*, [1907] 1 Ch. 81.

(*n*) *Salomons* v. *Laing* (1849), 12 B. 339; *Great Western Rail. Co.* v. *Metropolitan Rail. Co.* (1863), 32 L. J. Ch. 382.

(*o*) *Bostock* v. *North Staffordshire Rail. Co.* (1852), 5 De G. & Sm. 584.

(*p*) *A. G.* v. *West Gloucestershire Co.*, [1909] 2 Ch. 338; *Marriot* v. *East Grinstead Water Co.*, [1909] 1 Ch. 70.

(*q*) *Smith* v. *Ashbury Carriage Co.* (1869), 20 L. T. 360; *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653. See also *Guinness* v. *Land Corporation of Ireland* (1882), 22 C. D. 349.

(*r*) Cf. *Grimes* v. *Harrison* (1859), 26 B. 435; *Kent Benefit Building Society* (1861), 1 Dr. & Sm. 417, which were decided under the Act 6 & 7 Will. 4, c. 32.

(*s*) *Phœnix Life Assurance Co.* (1863), 2 John & H. 441.

was incorporated that it is to be deemed prohibited (*t*). An agreement *ultra vires* of the company being void, it is obvious that it cannot be specifically enforced (*u*); and a company will be restrained from performing such part of an agreement as contains *ultra vires* stipulations (*x*). Any shareholder suing on behalf of himself and all other shareholders may maintain the action (*y*), but one corporation will not be restrained from exceeding its powers in an action brought against it by another corporation which does not allege it is thereby suffering a private injury (*z*). All the parties to the agreement should be made defendants in the action for the injunction (*a*).

When an agreement is void as being *ultra vires* of the company, a consent judgment obtained on the contract, the question of *ultra vires* not having been raised either in the pleadings or on the facts stated, is also void (*b*).

3. A corporation cannot do anything inconsistent with, or repugnant to, the objects or purposes for which it is incorporated, except in pursuance of some statutory power.

A society incorporated by charter cannot surrender its charter in order to obtain a new charter for a different object (*c*); and directors of a chartered company will be restrained from doing an act which would render its charter liable to forfeiture (*d*).

A company incorporated by special Act for purposes of a public nature cannot contract so as to prejudice the powers conferred upon it by such Act, *e.g.* not to take lands which it has power to take compulsorily; or not to use land so taken for the purposes for which the power was given (*e*); or to sell lands required for the purposes of its undertaking (*f*). A company cannot grant rights inconsistent with its statutory powers; *e.g.* a canal company cannot grant rights of taking water from its canals (*g*).

(*t*) *Power* v. *Hoey* (1871), 19 W. R. 916.

(*u*) *Ellis* v. *Colman* (1858), 25 B. 662.

(*x*) *Charlton* v. *Newcastle and Carlisle Rail. Co.* (1859), 5 Jur. N. S. 1096; *Hattersley* v. *Earl of Shelburne* (1862), 31 L. J. Ch. 873; *Maunsell* v. *Midland Great Western (Ireland) Rail. Co.* (1863), 1 H. & M. 130.

(*y*) See *post*, p. 411.

(*z*) *Stockport District Waterworks Co.* v. *Corporation of Manchester* (1863), 9 Jur. N. S. 266; *Pudsey Coal Gas Co.* v. *Corporation of Bradford* (1873), 15 Eq. 167.

(*a*) *Russell* v. *Wakefield Waterworks Co.* (1875), 20 Eq. 478, per Jessel, M.R.

(*b*) *Great North-West Central Rail.* v. *Charlebois*, [1899] A. C. 114.

(*c*) *Ward* v. *Society of Attornies* (1844), 1 Coll. 370; 8 Jur. 1021.

(*d*) *Rendall* v. *Crystal Palace Co.* (1858), 4 K. & J. 326.

(*e*) *Ayr Harbour Trustees* v. *Oswald* (1883), 8 A. C. 623.

(*f*) *Llanelly Rail., &c., Co.* v. *South Wales Rail. Co.* (1850), 14 Q. B. 902; *Mulliner* v. *Midland Rail. Co.* (1879), 11 C. D. 611. See also *post*, p. 297.

(*g*) *Staffordshire, &c., Canal* v. *Birmingham Canal* (1866), L. R. 1 H. L. 254; *Rochdale Canal Co.* v. *Radcliffe* (1852), 18 Q. B. 287.

4. No company registered under the Companies Acts, other than a private company (*h*), can commence any business, or exercise any borrowing powers, unless and until the following conditions have been duly complied with (*i*).

(1) Shares held subject to the payment of the whole amount thereof in cash (*k*) have been allotted to an amount not less in the whole than the minimum subscription (*l*); and

(2) 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 offered for public subscription (*m*), 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

(3) 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

(4) 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 a statement in lieu of prospectus (*n*).

The registrar, on the filing of the statutory declaration, and when necessary of a statement in lieu of prospectus, certifies that the company is entitled to commence business, and that certificate is conclusive evidence that the company is so entitled (*o*). Any contract made by a company before the date at which it is entitled to commence business is provisional only, and does not bind the company until such date (*p*). The company can, however, simultaneously offer for subscription shares,

(*h*) See *ante*, p. 7.

(*i*) C. A. 1908, s. 87. These conditions do not apply to any company which was registered before the 1st January, 1901, or to a company registered before the 1st July, 1908, which does not issue a prospectus inviting public subscription of its shares. See sub-sect. (6) as to the penalty for contravention of the provisions of this section, and *post*, p. 404.

(*k*) *Mears* v. *Western Canada Pulp, &c., Co.*, [1905] 2 Ch. 353. As to what is payment in cash, see *post*, p. 165.

(*l*) As to the meaning of minimum subscription, see C. A. 1901, s. 85 and *post*, p. 147.

(*m*) See *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

(*n*) As to statement in lieu of prospectus, see C. A. 1908, s. 82, and Schedule 2 to the Act and *post*, p. 541, App. I.

(*o*) C. A. 1908, s. 87 (2) and *post*, p. 52.

(*p*) *Ibid.* s. 87 (3).

debentures, and debenture stock, and may receive any money payable or application therefor (*q*).

Where a company goes into liquidation before it is entitled to commence business no claim can be made in the liquidation upon contracts made or services rendered before the liquidation (*r*).

5. The funds of a company cannot be applied to objects or purposes unauthorized by the terms of its incorporation, however desirable such an application may appear to be (*s*).

This rule has been applied to a foreign company (*t*). The following are examples of the application of the rule to companies incorporated by special Act of Parliament. A company cannot apply funds raised to construct one railway for the construction of another railway (*u*), nor even in making a part only of the railway subscribed for, the rest being abandoned (*x*); but where part has been completed, an injunction may be refused if such part can be made effective and beneficial to the public and profitable to the shareholders (*y*). It cannot expend its funds in promoting a Bill in Parliament (*z*); or in contributing towards the Parliamentary deposit required for Bills promoted by another company (*a*); but, by analogy to cases decided with respect to the powers of municipal corporations, it may do so in opposing a Bill which if passed would prejudice its interests (*b*). It cannot expend its funds in carrying on an action commenced by a shareholder against the company and its directors to make the latter liable for breaches of trust (*c*); nor can it covenant to pay a large sum of money to a person for not opposing the company's Bill in Parliament (*d*). The funds of a railway company cannot be applied in making a subscription to the funds of the Imperial

(*q*) C. A. 1908, s. 87 (4).

(*r*) *Otto Electrical Manufacturing Co.*, [1906] 2 Ch. 390; *New Druce Portland Co.* v. *Blakeston* (1908), 24 T. L. R. 584.

(*s*) *Munt* v. *Shrewsbury* (1850), 13 B. 1; *Beman* v. *Rufford* (1851), 1 Sim. N. S. 550; *Hare* v. *London and North Western Rail. Co.* (1861), 2 J. & H. 80, 105.

(*t*) *Pickering* v. *Stephenson* (1872), 14 Eq. 322.

(*u*) *Bagshawe* v. *Eastern Union Rail. Co.* (1849), 6 Ry. Cas. 152; 7 Ha. 114.

(*x*) *Cohen* v. *Wilkinson* (1849), 1 Mac. & G. 481.

(*y*) *Graham* v. *Birkenhead, &c., Rail. Co.* (1850), 2 Mac. & G. 146; *Hodgson* v. *Earl Powis* (1851), 1 De G. M. & G. 6.

(*z*) *Munt* v. *Shrewsbury* (1850), 13 B. 1; *Stevens* v. *South Devon Rail. Co.* (1851), 20 L. J. Ch. 491; *Great Western Rail. Co.* v. *Rushout* (1852), 16 Jur. 238; *Caledonian Rail. Co.* v. *Solway Rail. Co.* (1883), 32 W. R. 164.

(*a*) *Maunsell* v. *Midland Great Western (Ireland) Railway* (1863), 1 H. & M. 130.

(*b*) *Att.-Gen.* v. *Mayor of Brecon* (1878), 10 C. D. 204, and cases therein cited.

(*c*) *Kernaghan* v. *Williams* (1868), C Eq. 228.

(*d*) *Preston* v. *Liverpool, &c., Rail. Co.* (1856), 5 H. L. Cas. 605.

Institute, although its establishment may increase the traffic over the company's line (*e*). By sect. 65 of the Companies Clauses Act, 1845, a company cannot apply its funds except in payment of the costs and expenses incurred in obtaining the special Act, and in carrying the purposes of the company into execution.

In the case of a bank incorporated by charter, it was held that a general meeting could authorize the payment of a pension for five years for the benefit of the family of one of its superintendents (*f*).

With regard to companies registered under the Companies Acts, the following decisions have been given:—A company cannot pay the costs of proceedings in respect of a libel upon its directors, but can pay the costs of similar proceedings where the libel not only affects them, but is also calculated to injure the company itself (*g*). Directors can properly pay the expenses of printing, stamping, and posting proxy forms filled up with the names of the proposed proxies therein, even although the proxies are some of the directors who are asking for votes to support the policy of the board (*h*). A company can pay a reasonable sum by way of brokerage or commission to a stockbroker for placing a company's shares (*i*), but not an unreasonable sum (*k*). Before the passing of the Companies Act, 1900, it was unlawful for a company to pay for underwriting its capital (*l*), but under and subject to the provisions of that Act a company could do so (*m*). An industrial society cannot apply any portion of its funds in subscribing to a strike fund (*n*).

It is not *ultra vires* of a company to apply its funds towards some of the objects or purposes for which it has been incorporated, in exclusion of its other objects or purposes. Thus, a company established to buy a certain brewery, and also to carry on the business of brewers generally, may buy a smaller brewery, although by so doing it may not have sufficient funds left to buy the other brewery (*o*). This rule does not, however, apply to companies upon which Parliament has conferred special privileges, such as compulsory powers to acquire land, or a monopoly (*p*).

(*e*) *Tomkinson* v. *South Eastern Rail. Co.* (1887), 35 C. D. 675.

(*f*) *Henderson* v. *Bank of Australia* (1888), 40 C. D. 170.

(*g*) *Studdert* v. *Grosvenor* (1886), 33 C. D. 528.

(*h*) *Peel* v. *L. & N. W. Ry. Co.*, [1907] 1 Ch. 5, overruling *Studdert* v. *Grosvenor* on this point. See also *Campbell's* v. *Australian Mutual Provident Co.*, [1908] 99 L. T. 3.

(*i*) *Metropolitan Coal Consumer's Assn.* v. *Scrimgeour*, [1895] 2 Q. B. 604; C. A. 1908, s. 89 (3).

(*k*) *Faure Electric Co.* (1888), 40 C. D. 141.

(*l*) See *post*, p. 69.

(*m*) C. A. 1900, s. 8. See now s. 89 of the C. A. 1908.

(*n*) *Warburton* v. *Huddersfield Industrial Society*, [1892] 1 Q. B. 213.

(*o*) *Syers* v. *Brighton Brewery Co.* (1864), 13 W. R. 220. Cf. *Langham Skating Rink Co.* (1877), 5 C. D. 685.

(*p*) *Cohen* v. *Wilkinson* (1849), 1 Mac. & G. 481; *Hodgson* v. *Earl Powis* (1850), 12 B. 392. Cf. *Graham* v. *Birkenhead, &c., Rail. Co.* (1850), 2 Mac. & G. 146.

6. No part of the paid-up capital of a company limited by shares, governed by the Companies Acts or incorporated by a special Act, can be returned to its members, except in winding-up proceedings, or except the special Act incorporating the company, or another Act (*q*), so provides; or unless it is returned under the Companies Clauses Act, 1845, to the members of a company incorporated by a special Act, or under the Companies Act, 1908, to the members of a company incorporated under the Companies Acts (*r*).

The following sub-rules are deducible from this rule:—

(1) No part of the paid-up capital of the company can be returned to its members by way of dividends upon their shares.

Under the Companies Clauses Act, 1845, s. 121, no company governed by that section can pay any dividend out of its capital. Railway companies are sometimes authorized by their special Acts to pay interest out of capital upon shares issued for the purpose of raising money to construct a railway; but such interest cannot exceed 4 per cent. per annum, nor be paid after the time allowed by the special Act for the completion of the railway (*s*). As to the power of a company governed by the Companies Acts to pay interest out of capital, see *post*, p. 317.

Before the Companies Act, 1862, was passed, it was decided, in the case of an insurance company constituted in the year 1820 by a deed of settlement, that under the terms of that deed it was a breach of trust on the part of the directors to pay dividends out of capital. By the deed the capital of the company was alone to be answerable for the claims of policy holders and annuitants. The company adopted incorrect tables and never earned profits, yet the directors declared and paid dividends to its shareholders (*t*).

In *Fawcett* v. *Laurie* (*u*) the directors of a company constituted by a deed of settlement were restrained, at the suit of a shareholder, from paying future dividends out of capital; but in the absence of the other shareholders the directors were not restrained from paying a dividend already declared. The earliest reported case with respect to the payment

(*q*) *Sovereign Life Assurance Co.*, [1892] 3 Ch. 279.

(*r*) *Semble* these restrictions do not apply in the case of a company incorporated by charter. See *Stevens* v. *Hudson's Bay Company* (1909), T. L. R.

(*s*) See House of Commons' Standing Order, No. 167.

(*t*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835.

(*u*) (1860), 1 Dr. & Sm. 192.

of dividends out of capital by a company incorporated under the Companies Act, 1862, is *Macdougall* v. *Jersey Imperial Hotel Co.* (*x*), where, no profits having been earned, a special resolution was passed sanctioning the payment to the shareholders of 5 per cent. as interest on the amount paid up on the shares. Wood, V.-C., granted an interlocutory injunction restraining the company and the directors from paying such interest, and said: "On grounds of public policy, and on every principle, not only of honesty as regards the public generally, but of the interests of this company itself, I feel bound to prevent this proceeding. This is not in accordance with the contract entered into with the legislature on behalf of the public, whereby it was determined that the shareholders should be liable to a certain defined amount, and no more, to the creditors of the company; and not in accordance with the contract between the parties, whereby each shareholder was protected against creditors to the extent of the contributive liability of all the others." In *Salisbury* v. *Metropolitan Railway Co.* (*y*), the company, which was incorporated by a special Act, being possessed of surplus lands bringing in a net revenue of 28,000*l.*, estimated their annual value at 60,000*l.*, and by this means an apparent profit was shown available for dividend, and a dividend paid accordingly; but the directors were ordered to repay the dividend, which in fact had not been earned. See also *Salisbury* v. *Metropolitan Railway Co.* (*z*), and *Bloxam* v. *Metropolitan Railway Co.* (*a*), where the same company was also restrained from paying dividends out of capital. In *Rance's Case* (*b*) a director was ordered to repay a bonus declared upon his shares in a marine insurance company, he with other directors having recommended its payment upon an account of receipts and expenditure in which no allowance was made for risks, and without having a profit and loss account prepared. In the case of *The National Funds Assurance Co.* (*c*), the company's articles empowered the directors to issue "share warrants to bearer" to shareholders who had fully paid up their shares. Article 122 provided that the directors might, without the sanction of a general meeting, pay interest at the rate of 5 per cent. per annum upon the paid-up capital of the company; and Article 123, that no dividend should be payable except out of the profits arising from the business of the company. Share warrants bearing interest at 5 per cent. were issued to shareholders, and altogether 1,311*l.* 7*s.* 2*d.* was paid for interest upon them, although the company never made any profits. The payments, or some of them, were sanctioned by the shareholders. Jessel, M.R., held that Article 122 did not authorize the payment of interest out of capital, and that the payment was *ultra vires*. These

(*x*) (1864), 2 H. & M. 528.
(*y*) (1870), 22 L. T. 839.
(*z*) (1869), 20 L. T. 72.
(*a*) (1868), 17 L. T. 637.
(*b*) (1870), 6 Ch. 104.
(*c*) (1878), 10 C. D. 118. See also *Re Sharpe*, [1892] 1 Ch. 154.

decisions were followed in *Re Alexandra Palace Co.* (*d*) and *Flitcroft's Case* (*e*), where directors had knowingly declared and paid dividends, no profits having been made, and in *Re Oxford Building Society* (*f*) by Kay, J., where the facts were somewhat peculiar. The articles of association relating to accounts closely resembled those contained in Table A., scheduled to the Companies Act, 1862, but as to dividends, the articles prescribed that no dividend should be payable except out of realized profits. The business of the company consisted chiefly in advancing money to builders upon mortgages repayable by instalments of principal and interest spread over a number of years. No profit and loss account, revenue or capital account, was ever kept, and the annual accounts prepared by the secretary and adopted by the directors, and presented to the shareholders, consisted of a statement showing the receipts and expenditure for the past year and an estimate of the company's assets and liabilities. The principal asset of the company was arrived at by calculating upon annuity tables the present value of the instalments owing by mortgagors, and treating the amount so arrived at as an asset. The total liabilities, including therein the paid-up capital, were deducted from the total assets so estimated, and the balance treated as realized profits. Upon these balance-sheets dividends were paid for many years, until ultimately the company became insolvent and was wound up. It was proved that over 40,000*l.* in excess of profits had been paid away in dividends. This decision was followed in the case of *The Leeds Estate Building and Investment Co.* v. *Shepherd* (*g*), which resembled in many respects *The Oxford Building Society's Case*. The articles of association of both companies were very similar, except that under the articles of the Leeds Company dividends were not to be payable except out of "profits," instead of, as in the Oxford Building Society, "realized profits." Dividends were declared and paid out of capital. The balance-sheets on which the dividends were declared were prepared, not by the directors, but by the company's manager, and were delusive, in that they over-estimated the assets of the company, and were framed solely with the view of showing a profit which did not exist, and contained no profit and loss account. The auditor never looked at the articles of association, but accepted the manager's statements, and certified from time to time that the accounts submitted to him were true copies of those shown in the books of the company. In *Davison* v. *Gillies* (*h*), a shareholder obtained an interlocutory injunction (made perpetual by consent) restraining directors from paying a dividend declared on the ordinary shares, upon the ground that if proper provision had been made for the maintenance, repairs, and renewals of the tramway there could have

(*d*) (1882), 21 C. D. 149.
(*e*) *Ibid.* 519.
(*f*) (1886), 35 C. D. 502.
(*g*) (1887), 36 C. D. 787.
(*h*) (1879), 16 C. D. 347, n.

been no profits available to pay such dividend. It has been decided that the paid-up capital of one class of shares of a company cannot be applied in payment of dividends upon another class of shares, even although by the memorandum the capital is divided into "A" shares and "B" shares, and by the articles the sums paid on the "B" shares are to be invested, and the investments and income thereof used as a guarantee fund, out of which to make good a preferential dividend upon the "A" shares (*i*).

The burden of proving that dividends have been paid out of capital lies upon the plaintiff or applicant, and there have been cases where the plaintiff or applicant has failed to prove that dividends were so paid (*k*). In *Re Denham* (*l*), one of the directors escaped because it was not proved that he was a party to the wrongful payment.

The payment of dividends out of capital is further considered in Chapter XXIV., and the liability of directors for parting with the property of the company in carrying out an *ultra vires* agreement or transaction is dealt with in Chapter XXVI.

(2) No part of the paid-up capital of a company limited by shares governed by the Companies Acts can be returned to a shareholder in purchasing his shares, unless the reduction of capital thereby effected is sanctioned by the Court (*m*).

Before the Companies Act, 1862, was passed, there were several cases which decided that a company could not purchase its own shares from a director who had agreed with the board of directors to retire upon that condition (*n*). After the passing of that Act it was held that, in the absence of an express power in the memorandum or articles of association of a company, it could not purchase its own shares (*o*). In the *Dronfield Silkstone Coal Co.* (*p*) it was decided, reversing Jessel, M. R., that where such a power was contained in the articles, although not in the memorandum, the company could purchase its shares with the view of carrying into effect an arrangement considered to be for the benefit of the company; but that it could not traffic in its own shares generally. The principle laid down in this case was reluctantly followed in *Re Balgooley Distillery*

(*i*) *Guinness* v. *Land Corporation of Ireland* (1882), 22 C. D. 349.

(*k*) *Stringer's Case* (1865), 4 Ch. 475; *Glasgow Bank* v. *Mackinnon* (1882), 9 Rett. 535; and *Lee* v. *Neuchatel Asphalte Co.* (1889), 41 C. D. 1.

(*l*) (1883), 25 C. D. 752.

(*m*) *British Finance Corp.* v. *Couper*, [1894] A. C. 399.

(*n*) *Munt's Case* (1856), 22 B. 55; *Ex parte Walker* (1856), 26 L. J. Ch. 261. See also *Lawes' Case* (1852), 1 De G. M. & G. 401; *Hodgkinson* v. *National Live Stock Co.* (1859), 26 B. 473.

(*o*) *Cross's Case* (1869), 38 L. J. Ch. 583; *Zuluetas' Claim* (1870), 5 Ch. 444; and in *Hope v. International Financial Society* (1876), 4 C. D. 327.

(*p*) (1881), 17 C. D. 76.

Co. (*q*); but was overruled in *Trevor* v. *Whitworth* (*r*), which decided that a purchase by the company of its own shares is *ultra vires*, even although purporting to be authorized by its articles. The cases of *Phosphate of Lime* v. *Green* (*s*) (which assumes that a purchase of shares can be ratified by the company) and *Taylor* v. *Pilson Electric Light Co.* (*t*), so far as they relate to a company's power to purchase its shares, are also overruled by *Trevor* v. *Whitworth*. Even if the memorandum of association purports to give express power to purchase the company's own shares, such a power is void (*u*). Where directors of a company have purchased some of its shares out of accumulated profits, leave will be given to reduce the capital by writing off the shares so purchased (*x*). An agreement by way of compromise between the vendors to a company, and the company providing *inter alia* that the vendor shall transfer to the company to hold in trust for its preferred shareholders certain share warrants representing fully-paid shares in the company is not a purchase by the company of its own shares or a surrender of shares to the company, and the trust is valid (*y*).

(3) No company governed by the Companies Acts can apply any of its shares or capital money directly or indirectly in payment of any commission, discount, or allowance, as consideration for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any of its shares, whether absolutely or conditionally, except under sect. 89 of the Companies Act, 1908 (*z*).

Prior to the 1st January, 1901, the shares of such a company could not be issued at a discount, nor could a commission upon such issue be paid by the company (*z*). After that date the company could pay such a commission in accordance with the provisions of sect. 8 of the Companies Act, 1900, and can now pay it under section 89 of the

(*q*) (1885), 17 L. R. Ir. 239.

(*r*) (1887), 12 A. C. 408.

(*s*) (1871), 7 C. P. 43.

(*t*) (1884), 27 C. D. 268.

(*u*) See dictum of Lord Macnaghten in *Trevor* v. *Whitworth* (1887), 12 A. C. 430, and the decisions in *Raine's Case* (1887), 4 T. L. R. 302; *Mersina and Adana Construction Co.* (1889), 5 T. L. R. 680; *General Property Co.* v. *Matheson's Trustees* (1888), 16 Ct. of Sess. Cas. 282 (Sc.) (Rettie).

(*x*) See *York Glass Co.* (1889), 60 L. T. 744; *Dicido Pier Co.*, [1891] 2 Ch. 354, decided under the C. A. 1877, s. 4.

(*y*) *Gill v. Arizona Copper Co.* (1900), 2 Fraser 843.

(*z*) *Almada and Tirito Co.* (1888), 38 C. D. 415; overruling *Ince Hall, &c., Co.* (1882), 23 C. D. 545, n., and *Plaskynaston Tube Co.* (1883), *ibid.* 542. See also *Addlestone Linoleum Co.* (1887), 37 C. D. 191; *New Chile Co.* (1888), 38 C. D. 475; *London Celluloid Co.* (1888), 39 C. D. 190; *Weymouth, &c., Packet Co.*, [1891] 1 Ch. 66; *Ooregum Co.* v. *Roper*, [1892] A. C. 125; *Follett's Case* (1892), 9 T. L. R. 499; *Welton* v. *Saffery*, [1897] A. C. 299. See *post*, p. 70.

Act of 1908. But shares cannot even now be issued at a discount (*a*). The question arises, What is the result of such an issue? In *Ince Hall, &c., Company* (*b*), Chitty, J., said: "If it [the contract to issue shares at a discount] is *ultra vires*, it must be set aside *in toto*, the consequence being that these gentlemen [to whom such shares had been issued] would be entitled to be relieved of their shares and receive back the money paid upon them." Therefore directors can, before shares issued at a discount have been registered, rescind the allotment (*c*). Even where a person is registered as the holder of shares issued at a discount, he does not merely by such registration become a member of the company, and while the company is a going concern he is entitled to have his name removed from the register, unless he be estopped by his conduct from obtaining such relief. Thus, in *Almada and Tirito Company* (*d*), where the application was made shortly after the shares were registered, the applicant's name was removed from the register, and his deposit on the shares was ordered to be repaid. In *Railway Time Tables Company* (*e*), where the application for similar relief was made more than two years after registration of the applicant as the holder of the shares, it was refused, upon the ground that the applicant was estopped by her conduct, in selling some and attempting to sell others of such shares, from denying that she was a shareholder, and that she therefore held the shares subject to the liability of paying for them in full. The result would be the same if a person receives dividends on shares issued to him at a discount (*f*). An order can be obtained for the rectification of the register in which shares issued at a discount are stated to be fully paid (*g*). When an effective resolution has been passed, or an order has been made, for winding up a company and the registered holder of shares issued at a discount has acted as a member in respect of them, he is a contributory in respect of the amount unpaid upon such shares (*h*), unless he is a *bonâ fide* transferee for value of such shares, without notice of their having been issued at a discount, and the certificates issued to him in respect thereof state that they are fully paid (*i*). He cannot claim any portion of the surplus assets as against the fully-paid shareholders without first accounting for the discount (*k*); and a call may be made upon him for

(*a*) *Keatinge* v. *Paringa Consolidated Mines, Ltd.* (1902), 18 T. L. R. 266; *Mosely* v. *Koffyfontein Mines*, [1904] 2 Ch. 108; *Bury* v. *Famatina Development Corporation*, [1909] 1 Ch. 754.

(*b*) (1882), 23 C. D. 545, n.

(*c*) *Barnett's Case* (1874), 18 Eq. 507.

(*d*) (1888), 38 C. D. 415.

(*e*) (1889), 42 C. D. 98.

(*f*) See also *Gregory* v. *Patchett* (1864), 33 B. 595.

(*g*) *Ooregum Co.* v. *Roper*, [1892] A. C. 125.

(*h*) *Addlestone Linoleum Co.* (1887), 37 C. D. 191; *London Celluloid Co.* (1888), 39 C. D. 190.

(*i*) *New Chile Gold Mining Co.*, W. N., [1892] 193; cf. *Hirsche* v. *Sims*, [1894] A. C. 654, 657.

(*k*) *Ex parte Stephenson* (1885), 15 L. R. Ir. 51; *Weymouth, &c., Steam Packet Co.*, [1891] 1 Ch. 66.

the amount of such discount in order to adjust the rights of the contributories *inter se*, as well as for the payment of the company's debts and the costs of winding up (*l*). The fact that such a call can only be made in a winding-up is no ground for making a winding-up order (*m*). In the case of *Odessa Tramways* v. *Mendel* (*n*), where, in order to enable the directors to issue shares at a discount, two contracts were entered into, one whereby the defendant agreed to subscribe for 2,000 shares, and the other whereby the directors agreed to pay him 4,000*l*., ostensibly for services rendered to the company, which had never been given, it was held that the defendant was estopped from setting up his own fraud as a defence to his liability to pay for the shares. In all these cases the application to the company for shares at a discount and the allotment of such shares purporting to have a larger sum credited upon them than is actually paid or satisfied, does not constitute a contract at all, because, the company being incapable of issuing such shares, there is no agreement, as the applicant applies for one thing and receives another; but registration of the applicant as the holder of such shares, followed by his acquiescence in such registration, constitutes the real contract to take such shares, with all the liabilities attached to them by statute.

Companies incorporated by Act of Parliament, to which the Companies Clauses Act, 1863, s. 21, and Companies Clauses Act, 1869, ss. 6 and 7, are applicable, may issue new shares or stock at a discount; and it has been decided that companies governed by the Companies Clauses Act, 1845, and the Acts amending the same, may, acting in good faith, issue at a discount original stock or shares as fully paid and for any valuable consideration, but the Court left undecided the question whether shares liable to calls could be issued at a discount (*o*).

Forfeited shares of companies governed by the Companies Acts can be re allotted with the amount theretofore paid in respect of the shares credited as paid thereon (*p*).

(4) No part of the capital of a company limited by shares can be returned to its shareholders in reduction of capital, except, as to companies governed by the Companies Acts, in accordance with the provisions of the Companies Act, 1908, and, as to companies incorporated by special Act, under such Act or the Companies Clauses Act, 1845.

As to companies governed by the Companies Acts, see *Trevor* v. *Whitworth* (*q*).

(*l*) *Welton* v. *Saffery*, [1897] A. C. 299.

(*m*) *Pioneers, &c., Syndicate*, [1893] 1 Ch. 731.

(*n*) (1877), 8 C. D. 235.

(*o*) *Webb* v. *Shropshire Rys. Co.*, [1893] 3 Ch. 307; *Statham* v. *Brighton Marine Palace Co.*, [1899] 1 Ch. 199.

(*p*) *Morrison* v. *Trustees, &c., Corp.*, [1898] 79 L. T. 605.

(*q*) (1887), 12 A. C. 409; *Moxham* v. *Grant*, [1900] 1 Q. B. 88.

By the Companies Clauses Act, 1845, sect. 121, any portion of the capital stock of the company may be returned to the members with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at any extraordinary general meeting to be convened for that object. In *Holmes* v. *Newcastle Abattoir Co.* (*r*), the plaintiff and nine other persons formed themselves into a limited company. The paid-up capital consisted of land, which was conveyed by the ten persons as co-owners to the company. The directors sold part of it, and divided the proceeds in equal shares among the shareholders other than the plaintiff, who brought this action against the company and his co-shareholders, and obtained an order against his co-shareholders for repayment of their shares to the company (with costs against all the shareholders except two, who submitted to pay, and who supported him), although some of the shares had since been sold to other persons.

It is submitted that where a shareholder has, under a power in the articles, paid money on his shares in advance of calls, he cannot demand the repayment of such advances from the company (*s*). Interest can be paid upon such moneys although no profits have been made by the company (*t*); and, upon the same principle, subscribers for shares are often allowed a rebate if they pay for such shares in advance of the time fixed by the term of allotment. A company having paid-up capital in excess of its wants may reduce the same by returning such excess to its shareholders (*u*). The steps to be taken before this can be done are similar to those which have to be taken in the case of companies reducing their capital by writing off liability upon shares: see *post*, p. 51. It has been decided that a company cannot, without the sanction of the Court, return capital on the footing that it may be called up again (*x*).

7. The doctrine of *ultra vires* must be applied reasonably, so that whatever is fairly incidental to or consequential upon the purposes for which the company has been incorporated ought not (unless expressly prohibited) to be considered as *ultra vires* (*y*).

(*r*) (1875), 1 C. D. 682. See also *Moxham* v. *Grant*, [1900] 1 Q. B. 88.

(*s*) Cf. *Poole's Case* (1878), 9 C. D. 322; *Lock* v. *Queensland Land Co.*, [1896] 1 Ch. 407, per Kay, L. J.

(*t*) *Lock* v. *Queensland Land Co.*, [1896] A. C. 461, approving *Dale* v. *Martin* (1883), 11 L. R. Ir. 371.

(*u*) C. A. 1908, s. 46.

(*x*) *Northmoor Spinning Co.* (1883), Palmer's Company Precedents, 4th ed. 465.

(*y*) *Att.-Gen.* v. *Great Eastern Rail. Co.* (1880), 5 A. C. 473. In this case the company was incorporated by a special Act; but the same principle applies to other joint stock companies. See Lord Watson's judgment, p. 486.

This principle was approved in a building society case (*z*) by Lord Selborne, who, in effect, said, that in order to apply the principle we must ascertain first of all what the purpose is, and then whether the act proposed can be brought in as incidental to that purpose, and a thing reasonably to be done for effectuating it. In *Simpson* v. *Westminster Palace Hotel Co.* (*a*), it was held that the letting, for the purpose of a government department, of a large part of the hotel while it was in course of erection was within the clause of the memorandum of association authorizing the doing all such things as are incidental or otherwise conducive to the attainment of the object for which the company was formed, viz. the business of hotel keepers. So, too, a company may, in order to have its office in the most eligible place, take a lease of a house, and let off a large portion of it, although the letting of offices is not part of the business of the company (*b*). An insurance company may pay losses which it is not legally liable to pay, but which other insurance companies are accustomed to pay (*c*). A manufacturing company incorporated by special Act of Parliament, and having the powers of management conferred by the 90th section of the Companies Clauses Act, 1845, may apply a part of the undivided profits of the company in paying a gratuity of one week's extra pay to each of the workmen who have worked for the company for a year with a good character (*d*); but a company about to be wound up cannot give gratuities to its officers or servants whose employment is to be determined by proper notice (*e*). A chartered bank, although not expressly empowered to do so by its deed of settlement, may grant a pension to the widow of a deceased officer of the bank (*f*). A railway company having authority to keep steam vessels for the purposes of a ferry may use such vessels for sea excursions when not required for the ferry (*g*). A railway company carrying coals for a coal merchant may agree to let him have the use of its weighing machines to weigh out the coals to his customers (*h*). A limited company formed to work a patented machine may purchase the patent (*i*). A mining company may acquire the surface of land under which minerals are to be found although the area exceeds sixty-five square miles (*k*). A colliery company has an implied power to sell its real estate (*l*). A joint stock bank having extensive powers to carry on the business of bankers, and to act in such

(*z*) *Small* v. *Smith* (1884), 10 A. C. 119.

(*a*) (1860), 2 D. F. & J. 141; 8 H. L. Cas. 712.

(*b*) *Ex parte Horsey* (1868), 5 Eq. 561.

(*c*) *Taunton* v. *Royal Insurance Co.* (1864), 2 H. & M. 135.

(*d*) *Hampson* v. *Price's Candle Factory* (1876), 45 L. J. Ch. 437.

(*e*) *Hutton* v. *West Cork Rail. Co.* (1883), 23 C. D. 664.

(*f*) *Henderson* v. *Bank of Australasia* (1888), 40 C. D. 170.

(*g*) *Forrest* v. *Manchester, &c., Rail. Co.* (1860), 30 B. 40.

(*h*) *L. & N. W. Rail. Co.* v. *Price* (1883), 11 Q. B. D. 485.

(*i*) *Leifchild's Case* (1865), 1 Eq. 231.

(*k*) *Johns* v. *Balfour* (1889), 5 T. L. R. 389.

(*l*) *Kingsbury Collieries*, [1907] 2 Ch. 259.

manner as may appear to the bank best calculated to promote its interests, may guarantee the payment of interest on debentures of another company, the existence of which is important in the interests of the bank (*m*); but, *semble*, a power in the memorandum of association of a discount company to carry on the business of a bill-broker and scrivener, and to make advances and to procure loans, does not empower the company to apply for a large number of shares in a proposed limited joint stock bank for the purpose of increasing the business of the discount company (*n*). Nor does a power to advance money on a second mortgage authorize a building society, as second mortgagee, to guarantee the payment of the prior mortgage debt in consideration of the first mortgagees not proceeding to exercise their power of sale (*o*); nor does a power to lend empower a company to guarantee the debts of another company promoted by the guaranteeing company (*p*).

Where the memorandum and articles of association are contemporaneous documents, ambiguous terms in the memorandum may be interpreted by clear terms in the articles; so that where, upon the memorandum alone, it is doubtful whether directors have certain powers, they can exercise such powers if the articles expressly authorize them so to do, provided that such articles are not inconsistent with the memorandum (*q*). It is obvious that the articles cannot, even where the memorandum is obscure, authorize directors to do anything which the memorandum itself cannot authorize, *e g.* to pay dividends out of capital, purchase its own shares, etc.

General words in the memorandum of association, and wide powers given in general words (*r*), must be construed as being only ancillary to the primary objects for which a company has been formed (*s*), and this is so although the memorandum states that the objects specified in each paragraph of the objects clause shall be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company (*r*).

8. An act, contract, or disposition *ultra vires* of a company is incapable of ratification, and therefore

(*m*) *In re West of England Bank, Ex parte Booker* (1880), 14 C. D. 317.

(*n*) *Joint Stock Discount Co.* v. *Brown* (1866), 3 Eq. 139.

(*o*) *Small* v. *Smith* (1884), 10 A. C. 119.

(*p*) *Queen Anne Mansions Co.*, [1894] 1 Manson, 460.

(*q*) *Phœnix Bessemer Co.* (1875), 44 L. J. Ch. 683; *Pyle Works* (1890), 44 C. D. 534, where it was held that directors could mortgage future calls.

(*r*) *Stephens* v. *Mysore Reef Co.*, [1902] 1 Ch. 745, distinguished in *Pedlar* v. *Road Block Gold Mines*, [1905] 2 Ch. 427.

(*s*) *Suburban Hotel Co.* (1866), 2 Ch. 737; *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653; *Haven Gold Mining Co.* (1882), 20 C. D. 151; *German Date Coffee Co.* (1882), *ibid.* 169; *Amalgamated Syndicate, Ltd.*, [1897] 2 Ch. 600; *Coolgardie Consolidated Gold Mines, Ltd.* (1897), 76 L. T. 269.

cannot be made valid by the assent with full knowledge either of a general meeting or of every member of the company (*t*).

But a sale by a company of its undertaking for the purpose of a reconstruction not made under sect. 192 of the Companies Act, 1908, although invalid (*u*), may be ratified after the Company goes into liquidation by a special resolution passed under that section (*x*).

9. A company and its directors will be restrained by injunction from parting with any of its property in carrying out a transaction *ultra vires* of the company.

The rule has been applied in the following cases, namely :—

Paying dividends out of capital (*y*). Paying dividends to one class of shareholders in prejudice of the rights of another class (*z*). Purchasing the company's own shares (*a*), or the shares of another company when not authorized (*b*).

A shareholder seeking an injunction must both allege and prove that the act is *ultra vires* (*c*). Any registered shareholder suing on behalf of himself and all other shareholders, or all other shareholders of his class, may obtain such an injunction (*z*), provided he is not personally disqualified from obtaining the relief he seeks (*d*). *Quære* whether a person having a right to be registered as a member can, before registration, commence such an action (*c*). An unsecured creditor cannot commence such an action, even although the acts complained of, *e.g.* payment of dividends out of capital, will diminish the fund available for the payment of his debt (*c*).

(*t*) *Bagshaw* v. *Eastern Union Rail. Co.* (1850), 2 Mac. & G. 389; *East Anglian Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 11 C. B. 775; *Simpson* v. *Westminster Palace Hotel Co.* (1860), 8 H. L. Cas. 712; *Gregory* v. *Patchett* (1864), 33 B. 595; *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653.

(*u*) *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743.

(*x*) *Ex parte Fox* (1871), 6 Ch. 176.

(*y*) *Macdougal* v. *Jersey Hotel Co.* (1864), 2 H. & M. 528; *Salisbury* v. *Metropolitan Rail. Co.* (1870), 22 L. T. 839; *Davison* v. *Gillies* (1879), 16 C. D. 347, n.

(*z*) *Hoole* v. *Great Western Rail. Co.* (1867), 3 Ch. 262; *Dent* v. *London Tramways Co.* (1880), 16 C. D. 344.

(*a*) *Hodgkinson* v. *National Live Stock Assurance Co.* (1859), 26 B. 473.

(*b*) *Salomons* v. *Laing* (1850), 12 B. 339.

(*c*) *Mills* v. *Northern Railway of Buenos Ayres Co.* (1870), 5 Ch. 621.

(*d*) *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558.

POWERS OF THE COMPANY.

CANADIAN NOTES.

Under sect. 17 of the Ontario Act of 1907 very broad ancillary powers are conferred on all companies having a share capital. These clauses render it unnecessary to insert more than a brief statement of the proposed powers of the company in a petition for incorporation. A company may, for example, now carry on any business other than that for which it is incorporated which may seem to the company capable of being conveniently carried on in connection with its business. A joint stock company may even lend money to or guarantee the contracts of its customers or any person or company with which the company may enter into partnership or a profit-sharing arrangement. In connection with this power of lending money regard must be had, however, to the provisions of the Loan Corporation Act.

If it is desired to limit the ancillary powers specified in the Act this may be accomplished by inserting a clause asking for such limitation in the petition for incorporation, and such powers may then be withheld by the letters patent or supplementary letters patent.

A company incorporated under the authority of a Provincial Legislature to carry on business is not inherently incapable of entering into a valid contract outside of the boundaries of its province of origin relating to properties also outside this limit. (*C. P. R.* v. *Ottawa Fire Insurance Co.*, 39 S. C. R. 405; *Kerlin Bros.* v. *Ontario Pipe Line Co.*, 11 O. W. R. 797.)

Examples of Implied Powers.

The implication is made having regard to the entire constating instruments; so where a company by its act of incorporation was directed to deposit moneys received from stock subscriptions in a

bank to be withdrawn by the provisional directors for the purpose only of the company, it was said that the power of withdrawal given did not extend to the general purposes of the company, but only to such purposes as were necessary in the work of organizing the company. *Monarch Life* v. *Brophy*, 9 O. W. R. 151.

It is not *ultra vires* of a mining company or its directors to grant a partnership interest in a mine to an explorer who has made known his location to the company under an agreement that he should be compensated for the communication, that being the usual mode of compensation in such cases. *McDonald* v. *Upper Canada Mining Co.*, 15 Gr. 179.

Where by the statute incorporating it, the corporation was forbidden to buy on credit, it was held that a vendor of goods could not recover, as no action could be maintained upon an implied representation or warranty of authority in law to do an act; and moreover, the plaintiff must be taken to have known of the statutory inability. *Struthers* v. *MacKenzie*, 28 O. R. 381.

In *Ritchie* v. *Vermilion Mining Co.*, 1 O. W R. 627, a shareholder sued to restrain the company from parting with all its mining lands on the principle that it involved a termination of the business, which was an *ultra vires* act. The Court took the view that there was nothing to prevent the business being continued by the purchase of other mines, or mining lands afterwards, and it was for the company to determine what shall be done afterwards. See also *Hovey* v. *Whiting*, 13 A. R. 7 and 14 S. C. R. 515.

Where a company has power to acquire land it has the implied power to give a mortgage for and to bind itself by covenant to pay the purchase money. The powers of a corporation created for certain specified purposes depends on what those purposes are, and except so far as it has express powers given to it would have such powers only as are necessary for the purpose of enabling it in a reasonable and proper way to discharge the duties or fulfil the purpose for which it was constituted. *Shepperd* v. *Bonanza Nickel Co.*, 25 O. R. 305; *Western Assurance Co.* v. *Taylor*, 9 Gr. 471.

Corporations must have a power of compromise as an incident to their existence. No compromise can have any effect upon the rights of creditors of the Company antecedent to the deed of compromise. *Fuches* v. *Hamilton Tribune*, 10 O. R. 497.

In the absence of statutory prohibition, the holding of shares by one trading corporation in another trading corporation is not *ultra vires*. *Canada Life Assurance Co.* v. *Peel General Manufacturing Co.*, 26 Gr. 477.

As to lease by railway company, see *Hinckley* v. *Gildersleeve*, 19 Gr. 212, and *Michigan Central R. W. Co.* v. *Wealleans*, 24 S. C. R. 309; *Attorney-General* v. *Niagara Falls International Bridge Co.*, 20 Gr. 34.

A company authorized to borrow may validly give a mortgage. *Hope* v. *Glass*, 23 U. C. R. 86; *Bickford* v. *Grand Junction Railway*, 1 S. C. R. 696; *Farrell* v. *Caribou Gold Mining Co.*, 30 N. S. R. 199. And pay a higher rate than the legal rate of interest. *McDougall* v. *Montreal Warehousing Co.*, 3 L. N. 64.

When acts are spoken of as being *ultra vires* it is not meant that they are prohibited, but merely that they are not within the powers directly or indirectly conferred upon the corporation. It would accordingly be unjust if a corporation were allowed to avail itself of the doctrine of *ultra vires* as against a party seeking to enforce a contract which has been performed by him and has resulted in a corresponding benefit to the shareholders. *Clarke* v. *Sarnia Street Railway Co.*, 42 U. C. R. p. 45; *Macdonald* v. *Upper Canada Mining Company*, 15 Gr. 179.

Franchises and special privileges or powers in the nature of franchises cannot be delegated. Every capacity of a corporation which can be styled "special" or a "privilege" is given to it for itself for its own purposes, and to be used by itself directly. Any transfer, direct or indirect, to others is void. *Attorney-General* v. *Niagara Falls Bridge Co.*, 20 Gr. 34; *International M. C. Railway* v. *Wealleans*, 24 S. C. R. 309; *Hinckley* v. *Gildersleeve*, 19 G. R. 212.

As to when defendant in a suit by a company may be debarred from setting up a defence of *ultra vires* on the part of a company, see *Northern Railway Co.* v. *Lister*, 27 U. C. R. 57. See also *Charlebois* v. *Delap*, 26 S. C. R. 221.

Assent of all Shareholders.

Where a company acts in a matter which is *ultra vires* of the powers contained in its charter, or reasonably incidental thereto, the unanimous assent of all the shareholders to the act will not validate it. *Charlebois* v. *Delap*, 26 S. C. R. 221. See also *Adams* v. *Bank of Montreal*, 32 S. C. R. 719.

Ultra Vires Contract: Consent Judgment.

In the case of *Charlebois* v. *Delap* (*supra*) it was held that judgment obtained on consent on an *ultra vires* contract had no greater validity than the contract itself, because the company could not validly give the consent to treat as valid what was *ultra vires*.

The Privy Council laid down that it was quite clear that a company cannot do what is beyond its legal powers by simply going into Court and consenting to a decree which orders that the thing shall be done. Such a judgment cannot be of more validity than the invalid contract on which it is founded. *Great North-West Central Railway* v. *Charlebois* (1899), A. C. p. 124.

It may be added that the question of *ultra vires* cannot be made to depend upon the further question whether a certain contract was or was not beneficial to the company. Benefit or no benefit has really no bearing upon the question of *ultra vires*. The circumstance that a contract may require for its full or maximum performance an increased plant on the part of the company is not in itself sufficient to render the contract *ultra vires*. It would be different if such increased plant had been required to carry on a new or different business from that then being carried on by the company. *National Malleable Castings Co.* v. *Smith's Falls*, 14 O. L. R. 22.

Companies may also so far develop and extend their operations as to engage in matters not primarily contemplated by their founders, provided these matters are incidental to their proper business or *bonâ fide* conducive to their prosperous development. *Ryckman* v. *Toronto Type Foundry Co.*, 3 O. W. R. 434.

Illustrations of Ultra Vires Acts.

Apart from special enabling provisions the following Acts are *ultra vires*.

Issuing shares at a discount. *North-West Electric Co.* v. *Walsh*, 29 S. C. R. 33.

Under the Ontario Act a company cannot use any of its funds for the purchase of shares of another company unless a bye-law has been passed and ratified by two-thirds of the shareholders. See sect. 79.

Similarly, no loan may be made by a company to a shareholder, and if such a loan is made all directors and officers of the

company making same or assenting shall be jointly and severally liable.

The giving of a guarantee by a company to answer for the debt of a person who does work for them, if not within the general or special powers of the company, may be justified on the ground that it is incidental to the main purpose and that there was a potential necessity for entering into the guarantee, and that, therefore, there is a reasonable implication or power to do it. *Williams* v. *Crawford Tug Co.*, 11 O. W. R. 321. See also *Re Central Bank*, 30 C. L. T. 275.

Bye-Laws.

A bye-law is a rule or law adopted by a corporation or association for the regulation of its own actions or concerns, and the rights and duties of its own members among themselves. A bye-law may be in the same form as a resolution, and require the same solemnities to pass it, but a resolution is not necessarily a bye-law. See *Mackenzie* v. *Maple Mountain Mining Co.*, 20 O. L. R. 615.

To be valid, a bye-law must operate generally; but a resolution is adopted ordinarily to reach special and individual cases. *Re Manes Tailoring Co.* v. *Wilson*, 14 O. L. R. 96.

It is a general common law principle that a bye-law must not be unreasonable or work unequally towards members of any one class of shareholders affected by it. And so where a bye-law had the effect of discriminating as to terms of payment between certain individuals and the other shareholders of the company, it was held to be invalid upon its face. *The North-West Electric Co.* v. *Walsh*, 29 S. C. R. 33.

As to the right to repeal bye-laws to the prejudice of parties who obtain vested rights under them, see *Wright* v. *Incorporated Synod of the Diocese of Huron*, 29 Gr. 348; 9 A. R. 411; 11 S. C. R. 95.

In the absence of any provisions to the contrary in the Act of letters patent, the right to make bye-laws for the management of the company is no doubt vested in the whole body of shareholders; but it is competent for the power creating the corporation to vest the power in a select body, as is done in the Ontario Companies Act and similar Acts, which provide that the directors may pass bye-laws for certain purposes specified in the Act. The term of office of the directors is a matter to be dealt with by bye-law to be

passed by them, and where the directors of a company passed a bye-law fixing their term of office at one year, and this bye-law had been confirmed at the annual meeting of shareholders, it was held that the shareholders were bound by the bye-law, and could not themselves pass another to alter it. They must wait until the next annual meeting, and put in a new set of directors, who would pass a new bye-law. *Stephenson* v. *Vokes*, 27 O. R. 691.

Note that the shareholders' bye-law was passed during the directors' year of office, and provided that the directors' appointment should be terminable by resolution. See generally *Temple* v. *Toronto Stock Exchange*, 8 O. R. 705; *Clarkson* v. *Toronto Stock Exchange*, 13 O. R. 213.

The presumption that a corporation's shareholders can pass bye-laws necessary for the management of its affairs arises only in the absence of an express power. The clauses in the Ontario Companies Act empowering the directors to pass bye-laws in respect to certain matters withhold from the shareholders the power to pass bye-laws in respect to such matters. *Kelly* v. *Electrical Construction Co.*, 10 O. W. R. 704.

Were the rule otherwise, there might be in existence at the same time two inconsistent bye-laws, one passed by the directors and the other by the shareholders. *Ibid.* See also *Beadry* v. *Read*, 10 O. W. R. 622.

CHAPTER IV.

CAPITAL.

The capital of a company limited by shares, or limited by guarantee and having a capital divided into shares, governed by the Companies Acts must be divided into shares of a certain fixed amount (*a*). Capital may be either nominal, issued, or paid up. The nominal capital is the total amount authorized by the special Act, charter, deed of settlement, or memorandum of association. The issued capital is the total amount issued, and the paid-up capital is that part of the issued capital which is paid up or duly credited as paid up.

A limited company governed by the Companies Clauses Acts may, unless its special Act otherwise provides, convert all or any of its fully paid-up capital into stock (*b*), or reduce its capital by returning a part of it to its members, with the consent, duly given, of all the mortgagees and bond creditors of the company (*c*), and may divide its ordinary stock into preferred and deferred ordinary stock (*d*). It is submitted that, unless empowered by its special Act or Acts, such a company cannot reduce its issued capital, except as before mentioned, or subdivide or consolidate its shares. A limited company governed by the Companies Acts can increase (*e*) or reduce its capital (*f*), consolidate or subdivide its shares (*e*), re-organize its capital by the consolidation of shares of different classes, or by the division of its shares into shares of different classes (*g*), and, as to its fully paid-up capital, convert it into stock (*h*), or issue share warrants in respect thereof (*i*), and re-convert stock into shares (*h*).

(*a*) C. A. 1908, ss. 3 and 4.
(*b*) Companies Clauses Act, 1845, s. 61.
(*c*) *Ibid.* s. 121.
(*d*) See *post*, p. 54.
(*e*) C. A. 1908, s. 41.
(*f*) *Ibid.* ss. 46–56.
(*g*) *Ibid.* s. 45.
(*h*) *Ibid.* s. 41.
(*i*) *Ibid.* s. 37.

Increase of Capital.

1. An increase of the nominal capital of a company incorporated by a special Act of Parliament can only be authorized by another special Act.

Where an increase of capital has been authorized by a special Act which incorporates the provisions of Part II. of the Companies Clauses Act, 1863, the creation and issue of the additional capital require the sanction of the company by a majority of three-fifths, or the majority prescribed by the special Act, at a special meeting duly convened for that purpose; but no preference assigned to any shares or stock to be issued can affect any guarantee or any preferential dividend upon existing shares or stock; and, unless the company otherwise determines, new capital must first be offered to the members of the company if the ordinary shares or stock are at a premium.

2. A company limited by shares or by guarantee if registered after the 31st December, 1900 and having a share capital governed by the Companies Acts can, if so authorized by its articles of association, increase its capital (*j*).

When the articles of association give power to a company to increase its capital, then, unless the articles otherwise provide, the company may, by an ordinary resolution passed at an extraordinary general meeting, increase its capital (*j*). If the articles do not empower the company to increase its capital, they must be altered by special resolution so as to confer upon the company such a power; and though the resolution for the increase of capital cannot be passed until the regulations of the company have been so altered (*k*), still it is not necessary to have the articles altered by a special resolution, and then have the new capital authorized at a meeting of the company held after the confirmatory meeting necessary to pass the special resolution; but it is sufficient if the new capital is created at such confirmatory meeting after the special resolution is passed (*l*). Where by the articles as amended a *special* resolution is required to sanction an increase of capital, the articles cannot be altered and the issue authorized by special resolutions passed contemporaneously; but at least three meetings of the company are necessary (*m*). When the issue of any part of the new capital requires the consent of the company in general meeting, such

(*j*) C. A. 1908, s. 41 (1a).

(*k*) *Patent Invert Sugar Co.* (1885), 31 C. D. 166.

(*l*) *Campbell's Case* (1873), 9 Ch. 1.

(*m*) Cf. *Imperial Hydropathic Hotel Co.* v. *Hampson* (1882), 23 C. D. 1; and *Patent Invert Sugar Co.* (1885), 31 C. D. 166.

consent should be obtained. If the articles so provide, the new capital should, in the first instance, be offered for subscription, *pro ratâ*, to existing members; and, unless a member accepts the offer within the prescribed time, he loses his right to an allotment (*n*).

Notice of increase of registered capital must be given to the registrar within fifteen days after the passing of the resolution increasing the capital (*o*).

Reduction of Capital.

3. The paid-up capital of a company incorporated by a special Act, to which the Companies Clauses Acts are applicable, may be reduced by returning any portion of it to its members, with the consent duly given of all its mortgagees and bond creditors, and its nominal capital may be reduced by cancelling unissued new capital.

These powers are respectively given by the Companies Clauses Act, 1845, s. 121 (unless excluded by the special Act), and the Companies Clauses Act, 1863, s. 16 (if expressly incorporated with and by the special Act).

4. Subject to confirmation by the Court, a company governed by the Companies Acts, whether limited by shares, or limited by guarantee and having a share capital, if registered after the 31st December, 1900 (*p*), if so authorized by its articles, may, by special resolution, reduce its share capital in any way (*q*).

The Courts having jurisdiction are the Courts having jurisdiction in winding up (*s*). The Court may, in its discretion, upon the petition of the company, without prejudice to the generality of the above-mentioned

(*n*) *Pearson* v. *London and Croydon Rail. Co.* (1845), 14 Sim. 541. See Table A., Art. 27, in the First Schedule to the C. A. 1862. In that article "members" include a deceased member whose name is on the register: *James* v. *Buena Ventura Syndicate*, [1896] 1 Ch. 456. Cf. Art. 42 of Table A. in Schedule 1 to the C. A. 1908.

(*o*) C. A. 1908, s. 44. As to penalty on default, see *post*, p. 402.

(*p*) C. A. 1908, s. 56. This only applies to companies limited by guarantee and registered on or after January 1st, 1901.

(*q*) C. A. 1908, s. 46. A reduction of nominal capital effected by cancelling shares which at the date of the passing of the special resolution have not been taken or agreed to be taken by any person, does not require the confirmation of the Court, provided the articles authorize it. *Ibid.* s. 41.

(*s*) *Ibid.* ss. 285 and 131. See *post*, p. 430.

rule, confirm the reduction of (1) paid-up capital by cancelling capital which is lost or unrepresented by available assets (*t*), or by returning to shareholders capital in excess of the wants of the company (*u*); (2) capital issued but not paid up, by extinguishing or reducing the liability upon the shares not fully paid up; and (3) unissued capital by cancelling any part thereof or by reducing the nominal amount of the shares. In each of the above-mentioned cases capital can only be reduced if the company, under its articles, has power to so reduce capital; but the company can, by a special resolution, alter its articles so as to acquire this power. Even where in a winding-up all shares rank equally in repayment of capital, a reduction of paid-up capital need not be made *pro ratâ* on each class of the shares of the company if the shareholders prejudicially affected by any other mode of reduction agree thereto (*v*). Where preference shares have no priority in repayment of capital, preference and ordinary shares may be reduced by the same percentage on each share (*w*). In the same case Cotton, L.J., was of opinion that by the terms of issue of any class of shares it could be provided that upon any reduction of capital such shares should not be reduced. North, J., held, in *Quebrada Rail. Co.* (*x*), that one class only of paid-up capital could be reduced although the other class had no priority in repayment of capital; but Kay, J. (*y*), refused to sanction a similar resolution. In such a case, however, where the holders of the reduced or the extinguished shares are to receive out of the funds of the company a just equivalent, the reduction will be sanctioned (*z*). *Primâ facie* where there has been a loss of capital and there are different classes of shares, the loss should, on a reduction of capital, be borne by that class of shares which, according to the constitution of the company, is the proper class to bear it. Thus, if there are first and second preference and ordinary shares, the first preference having priority as to capital, the loss, if equal to the amount of the other shares, should be met by extinguishing such other shares (*a*). Where, however, there

(*t*) The loss of capital need not be proved when the interests of creditors are not concerned: *Poole* v. *National Bank of China*, [1907] A. C. 229 overruling dicta in *Barrow Hæmatite Steel Co.*, [1900] 17 T. L. R. 569; and *Abstainer's, &c., Insurance Co.*, [1891] 2 Ch. 124, and the decision in *Anglo-French Exploration Co.*, [1902] 2 Ch. 845. As to the present practice, see *Louisian, &c., Mortgage Co.*, [1909] W. N. 170.

(*u*) As to procedure, see *Lees Brook Spinning Co.*, [1906] 2 Ch. 394, dissenting from *Calgary Land Co.*, [1906] 1 Ch. 141.

(*v*) *Gatling Gun Co.* (1890), 43 Ch. D. 628.

(*w*) *Bannatyne* v. *Direct Spanish Telegraph Co.* (1886), 34 C. D. 287, 307; *Barrow Hæmatite Steel Co.* (1888), 39 C. D. 582, where the preference shareholders had no votes.

(*x*) (1889), 40 C. D. 363.

(*y*) *Union Plate Glass Co.* (1889), 42 C. D. 513.

(*z*) *British and American, &c., Corp.* v. *Couper*, [1894] A. C. 399; *Denver Hotel Co.*, [1893] 1 Ch. 495; *Pinkney & Sons' S.S. Co.*, [1892] 3 Ch. 125; *Newberry-Vautin Patents, &c., Co.*, *Ibid.* 127, n.

(*a*) *American Pastoral Co.* (1890), 62 L. T. 625; *Floating Dock, &c., Co., Ltd.*, [1895] 1 Ch. 691; *London and New York Investment Co.*, [1895] 2 Ch. 860.

are different classes of shares, and by the articles power is given to bind the minority by a resolution passed at separate meetings of the members of each class, part of the loss may be thrown upon preference shareholders, although they have priority in repayment of capital and the ordinary share capital is sufficient to bear the whole loss, provided the special resolution making the reduction is duly sanctioned by resolutions passed at separate meetings duly convened of the classes of preference shareholders (*b*). But the Court has jurisdiction to sanction any reduction which is not unjust or inequitable to shareholders (*c*). Thus the Court may confirm a reduction throwing a part of the loss on shares having priority in repayment of capital (*d*), or where the articles provide that in a winding-up losses of capital are to be borne in proportion to the capital paid up, a reduction may be sanctioned, although it is not made in proportion to the capital then paid up (*e*). It is submitted that a company cannot contract itself altogether out of the power given by the Acts to reduce its capital (*f*). Where there are issued and unissued shares, the former alone may be reduced. A surrender by a company of some of the shares held by it in another company, with a view to improve the value of the remainder, does not require to be sanctioned as a reduction of capital (*g*). The Court will not allow the Act to be used as a substitute for winding-up (*h*), or confirm a reduction which is contingent upon the company issuing shares as fully paid up without any valuable consideration (*i*). Where a reserve fund has been formed out of profits, a reduction of capital, leaving a part of the reserve fund subsisting, may be sanctioned (*k*). The procedure prescribed by statute (*l*) for the reduction of capital, other than by cancelling unissued shares, or returning to shareholders accumulated profits, is as follows :—

(1) The alteration of the articles by special resolution so as to authorize the company to reduce its capital, if not authorized already (*m*).

(2) The passing of a special resolution to reduce the capital.

(3) The adding of the words "and reduced" to its name from the

(*b*) *National Dwellings Society*, [1898] 78 L. T. 144.

(*c*) *British and American, &c., Corp.* v. *Couper, supra.*

(*d*) *Balmenach, &c., Distillery* (1907), 8 Fraser 1135.

(*e*) *Credit Assurance Corp.*, [1902] 2 Ch. 601.

(*f*) *Barrow Hæmatite Steel Co., supra.* Cf. *Walker* v. *London Tramways Co.* (1879), 12 C. D. 705.

(*g*) *Thomson* v. *Trustees, &c., Corp.* (1895), 2 Ch. 454.

(*h*) *Wallasey Brick and Land Co.*, [1894] 63 L. J. Ch. 415.

(*i*) *Development Co.*, [1902] 1 Ch. 547.

(*k*) *Hoar & Co.*, [1904] 2 Ch. 208; *Poole* v. *National Bank of China*, [1907] A. C. 229.

(*l*) C. A. 1908, ss. 46–56: Companies (Reduction of Capital) Rules, W. N. 15, May, 1909.

(*m*) *West India, &c., Co.* (1868), 9 Ch. 11, n.; *Patent Invert Sugar Co.* (1885), 31 C. D. 166; *John Crossley & Sons*, W. N. (1892), 55. A power given by the memorandum alone is not sufficient: *Dexine Patent, &c., Co.*, [1903] 88 L. T. 791.

passing of the special resolution until such date as the Court shall fix (*n*).

(4) An order of the Court confirming the reduction.

(5) Registration by the registrar of such order, and of a minute, approved by the Court, showing, as altered by the order, the amount of capital, the number of shares, the amount of each share, and the amount deemed to have been paid up on each share (*o*).

In order to protect the rights of the creditors of the company, the Court, before making an order upon the petition praying for the sanction of the Court, requires, in every case where the proposed reduction involves either diminution of liability in respect of unpaid share capital or payment to any shareholders of any paid-up share capital, and in every other case if the Court so directs, that a list of the creditors of the company entitled to object to the reduction at a date fixed by the Court be settled, and notice given to each creditor of the proposed reduction (*p*). The consent of every creditor whose name is entered on such list to the proposed reduction must be obtained, or his debt or claim must have been discharged or determined or secured to the satisfaction of the Court (*q*), and a lessor is entitled to have a sum impounded to answer future rent (*r*). The amount of the debt or claim may be fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court (*s*). Any creditor of the company is entitled to object who, at the date fixed by the Court, 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 (*t*). The consent of a creditor not entered on the list (*u*), or of any person who becomes a

(*n*) Except where the reduction of the capital of the company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, in which case it is not necessary to add the words "and reduced" before the presentation of the petition to the Court for confirmation of the reduction, and the Court may dispense with their use altogether (C. A. 1908, s. 48). *E.g.* where a company carries on any business abroad: *Sumatra Tobacco, &c., Co.*, W. N., [1898] 80; *Laurence Bullen, Ltd.*, [1901] W. N. 158. One month from the date of the order sanctioning the reduction is the date usually fixed by the Court.

(*o*) The certificate of the registrar of the registration of the order and minute is conclusive evidence that the capital has been duly reduced, and is as stated in the minute (C. A. 1908, s. 51 (4), *Ladies' Dress Assn.* v. *Pulbrook*, [1900] 2 Q. B. 376), and the liability of members cannot exceed the difference between the amount paid or (as the case may be) the reduced amount deemed to have been paid on his shares and the amount of the share as fixed by the minute (C. A. 1908, s. 53).

(*p*) C. A. 1900, s. 49.

(*q*) *Ibid.* ss. 49 and 50. A creditor who neither assents nor dissents is not to be deemed a creditor who consents: *Patent Ventilating Co.* (1879), 12 C. D. 254, dissenting from *Credit Foncier of England* (1871), 11 Eq. 356.

(*r*) *Telegraph Construction Co.* (1870), 10 Eq. 384.

(*s*) C. A. 1908, s. 49.

(*t*) *Ibid.* See *post*, p. 480, as to what debts or claims are admissible in proof.

(*u*) *Credit Foncier of England*, *supra*.

creditor of the company after the date fixed by the Court, is not necessary. The Court has no power, except as aforesaid, to dispense with a list of creditors although evidence is adduced to prove that there are no creditors (*x*). Directors, managers, and officers of the company are liable to be punished as misdemeanants if they wilfully conceal the name of any creditor or misrepresent the amount or nature of his debt or claim, or aid, abet, or are privy to any such concealment or misrepresentation (*y*); and the rights of creditors not entered on the list by reason of their ignorance of the proceedings, or their nature or effect, are safeguarded (*z*). The reduction of capital by writing off shares purchased by the company out of accumulated profits has been sanctioned (*a*). The Court will not sanction a reduction of capital by the amount representing preliminary expenses (*b*) or the discount at which shares have been issued (*c*). In the case of the *Plaskynaston Co.* (*d*), such a reduction was sanctioned, upon the mistaken assumption that new capital could be issued at a discount if a contract were filed. The Court may, as a condition of giving its sanction to the reduction, require the company to alter the voting power of the shares (*e*). Where any of the shares to be reduced were issued prior to the 1st January, 1901, and have not been paid for in cash, proof is required that the Companies Act, 1867, s. 25, has been complied with (*f*). A reduction of capital by returning capital to shareholders may be sanctioned although it is to be borrowed from them by the company (*g*). The Court has power to sanction a reduction of capital by returning paid-up capital to members upon the footing that the whole or any part of it may be called up again (*h*).

The Companies Act, 1908, s. 40, purports to give any company governed by the Companies Acts the power of reducing its paid-up capital by returning to the shareholders accumulated undivided profits available for dividend, the amount unpaid on the issued capital being thereby increased by a similar amount. The writer is unable to discover how sums of money can be returned to shareholders which have never been paid to the company by its members, or how the paid-up capital can be reduced by distributing among shareholders profits available for dividend. The only effect of exercising the powers conferred by this section is to increase the liability of the shareholders by the amount paid

(*x*) *Lamson Store Service Co.*, [1895] 2 Ch. 726.

(*y*) C. A. 1908, s. 54.

(*z*) *Ibid.* s. 53.

(*a*) *York Glass Co.*, W. N. (1889), 79; *Dicidio Pier Co.*, [1891] 2 Ch. 354.

(*b*) *Abstainers, &c., Insurance Co.*, [1891] 2 Ch. 124.

(*c*) *New Chile Gold Mining Co.* (1888), 38 C. D. 475.

(*d*) (1883), 23 C. D. 542.

(*e*) *Pinkney & Sons' Steamship Co.*, [1892] 3 Ch. 125; *Newberry-Vautin, &c., Co.*, [1892] 3 Ch. 127, n. Cf. *Re Colmer*, [1897] 1 Ch. 524.

(*f*) *Omnium Investment Co.*, [1895] 2 Ch. 127.

(*g*) *Nixon's Navigation Co.*, [1897] 1 Ch. 872.

(*h*) *Fore Street Warehouse* (1888), 59 L. T. 214; *Re Watson, Walker and Quickfall*, W. N. (1898), 69.

to them out of accumulated profits, which could be distributed without resorting to the section. As between tenant for life and remaindermen, the sums so returned are income (*i*).

A company may be required by the Court to publish both the reasons and causes of the reduction (*k*).

Conversion of Shares into Stock.

5. A company governed by the Companies Clauses Act, 1845, may, unless its special Act otherwise provides, convert its fully paid shares into stock with the consent of three-fifths of the votes of its shareholders present in person or by proxy at any general meeting of the company duly convened for that purpose.

The power is given by the Companies Clauses Act, 1845, s. 61, and the effect of conversion is regulated by sects. 62 to 64 of that Act, under which, virtually, a stockholder has the same rights as to transfers, voting, dividends, and otherwise, as a holder of fully paid shares of equal amount in the capital of the company. The only difference is, that while a shareholder cannot transfer a part of the amount represented by a share, a stockholder may transfer stock of any nominal value, subject to any regulations in the special Act prescribing the minimum amount transferable or preventing fractions of a £ from being transferred (*l*).

6. A company limited by shares governed by the Companies Acts may, if so authorized by its articles, convert all or any of its fully paid shares into stock, and reconvert such stock into paid-up shares of any denomination (*m*).

If it is desired to convert shares into stock, or to reconvert stock into shares, and the articles contain no power to do so, they must be altered by special resolution so as to confer that power upon the company.

(*i*) *Re Piercy*, [1907] 1 Ch. 289.

(*k*) C. A. 1908, s. 55.

(*l*) *Morrice* v. *Aylmer* (1875), L. R. 7 H. L. 717. The Regulation of Railways Act, 1868, s. 13, empowers a company, in any year immediately succeeding a year in which it has paid a dividend of not less than 3 per cent. per annum, to divide its ordinary stock into preferred and deferred stock, and to issue the same, but only at the request of a holder of paid-up ordinary stock, and in substitution therefor in equal moieties of preferred and deferred stock, the former as against the latter being entitled to a non-cumulative preferential dividend of 6 per cent. per annum.

(*m*) C. A. 1908, s. 41.

Unless otherwise provided by the articles, an ordinary resolution passed at a duly convened meeting of the company is sufficient to sanction the conversion or reconversion. The effect of conversion is regulated by the articles of association; but, as a rule, the stockholders have rights similar to those before mentioned in the case of stockholders of a company governed by the Companies Clauses Act, 1845.

Notice of any conversion or reconversion must be given to the Registrar of Joint Stock Companies, specifying the shares converted or the stock reconverted, and thereafter all the provisions of the Companies Act, 1908, applicable to shares only cease as to the converted shares, and the register of members, and the list of members to be forwarded to the registrar, must show the amount of stock held by each member (*n*).

Consolidation and Subdivision of Shares.

7. The shares of a company incorporated by a special Act, if such Act fixes the number and amount of such shares, cannot be consolidated or subdivided unless the Act expressly authorizes such consolidation or subdivision.

Consolidation of shares is the dividing of the nominal capital represented thereby into shares less in number and greater in amount than the shares consolidated. Subdivision of shares is the dividing of the nominal capital represented thereby into shares more in number and less in amount than the shares subdivided.

Where the special Act does not divide the capital of the company into shares of a specified number and amount, the company may from time to time consolidate or subdivide its shares (*o*).

8. A company limited by shares governed by the Companies Acts may, if so authorized by its articles, consolidate or subdivide all or any of its shares (*p*).

Capital is divided by consolidation into shares of a larger amount, and by subdivision into shares of a smaller amount, than the existing shares.

Notice of consolidation must be given to the joint stock companies registrar specifying the shares consolidated (*q*). Unless otherwise

(*n*) Sects. 42 and 43. As to penalty for default in sending the information to the registrar, see s. 44, *post*, p. 402.

(*o*) *Ambergate Co.* v. *Mitchell* (1849), 6 Ry. Cas. 235.

(*p*) C. A. 1908, s. 41.

(*q*) *Ibid.* s. 42.

provided by the articles authorizing consolidation, an ordinary resolution passed by the company in general meeting can sanction consolidation. The subdivision of shares requires the sanction of a special resolution of the company; and therefore, if the articles do not authorize subdivision, it will require at least three meetings to alter the articles and pass the special resolution sanctioning subdivision (*r*). In any subdivision of shares, 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 was derived (*s*). Every copy of the memorandum of association issued after consolidation or subdivision must show the number and amount of shares resulting therefrom (*t*).

9. A company limited by shares may, by special resolution confirmed by an order of the Court, consolidate its shares of different classes or divide its shares into different classes of shares (*u*).

No preference or special privilege attached to any class of shares can be interfered with except by a resolution passed by a majority of shareholders of that class representing three-fourths of the capital of that class, and confirmed in the same manner as a special resolution. Every resolution so passed binds all shareholders of such class. An office copy of the order must be filed with the registrar within seven days after it is made, or within such further time as the Court shall allow, and the resolution only takes effect upon the filing (*u*).

Share Warrants.

10. A company incorporated by a special Act cannot, unless its special Act empowers it, issue share warrants.

11. A company limited by shares governed by the Companies Acts may, if so authorized by its articles, and subject to the provisions of such articles, issue share warrants representing fully paid shares or stock, and provide, by coupons or otherwise, for the payment of dividends thereon (*x*).

(*r*) See *ante*, p. 48.
(*s*) C. A. 1908, s. 41.
(*t*) *Ibid.* As to penalty upon default, see *post*, p. 402.
(*u*) C. A. 1908, s. 45.
(*x*) *Ibid.* s. 37.

A share warrant is a certificate, under the seal of the company, stating that the bearer thereof is entitled to fully paid-up shares of the company of the specified number and amount, or to the specified amount of the stock of the company (*y*). On the issue of the warrant the name of the member must be struck off the register in respect of the shares or stock specified in the warrant, and an entry made specifying the number of such shares or the amount of the stock and the date of the issue of the warrant (*z*). The bearer of a share warrant, subject to regulations as to his voting, is generally recognized by the articles of association as a member of the company to the full extent.

A share warrant is transferable by delivery (*a*). To avoid a loss to the revenue by reason of the transfer thus requiring no stamp, every share warrant must be stamped to an amount equal to three times the amount of the *ad valorem* duty chargeable upon the transfer on sale at par of a paid-up share of the same nominal amount as the shares or stock specified in the warrant (*b*). If a share warrant is issued not duly stamped, the company issuing the same, and the managing director, secretary, or other principal officer thereof at the time of issue, are liable to a penalty of 50*l.* (*c*). The duty payable upon share warrants may be compounded for under the Stamp Act, 1891, s. 115, by a payment by the company; and articles of association generally provide that, in case of a composition, the person to whom a share warrant is issued shall pay a certain sum to the company by way of compensation in respect of the shares specified in the warrant. A share warrant is a negotiable instrument, so that if it is stolen a *bonâ fide* holder, without notice of the theft, can enforce against the company the payment of coupons due in respect of the warrant (*d*).

(*y*) *Ibid.* sub-sects. (1) and (2).
(*z*) *Ibid.* sub-sect. (5).
(*a*) *Ibid.* sub-sect. (2).
(*b*) Stamp Act, 1891, s. 1, Sched. 1.
(*c*) Stamp Act, 1891, s. 107.
(*d*) *Webb Hale & Co.* v. *Alexandria Water Co.* (1905), 93 L. T. 339.

CHAPTER V.

PROMOTERS.

Some Acts of Parliament define the word "promoter" as used in such Acts (*a*). Apart, however, from any meaning so given, it is clear that a person who as principal, either alone or together with other persons, procures the formation or flotation (*b*) of a company is a promoter of that company.

This meaning practically agrees with the definition of "promoter" as used in the Joint Stock Companies Act, 1844, namely, "Every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining complete registration under that Act," that is, before incorporation.

The word "promoter," for the purposes of sect. 84 of the Companies Act, 1908, means "a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement (*c*), 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" (*d*). It is submitted that the word "promoter" as used in the Act of 1908, sect. 81, sub-s. (1) (j), includes every kind of promoter. As judges refuse to give an exhaustive definition of fraud, because no definition can embrace all the forms it may assume, so they decline to state what are the only acts which make a man a promoter. The question whether or not a person is a promoter is a question of fact, and, as such, it must in jury cases be left to the jury to decide (*e*). But although not bound to define the word, eminent judges have given definitions which, while they are not intended to be exhaustive, are of considerable assistance in determining what are the classes of acts which

(*a*) The Preliminary Inquiries Act, 1851, s. 7; Railways Construction Facilities Act, 1864; Private Bills Costs Act, 1865, s. 9; Tramways Act, 1870; C. A. 1908, s. 84 (5).

(*b*) As to what constitutes flotation, see *Torva Exploring Syndicate* v. *Kelly*, [1900] A. C. 612; and *Gifford* v. *Willoughby's Mashonaland, &c., Co.*, 16 T. L. R. 24.

(*c*) As to the meaning of prospectus, see *post*, p. 115.

(*d*) Sub-sect. 5.

(*e*) *Twycross* v. *Grant* (1877), 2 C. P. D. 476; *Emma Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396.

constitute a person a promoter of a company. The following are examples of such definitions:—

"A promoter is one who undertakes to form a company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose" (*f*). "It is a short and convenient way of designating those who set in motion the machinery by which the [Companies] Act enables them to create an incorporated company" (*g*). "The term 'promoter' is a term not of law but of business, usefully summing up in a single word a number of business operations, familiar to the commercial world, by which a company is generally brought into existence" (*h*). "The word 'promoters' . . . has no very definite meaning. As used in connection with companies, the term 'promoter' involves the idea of exertion for the purpose of getting up and starting a company —of what is called floating it—and also the idea of some duty towards the company imposed by or arising from the position which the so-called promoter assumes towards it. . . . A person not a director may be a promoter of a company which is already incorporated, but the capital of which has not been taken up, and which is not yet in a position to perform the obligations imposed upon it by its creators" (*i*). Vice-Chancellor Bacon considered this to be the most satisfactory of all the varying definitions he had been able to find (*k*). But with all these definitions before them, the Court of Appeal in 1886 (*l*) said "the word 'promoter' is ambiguous, and it is necessary to ascertain in each case what the so-called promoter really did before his legal liabilities can be accurately ascertained."

It is obvious that a person who as principal procures or aids in procuring the incorporation of a company is a promoter thereof (*m*). In order to discover what other classes of acts done by a person make him a promoter, it is useful to set out the facts of the cases in which the Court has decided that a person was or was not a promoter. In the following cases the persons who are denoted by capital letters were held to be promoters. A person being desirous of selling property agreed with A., B., C., and D. that they should form a company, and that he should sell the property for a certain sum; but that in the conveyance by him to the company a larger sum should appear as the consideration to be paid by the company, and the difference be divided between A., B.,

(*f*) Per Cockburn, C. J., *Twycross* v. *Grant*, *supra*, 541.

(*g*) Per Lord Blackburn, *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1268.

(*h*) Per Bowen, J., *Whaley Bridge Co.* v. *Green* (1879), 5 Q. B. D. 109, 111.

(*i*) *Emma Silver Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396, 407.

(*k*) *Great Wheal Polgooth* (1883), 32 W. R. 107, 109.

(*l*) *Lydney Co.* v. *Bird* (1886), 33 C. D. p. 93.

(*m*) *Hereford and South Wales Waggon Co.* (1876), 2 C. D. 621; *Madrid Bank* (1866), 2 Eq. 216; *Atwool* v. *Merryweather* (1868), 37 L. J. Ch. 35.

C., and D.; and such agreement was performed (*n*). K. joined with other persons in agreeing to purchase a mine, with the view of selling it to a company, which they then intended to form, and subsequently formed (*o*). A. having two parcels and B. one parcel of land supposed to contain oil springs, agreed with C., that if he succeeded in forming a company for the purpose of working the oil springs, and procuring such company to pay $13,750 for the land, he should be paid $3,750 out of the purchase-money for his services. B. accordingly, assuming the character of owner, gave C. a conditional promise to sell all the land to him for $13,750. A. wrote a letter recommending the purchase, but not disclosing his interest therein; which letter he intended should be shown to the persons about to form the company, with the object of inducing them to form the company and complete the purchase. The letter was shown to such persons, and the company was formed and the purchase completed. A. and B. actively co-operated with C. throughout the whole transaction (*p*). S., being desirous of selling certain concessions, entered into negotiations with G., a financial agent. G. then agreed with C. & P. (railway contractors), that, in consideration of the expense incurred and services rendered by him in obtaining a contract between them and an intended company for the construction of steam tramways authorized by the concessions, and in floating the company, C. & P. should make certain payments to him in cash and shares of the company and find a sum to qualify the directors. A contract was made a few days later between S. and C. & P. for the purchase of concessions. The company was formed on the next day, and on the ensuing day a contract was entered into between the company and C. & P. for the sale of the concessions to the company and the construction of the line (*q*). On the 30th August, 1871, a contract for the purchase of certain property belonging to a company then being wound up under the Court was entered into between such company and the agent of a syndicate, subject to the sanction of the Court being obtained, which was duly obtained on the 15th September, and about the same time the syndicate determined to form a joint stock company for working the property. On the 20th September the agent agreed to sell the property to a trustee for the company, which was registered on that day. Held, that each member of the syndicate was a promoter of the company (*r*). The owners of the property agreed with R. and C. that they should form a company for the purpose of purchasing such property, and C. made an agreement with G. to carry out the above scheme. R., C., G. took part in procuring

(*n*) *Hichens* v. *Congreve* (1828), 4 Russ. 562; (1831) 4 Sim. 420. See also *Gluckstein* v. *Barnes*, [1900] A. C. 240.

(*o*) *Beck* v. *Kantorowicz* (1857), 3 K & J. 230.

(*p*) *Lindsay Petroleum Co.* v. *Hurd* (1874), L. R. 5 P. C. 221.

(*q*) *Twycross* v. *Grant* (1877), 2 C. P. D. 469, 476.

(*r*) *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218.

a board for the company, and in the preparation and issue of the prospectus (*s*). A. and B. (metal brokers) assisted a person in selling a mine to a proposed company, allowed their names to appear on the prospectus as being ready to answer any inquiries relating to the mine, answered such inquiries, and kept silence about facts detrimental to the reputation of the mine, in consideration of being appointed brokers to the mine and being paid 5,000*l.* in shares, part of the purchase-money (*t*). G. purchased a mine with the view of selling it to a company which he subsequently formed, and which bought the mine at a profit. S. entered into a sham contract with G. for the purchase of the mine, to be used in negotiating the sale of the company (*u*). G. agreed with the owners of certain property to form a company to purchase such property at cost price, they stipulating thereout to pay a commission to G. G. thereupon formed the company, and was a party to the preparation and issue of the prospectus and the procuring of a board for the company (*x*).

On the other hand, persons do not become promoters merely by acting as solicitors of a company in the matter of its formation (*y*), nor by purchasing a property, although they shortly afterwards sell it at a profit to a company subsequently formed to buy it, if at the time of the contract for purchase they have taken no step to form a company (*z*); but if the contract for purchase is made in pursuance of an agreement between the purchasers which provides for the formation of a company to buy the property from them, they are promoters of that company at the time they make such agreement (*a*).

Having regard to the foregoing decisions, it would appear that—

1. Any person is a promoter of a company who, as principal, either solely or together with other persons,

   (a) Enters into a contract on behalf of or as trustee for an intended company; or

   (b) Procures the incorporation of a company; or

   (c) Not being a director of the company, prepares or issues a prospectus inviting subscriptions for its shares; or

(*s*) *Bagnall* v. *Carlton* (1877), 6 C. D. 371.

(*t*) *Emma Silver Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396.

(*u*) *Whaley Bridge Calico Co.* v. *Green and Smith* (1879), 5 Q. B. D. 109.

(*x*) *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918.

(*y*) *Great Wheal Polgooth* (1883), 32 W. R. 107.

(*z*) *Ladywell Mining Co.* v. *Brookes* (1886), 34 C. D. 398; 35 C. D. 400; *Lady Forrest Mines, Ltd.*, [1901] 1 Ch. 582.

(*a*) *Gluckstein* v. *Barnes*, [1900] A. C. 240.

(d) Prepares the draft memorandum and articles of association of the company or the draft charter or bill for the company; or

(e) Procures directors for the company.

It is conceived that underwriting the capital of the company does not *per se* make the underwriter a promoter. A person may do any of the above acts as an agent or as principal, or in both capacities (*b*). The true test as to whether a person doing any of these acts on behalf of other persons is also doing them on his own behalf, is whether he has or has not any interest in forming the company other than that to which he is properly entitled as agent. In *Lydney Co.* v. *Bird* (*c*), it was found that the agent of the vendors was a promoter, as he was to receive out of the purchase-money, which had been increased for that purpose, 10,800*l*. In *Great Wheal Polgooth* (*d*), it was found that the defendant, in the work he did in forming the company, only acted as a solicitor. A person may become a promoter of a company after as well as before its incorporation (*e*); and a promoter does not cease to be such by reason only of the formation of the company (*f*), but only when the directors take into their own hands what remains to be done in forming the company (*g*). It is submitted that a person by subscribing for a founder's share issued on the ordinary terms, or by subscribing the company's memorandum of association, becomes a promoter.

Having considered what constitutes a promoter, we have next to determine in what legal relation he stands with respect to his co-promoters and to third persons, as well as to the company he has promoted and its members. There are a number of cases which deal with the rights and liabilities of subscribers to deeds of settlement entered into for the purpose of procuring the incorporation of companies under the Joint Stock Companies Act, 1844. The decisions in these cases are based upon the terms of the deed and of that Act and of the Winding-up Act of 1848, and throw no light on the rights or liabilities of promoters generally. Where persons agree to promote a company the terms of the agreement must, so far as it deals with them, determine their rights and liabilities *inter se*. The following rules are useful for the purpose of determining whether promoters are or are not partners:—

(*b*) An example of a promoter acting through an agent is found in *Beck* v. *Kantorowicz* (1857), 3 K. & J. 230.

(*c*) (1886), 33 C. D. 85, 95.

(*d*) (1883), 32 W. R. 107.

(*e*) *Twycross* v. *Grant* (1877), 2 C. P. D. 503, per Bramwell, L. J.

(*f*) Per Cockburn, C. J., *Ibid.* 540.

(*g*) *Ibid.* 541.

2. Where promoters are only associated for the purpose of forming a company, they are not partners, whether the company is incorporated by special Act, charter, or under the Companies Acts (*h*).

In such a case one promoter is not liable for the acts of or liabilities contracted by another promoter, or to make contribution towards expenses incurred by him in promoting the company, unless the former expressly or by necessary implication authorized his co-promoter to do such acts, contract such liabilities, or incur such expenses on his behalf. Where promoters incur joint liability they are liable to make contribution, each to the extent of his share measured by the number of the promoters (*i*).

3. Where promoters join together in buying property for the purpose of selling it at a profit to a company which they form to purchase it, then they are partners.

In such a case each promoter is bound by the acts of and liabilities contracted by his co-promoter in reference to the adventure, and to contribute to the expenses connected with it. Frequently companies are promoted by persons who form a syndicate for that purpose. The syndicate is sometimes constituted by a letter, by which the persons subscribing their names to it empower one of their number to buy certain property and to form a company for acquiring it from the syndicate, and give to him full discretion to act as he thinks best in the interests of the subscribers, and they undertake to subscribe *pro ratâ* the sums set opposite their signatures, and agree that the profits shall be divided in the same proportion. It is clear that such a document constitutes the subscribers partners for the purposes of the adventure. As the liability of partners is unlimited, and each partner has power to bind his co-partners within the scope of the partnership business, syndicates often take the shape of limited companies. Where this course is adopted no contract by the syndicate company can impose any liability upon its members except in reference to the amount unpaid on their shares. The directors and promoters of the syndicate company might, however, be personally liable in case a fraudulent prospectus were issued (*k*), and incur liability as promoters of the company formed by the syndicate company (*l*).

(*h*) See Lindley on Partnership, 5th ed. p. 4, and the cases there cited.

(*i*) *Batard* v. *Hawes* (1853), 2 E. & B. 290.

(*k*) *Glasier* v. *Rolls* (1889), 42 C. D. 436.

(*l*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate* (1899), 2 Ch. 392, 420, 441.

We have next to consider in what relation a promoter stands towards the company he has promoted. It is clear that the relation of trustee and *cestui que trust* between promoters and a company does not exist, and that therefore they may lawfully, as vendors or agents to the vendors, make a profit upon a sale to the company, even if they are also the directors of the company, provided that they make full disclosure to the company (*m*). The duties and liabilities of a promoter towards the company he promotes may be ascertained by applying the following rule :—

4. A promoter stands in a fiduciary position with respect to the company he promotes from the time when he first becomes a promoter thereof until he ceases to be its promoter (*n*).

It is a question of fact in each case at what time a person begins (*o*) or ceases to be a promoter of a company. A promoter continues to be a promoter while there are any questions open between him and the company (*p*).

The liabilities of a promoter arising from his fiduciary relation towards the company are as follows :—(1) He cannot retain any profit made by him out of a transaction to which the company is a party without full disclosure to the company. (2) He cannot contract with the company so as to bind it, unless he fully discloses to the company all material facts. The company can, as to (1), recover the secret profit from the promoter (*q*); and as to (2), either obtain a rescission of the contract if the parties thereto can be restored to their original position, or affirm the contract and make the promoter account to the company for the profit made by him thereout (*r*).

In addition to the liabilities arising from the fiduciary relation subsisting between a promoter and the company he promotes, certain liabilities were imposed upon the promoters of a company governed by the Companies Acts, by the Directors' Liability Act, 1890 (*s*), and the

(*m*) *New Sombrero Phosphate Co.* v. *Erlanger* (1877), 5 C. D. 118, per James, L. J.; *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392, 422.

(*n*) *Twycross* v. *Grant* (1877), 2 C. P. D. 538, per Cockburn, L. C. J.; *New Sombrero Phosphate Co.* v. *Erlanger* (1877), 5 C. D. 73, 112, 118, 123; 3 A. C. 1236, 1269; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, *supra*, 392, 422; *Gluckstein* v. *Barnes*, [1900] A. C. 240.

(*o*) *Ladywell Mining Co.* v. *Brookes* (1887), 35 C. D. 400, 409; *Lady Forrest Mines, Ltd.*, [1901] 1 Ch. 582; *Leeds and Hanley Theatres*, [1902] 2 Ch. 809. See also *Gluckstein* v. *Barnes*, *supra*.

(*p*) *Eden* v. *Ridsdale's Railway Lamp Co.* (1889), 23 Q. B. D. 368.

(*q*) See *post*, p. 348.

(*r*) See *post*, p. 350.

(*s*) See now C. A. 1908, s. 84, and *post*, p. 368.

Companies Act, 1900 (*t*), in favour of persons subscribing for shares, debentures, or debenture stock of the company on the faith of a prospectus issued by promoters. By sect. 38 of the Companies Act, 1867, certain liabilities were imposed in favour of persons so subscribing for shares of the company (*u*). This section has now been repealed as from the 31st December, 1900 (*x*). It did not impose any fresh duty on a promotor with regard to the company (*y*), or give the shareholders any fresh right against the company (*z*), or a right to any persons other than shareholders (*a*). A promoter is also liable at common law in damages to any shareholder, debenture holder, or debenture stockholder who applies for or purchases his shares, debentures, or stock in reliance upon a prospectus issued by the promoter to such applicant or purchaser which to his knowledge contains false statements (*b*). The promoters of certain companies incorporated by special Act have special statutory liabilities (*c*).

In the last place, we have to consider whether a promoter has any, and if so, what, rights against the company he promotes.

5. A promoter cannot claim from the company he promotes any payment for his services or expenses in promoting it, unless in the case of a company incorporated by special Act or charter the Act or charter so provides, or unless the company after its incorporation agrees with him to make such payment.

Although a promoter may come under liability to a company by reason of his acts before its incorporation (*d*), it is impossible for him by any such acts to acquire any rights against the company. Moreover, a promoter is personally liable upon all contracts made with him on behalf

(*t*) See now C. A. 1908, s. 81, and *post*, p. 389.

(*u*) See *post*, p. 123.

(*x*) C. A. 1900, ss. 33, 35.

(*y*) Per Lord Blackburn, *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1269.

(*z*) *Gover's Case* (1875), 1 C. D. 182.

(*a*) *Cornell* v. *Hay* (1873), L. R. 8 C. P. 328.

(*b*) See *post*, p. 365.

(*c*) By the Private Bills Costs Act, 1865, power is given to the committee on a private Bill, including Bills for a local and personal Act, to award costs, to be payable by the promoters, to a petitioner who has been unreasonably or vexatiously subjected to expense in defending his rights proposed to be interfered with by the Bill; and to award costs, to be payable by a petitioner to promoters who have been vexatiously subjected to expense by his opposition to the Bill. The Preliminary Inquiries Act, 1851, gives power to the Lord High Admiral to order an inquiry where a private Bill proposes to interfere with tidal lands, or tidal water, or navigable rivers, and to make the promoters of such Bill pay the costs of such inquiry.

(*d*) See *Gluckstein* v. *Barnes*, [1900] A. C. 240.

of the intended company, even although he expressly purports to act as its agent or trustee, and this liability remains until the contract has been performed or rescinded by either party under some power contained in the contract or with the consent of all parties, or until the company has, with the consent of the other contracting party, undertaken the liability of the promoter under the contract. Nor has the promoter any right of indemnity against the company for any obligation undertaken by him on its behalf before its incorporation. A promoter cannot sue a company upon a contract, entered into by him with an agent or trustee on its behalf before its incorporation, stipulating that the company shall pay the promoters a certain sum for preliminary expenses; and this is so even although the articles of association provide that the company shall defray the preliminary expenses (*e*). In order to make the company liable, the promoter must prove that it has entered into a fresh contract to pay such preliminary expenses, and the acts of the company cannot be evidence of such agreement if they only refer to the obligations of the company to indemnify a third person (*f*). There is no general principle that to the extent that a company derives benefit from services rendered before its incorporation, there may be a valid equitable claim on a *quantum meruit* (*g*). The directors of a company may properly pay a promoter the legitimate expenses incurred by him in forming and bringing out the company, such as registration fees, a sum charged for a report on the value of property to be purchased by the company, law costs, broker's fees, advertisements, printing, etc. (*h*); but not for underwriting the capital of the company (*i*), except under the Companies Act, 1908, sect. 89 (*k*), nor unreasonable sums for placing its shares (*l*). A company may agree to pay a promoter a reasonable sum for his services in bringing out the company (*m*). Generally, a company by its memorandum of association, and its directors by its articles, are expressly empowered to pay all expenses of and incident to the incorporation and floating of the company, and Table A. contains a similar power (Art. 71).

Where the memorandum of association empowers the directors without further authority to pay a specific sum for the costs and expenses of

(*e*) *Melhado* v. *Porto Alegre Rail. Co.* (1874), L. R. 9 C. P. 503.

(*f*) *Rotherham Alum Co.* (1883), 25 C. D. 103; *English, &c., Co.*, [1906] 2 Ch. 435.

(*g*) *Hereford Waggon Co.* (1876), 2 C. D. 621; *English & Co., supra*, and *National Motor Mail Coach Co.*, [1908] 2 Ch. 228, overruling a decision of Buckley, J., in the *English, &c., Co's. Case*, which was not appealed against.

(*h*) *Lydney Iron Co.* v. *Bird* (1886), 33 C. D. 85. As to paying brokerage fees, see *Metropolitan Coal Assn.* v. *Scrimgeour*, [1895] 2 Q. B. 604; C. A. 1908, s. 89.

(*i*) *Lydney Iron Co.* v. *Bird*, *supra*, p. 95, overruling on this point *Emma Mining Co.* v. *Grant* (1878), 11 C. D. 941.

(*k*) See *post*, p. 70.

(*l*) *Faure Electric Accumulator Co.* (1888), 40 C. D. 141.

(*m*) *Touche* v. *Metropolitan Warehousing Co.* (1871), 6 Ch. 671; *Bank of Turkey* v. *Ottoman Co.* (1866), 2 Eq. 366.

promoters, such payment without taxation is not improper (*n*). Where the articles of association state the amounts to be paid to promoters for procuring concessions and for preliminary expenses, shareholders, being bound to know the articles, cannot complain that the amounts are excessive (*o*); but the principle here laid down does not apply where the promoter has acted fraudulently (*p*); although if the money is paid and an action to recover the same is compromised with knowledge of the facts, the sum cannot afterwards be recovered (*q*).

In the case of a company incorporated by a special Act, the Act usually provides that the costs, charges, and expenses of and incident to the obtaining of the Act and preparatory thereto shall be paid out of the first moneys to be raised by the company (*r*). The Companies Clauses Act, 1845, s. 65, provides that all the money raised by the company shall be applied first in paying the costs and expenses incurred in obtaining the special Act, and all expenses incident thereto. Under such a provision as this a promoter can sue the company for such costs, as the statutory liability of the company to pay them gives him a statutory right to sue therefor (*s*); but a person who acts for the promoter in obtaining the Act, and who only looks to him for his remuneration, has no claim against the company (*t*). Promoters who have borrowed money for, and applied it in payment of, the costs of procuring a special Act, upon an agreement that it was "to be repaid out of the calls on shares," remain personally liable to the lender, although the Act contains a clause authorizing payment of such expenses and the company has ratified their acts, unless the lender has agreed to accept the liability of the company in lieu of that of the promoters (*u*). So, too, promoters are personally liable who have covenanted to pay the consideration for a patent out of the money raised by the first instalments or calls on the shares of the company (*x*). But where a promoter of a company agrees with other promoters that neither they nor the company shall pay the costs of obtaining the Act, but that he will do so, he cannot obtain such costs from the company, although the Act contains the usual clause directing payment by the company of such costs (*y*). Where, however, a promoter induces persons to sign the subscription contract by assuring them that they personally (without mentioning the company) shall incur no liability if the railway line is not

(*n*) *Croskey* v. *Bank of Wales* (1863), 4 Giff. 314.

(*o*) Per Lord Romilly, *Anglo-Greek Steam Co.* (1866), L. R. 2 Eq. 7.

(*p*) *Re Madrid Bank* (1866), L. R. 2 Eq. 216.

(*q*) *Ex parte Preston* (1868), 37 L. J. Ch. 618.

(*r*) See *Re Tilleard* (1863), 3 De G. J. & S. 519, as to what expenses come within such a clause.

(*s*) *Tilson* v. *Warwick Gas Light Co.* (1825), 4 B. & C. 962; *Carden* v. *General Cemetery Co.* (1839), 5 Bing. N. C. 253.

(*t*) *Kent Tramways Co.* (1879), 12 C. D. 312.

(*u*) *Scott* v. *Lord Ebury* (1867), L. R. 2 C. P. 255.

(*x*) *Pilbrow* v. *Pilbrow Rail. Co.* (1848), 5 C. B. 440.

(*y*) *Savin* v. *Hoylake Rail. Co.* (1865), L. R. 1 Ex. 9.

made, that does not prevent him making a claim in the winding-up of the company for his services in obtaining the Act of incorporation. *Semble*, the remedy of such individuals is against the promoter upon his contract to indemnify (if any) (*z*). The Court will not, under the jurisdiction given by the Companies Act, 1908, s. 170, to adjust the rights of the contributories in the winding up, enforce such a contract by directing a call payable primarily by the promoters only; and, *semble*, if such a contract rests upon representations made by an agent of the promoters, proof must be given of his authority to make them (*a*).

(*z*) *Re Brampton and Longtown Rail. Co., Shaw's Case* (1875), L. R. 10 Ch. 177.

(*a*) *Re Brampton and Longtown Rail. Co., Addison's Case* (1875), L. R. 20 Eq. 620.

PROMOTERS

CANADIAN NOTES

Promoters are not necessarily agents for each other, but if one is expressly or impliedly authorized to act on behalf of others, the ordinary responsibility of a principal attaches. *Wilson* v. *Hotchkiss*, 2 O. L. R. 261. And the company may be liable to the promoter. Thus, where a promoter was employed by one of the provisional directors of the company to advertise and promote its undertaking, and the board of directors was fully cognisant of what he did, it was held that he was entitled to recover from the company the value of his work, even although it was done without any specific instructions from his co-directors at formal meetings of the board, everything being done in the most formal manner. *Allen* v. *Ontario & Rainy River Ry. Co.*, 29 O. R. 510; *Patterson* v. *Brown*, 6 O. W. R. 204; *Evendin* v. *Standard Art Co.*, 8 O. W. R. 392. See *Wood* v. *Ontario & Quebec Ry. Co.*, 24 U. C. C. P. 344. See also the following cases: *Thomson* v. *Feeley*, 41 U. C. R. 224; *Gilpin* v. *Greene*, 7 U. C. R. 586. See also *Simpson* v. *Carr*, 5 U. C. R. 326; *Johnson* v. *Hamilton*, 13 U. C. R. 211.

Each promoter is only liable for that portion of the preliminary expenses or other liabilities incurred which he has sanctioned. *Howard Stive* v. *Dingman*, 10 O. W. R. 127.

Promoters who employed an agent to solicit subscriptions for stock were held liable to one induced to subscribe by false representations, though they were not aware of them, and did not authorize them. *Milburn* v. *Wilson*, 31 S. C. R. 481.

A promoter borrowing money for the purpose of a company is personally liable to repay it, and the company when it comes into existence is not bound and is not a debtor to the lender. *Clergue* v. *Humphrey*, 31 S. C. R. 66. And see *Seiffert* v. *Irving*, 15 O. R. 173; *Gildersleeve* v. *Balfour*, 15 P. R. 293; *Thames Navigation Co.* v. *Reid*, 13 A. R. 303.

The whole body of proposed corporators are not necessarily

liable as partners in the case of the prosecution of business prior to the incorporation, for the whole concern is not a partnership in that sense. But it is a *quasi*-partnership in this sense, that all those who take a practical part in the prosecution of the business, or who sanction or ratify the conduct of the affairs, become liable as partners. The extent or proportion of liability between themselves depends upon the extent of their interest as manifested in their subscription for shares. On this footing the profits and losses would be proportioned among them. The practical difference as to evidence is that in the case of partners all would be liable without notice of the obligation incurred. In the other case, some evidence must be given to show knowledge or notice and assent on the part of each person to be charged. The contribution should be without reference to what has been paid on each share. *Sandusky Coal Co.* v. *Walker*, 27 O. R. 677; *Sylvester* v. *McCuaig*, 28 C. P. 443.

Secret Profits of Promoters.

A promoter may not make, directly or indirectly, any profit at the expense of the company unless with the consent of the company after full disclosure, and the company can compel a promoter to account for secret profits. *Ruethel Mining Co.* v. *Thorpe*, 9 O. W. R. 942.

Disclosure must be full, and it is not sufficient for a promoter to give such facts as will put the company on notice as to the profits made. *O'Sullivan* v. *Clarkson*, 9 O. W. R. 46.

In seeking to make promoters liable for profits obtained by re-sale of their property to the company, it must be shown that at the time the purchase was made by the promoters they stood in such a position that they cannot claim to have bought the property for themselves. In other words, that they were not in a position to sell it to the company when afterwards formed, because the company came into existence with the right to say that the purchase was made by the promoters for it and not for themselves. This is generally a task of some difficulty, at all events where the property has not been expressly purchased for the purpose of being transferred to the intended company, or where it is not made to appear that at or before the time when the purchase was made the purchasers had invited the public to come in and join the prospective company. *Re Hess Manufacturing Co.*, 21 A. R. 66, S. C. R. 644; *Highway Advertising Co.* v. *Ellis*, 7 O. L. R. 504.

Where the owner of a patent arranged with a syndicate to give them an interest in the patent upon the understanding that they would jointly undertake to co-operate and build up a successful business, and the syndicate subsequently formed a company and received shares in proportion to their holdings or interest in the patent, it was held that they were not bound to account to the company for the value of the interests received by them, notwithstanding that actual transfers of their interests in the patent had not been executed. And apparently the fact that the interests had been acquired by the syndicate without consideration would make no difference unless they were acquired for the company. *Highway Advertising Co.* v. *Ellis*, 7 O. L. R. 504. See also *Hopper* v. *Hoctor*, 35 S. C. R. 645; *Wade* v. *Kendrick*, 37 S. C. R. 32.

Promoters who bought property with funds of a company incorporated by themselves and turned the property over to the company were not permitted to recover against the company any profits on the transaction. *Minister of Railways* v. *Quebec Southern Railway*, 12 Ex. C. R. 11. But an independent purchaser buying with his own money and selling at an advanced price to a company with full disclosures and without fraud can claim his profit. *Ibid.*

Where promoters proposed to acquire property and turn it over to a company to be formed in exchange for bonds and stock, it was held that there was no fiduciary relationship between the parties such as that of promoters or agents, and no agreement between the promoters would bind the company to be formed. *Garvin* v. *Edmonson*, 14 O. W. R. 435, 15 O. W. R. 210. See also *Bennett* v. *Havelock*, 16 O. W. R. 19.

CHAPTER VI.

UNDERWRITERS.

AN underwriter of the shares or debentures or debenture stock of a company is a person who agrees to take such part of a specified number of shares or amount of debentures or debenture stock as may not be subscribed for by the public (*a*).

Although underwriting contracts have been well known for many years, it was not until the case of *Ex parte Audain* (*a*) that any judicial interpretation was put upon the term "underwriting" as applied to shares or securities of a company. Prior to the Companies Act, 1900, no company governed by the Companies Acts could enter into a valid contract to pay out of its capital for underwriting its own shares (*b*), although it could always pay for underwriting its own debentures or debenture stock. To meet this difficulty, it became the practice to create a class of shares called founders' shares with valuable rights attached to them, and to make the allotment of the founders' shares conditional upon the allottee subscribing or procuring subscriptions for a specified number of shares in the company. Section 89 of the Companies Act, 1908, permits a company to pay for underwriting its own shares.

This section empowers a company to pay a commission to any person, in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, 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 of association, and the commission does not exceed the amount or rate so authorized, and if the amount or rate, in the case of shares offered to the public for subscription, is disclosed in the prospectus, or, if not so offered, is disclosed

(*a*) *Ex parte Audain* (1889), 42 C. D. 1. See also *London Paris Financial Corporation* (1897), 13 T. L. R. 569.

(*b*) *Lydney Iron Co.* v. *Bird*, [1896] 33 C. D. 85, 95. In *Ex parte Audain*, *supra*, the question of the legality of the contract was not raised by either party.

in the statement in lieu of prospectus (*c*), or in the statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and in any circular or notice which is issued. Save as aforesaid, no company can apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount, or allowance for any such consideration, whether the shares or 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 by the company, or the money be paid out of the nominal purchase-money or contract price or otherwise. Nothing, however, in this section affects the power of a company to pay such brokerage as it could theretofore lawfully pay (*d*).

An underwriting agreement is an example of an agreement whereby a person agrees conditionally to subscribe for shares in a company, and therefore falls within the section (*e*). A reconstruction agreement was held void, on the ground that a cash payment to be made thereunder was a commission within the section; and where articles authorize the payment of a commission at a specified rate, an agreement to pay a lump sum in cash as consideration for underwriting is invalid, as a sum of cash is not a rate (*e*); but an agreement by a company to give a person an option to subscribe for shares does not fall within the section (*f*).

There is no legal objection to an intending vendor of property to the company, or some other person who is interested in the company, entering into a contract with underwriters for underwriting the shares of the company, provided that the price to be paid to the vendor is not purposely inflated for the purpose of providing the underwriting commission out of the capital of the company. There are many vendors who, in order to secure the successful flotation of a company, are willing to pay out of their own pockets for the underwriting of such part of the capital of the company as will be sufficient to insure the completion of the purchase and the subscription of sufficient working capital to carry on the company (*g*). After the passing of the Companies Act, 1900, a question, however, was raised as to the legality of the practice, and by sect. 8 of the Companies Act, 1907 (now replaced by sub-sect. 3 of sect. 89 of the Companies Act, 1908), it is enacted that 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

(*c*) See C. A. 1908, s. 82, and *post*, p. 541, App. I.

(*d*) See *Metropolitan Coal Assn.* v. *Scrimgeour*, [1895] 2 Q. B. 604, as to what might be paid.

(*e*) *Booth* v. *New Africander Gold Co.*, [1903] 1 Ch. 295; but cf. *Barrow* v. *Paringa Mines*, 1909, Ltd., W. N. [1909] 195.

(*f*) *Hilder* v. *Dexter*, [1902] A. C. 474, overruling *Burrows* v. *Matabeleland Co.*, [1901] 2 Ch. 23.

(*g*) Cf. *Chapman* v. *Great Central Mines*, [1905] 22 T. L. R. 90.

of which, if made directly by the company, would have been legal under this section. It would be prudent, having regard to sect. 89, if a vendor is to pay for underwriting out of the purchase-consideration he is receiving from the company, that the requirements of that section should be complied with. The underwriting contract in such a case is usually constituted by two letters, consisting of (1) an offer, and (2) an acceptance. Both letters are usually printed on the same sheet of paper, and the contract can be made by the underwriter signing the offer and the vendor the acceptance in each other's presence; but usually the vendor supplies the underwriter with a printed form, which is filled in by the underwriter for the number of shares he underwrites, then the form is returned to the vendor, who signs the acceptance and gives notice to the underwriter of such acceptance. The nature of the contract and its legal incidents will, however, be more easily understood by reference to the subjoined form and the notes made thereon.

The X. Y. Z. Company, Limited.

Issue of 100,000 *ordinary shares of* £1 *each.*
To John Smith [the vendor].

1. *I agree for the consideration below stated to subscribe for* 1,000 *shares of the above issue, and to pay for the same on the conditions named in the proof prospectus, a copy of which has been supplied to me (which the directors of the company are to be at liberty to alter in any way they think fit, except as to terms of purchase, amount of capital, and payments on shares, without prejudice to this agreement), and to apply for the said shares on the first day when the subscription list opens, and to pay the amount payable on application therefor, and also the instalments thereon, in accordance with the terms of the said prospectus.*

Sometimes the offer is to subscribe for a specified number of shares, or such less number as the vendor thinks fit, as otherwise an acceptance for less than the number specified would not constitute a good contract. The above clause prevents an underwriter successfully repudiating his agreement upon the ground that the prospectus, on the faith of which he underwrote the shares, was altered before the public issue, unless the alteration does not fall within the power to alter. The agreement to apply for the shares on the first day when the subscription list opens, and to pay the amount payable on application therefor, is sometimes disregarded. It is, however, necessary to insert this part of the clause, so as to enable the vendor, if necessary, to exercise the power conferred upon him by clause 7. Some vendors insist, however, upon an application form being filled in by the underwriters for the shares underwritten and

handed to the vendors, together with a cheque for the application money. If no shares are offered to the public the underwriters' liability does not arise (*h*).

2. *I am to be under no liability hereunder unless before the public advertisement of the said prospectus* 50,000 *of the said shares are underwritten. Provided that for the purposes of this agreement any shares which you apply for or procure to be applied for before the public advertisement of the prospectus are to be deemed to be underwritten by you.*

This is a very important provision in the interests of the underwriter. An agreement to place or guarantee the issue of shares is not an underwriting (*i*), and therefore this clause would not be complied with if part were guaranteed and part were underwritten (*i*), or if any of the so-called underwriting contracts relied upon were invalid.

3. *If within three weeks of the public advertisement of the prospectus* 50,000 *of the shares of the above issue are allotted to the public, my liability hereunder is to cease, and no allotment is to be made to me in respect of this agreement, and my application money is to be returned to me in full.*

In this case the total number of shares to be underwritten is 50,000.

4. *If less than* 50,000 *shares are allotted to the public as aforesaid, then I am only to be allotted my proportion of the deficiency* pro ratâ *with the other underwriters of the above-mentioned shares, including yourself if an underwriter.*

5. *Shares allotted in respect of applications made or procured to be made to the company by you or by me or any other underwriter are not to be deemed allotted to the public, but are to go in relief of the obligations of the underwriters making or procuring such applications.*

In the absence of such a clause, shares allotted to underwriters upon application for shares to be taken "firm" would be regarded as allotted to the public, and not in relief of the liability of such underwriters only, but of the underwriters generally (*k*).

(*h*) *London Paris Financial Corporation* (1897), 13 T. L. R. 569.

(*i*) *Gorrisen's Case* (1873), 8 Ch. 507. But such agreements to place shares fall within s. 89 of the C. A. 1908, as they are agreements to procure the subscription of shares: *Metropolitan Coal Consumers' Association*, [1895] 2 Q. B. 604. *Quære* whether commission paid in this case could now be paid unless the provisions of s. 89 were complied with. It hardly seems to fall within the proviso in the section that nothing in the section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(*k*) *Sydney Harbour Collieries, Ltd.* v. *Earl Grey* (1898), 14 L. T. R. 373.

6. *In consideration of the premises you are to pay me a commission of £5 per cent. in cash upon the total amount of the shares hereby underwritten by me within fourteen days after the completion by the company of the purchase referred to in the prospectus if the whole of such* 50,000 *shares are so applied for by the public as aforesaid, but in the event of the public not so applying for the whole of such* 50,000 *shares, then such commission is to be payable by you within three weeks after payment by me to the company of the allotment money payable in respect of my proportion of the deficiency of such shares, or of the completion of the purchase by the above company, whichever event shall last happen, and I authorize you, if you think fit so to do, to apply my said commission or any part thereof in payment to the company of or on account of the said allotment money.*

7. *I further agree that this agreement shall be irrevocable on my part, and shall be sufficient to authorize and empower you in the event of my not applying for the said* 1,000 *shares within the time before mentioned, to apply for the said shares in my name and on my behalf, in accordance with the terms of the said prospectus (with or without modification thereof, as aforesaid), and to pay the amount payable on application therefor, and to accept the said shares or so many of them as are allotted to me hereunder, and to pay the instalments payable thereon in accordance with the terms of the said prospectus, and these presents shall also be sufficient to authorize and empower the directors of the company to allot to me the before-mentioned shares, and to enter my name on the register of members in respect thereof.*

The power given by this clause, being given for valuable consideration, cannot be revoked by the underwriter, and the company is therefore justified, on the application of the vendor under this power, in allotting to the underwriter the shares for which he is liable under the agreement, although by previous notice to the company he may have purported to revoke the authority (*l*), or the application is made after it is ascertained that the company cannot be successful (*m*). The terms of the power must be strictly complied with (*n*).

8. *I further agree not to sell or offer for sale any shares of the company, either directly or indirectly, until, at least, one calendar month after the first general allotment of shares has taken place.*

9. *If the public issue be not made within one calendar month from*

(*l*) *Carmichael's Case*, [1896] 2 Ch. 643; 65 L. J. Ch. 902.

(*m*) *Crown Lease Proprietary Co.* (1897), 14 T. L. R. 47.

(*n*) *Holophane, Ltd.* v. *Hesseltine* (1896), 13 T. L. R. 7.

your acceptance of this letter, I and you are to be released from all liability hereunder.

This clause is inserted for the purpose of defining the term within which the underwriting agreement is to remain binding. In the absence of such a clause the Court would hold that the issue must be within a reasonable time, and it is to prevent the question of what is a reasonable time being raised that this express provision is made.

10. *This agreement is subject to your accepting the same and notifying such acceptance to me by post, to the undermentioned address, on or before the public advertisement of the said prospectus.*

It is not sufficient for the vendor to simply sign an acceptance. He must give notice of his acceptance to the vendor in order to constitute a contract, and such notice must be given, even in the absence of any express stipulation so to do, before the result of the subscription by the public is known (*o*). If, in fact, no notice of acceptance of the underwriting contract has been given, and the company, upon the application of the vendor, and upon the production of the underwriting offer, has allotted shares to the underwriter, he is not estopped from disputing that he is the holder of the shares, as the authority is conditional upon the underwriting contract being made, and the production of the document containing the signatures of both parties is not sufficient (*p*). An underwriting contract, like other contracts, can be avoided, upon the ground that the underwriter was induced to enter into it by misrepresentation (*q*). Any condition precedent on which the liability of the underwriter depends must be strictly complied with, *e.g.* if an underwriter has agreed to subscribe, or find responsible subscribers, for a certain number of shares if or when called upon, then he is not liable upon shares allotted to him in pursuance of the power contained in the underwriting contract if the request is not made (*r*).

(*o*) *Hindley's Case*, [1896] 2 Ch. 121, 125.

(*p*) *Ex parte Stark*, [1897] 1 Ch. 575, distinguishing *Ex parte Harrison* (1893), 69 L. T. 204; *Gutta Percha Corporation* (1899), 15 T. L. R. 183; *North Charterland Co.* v. *Riordan* (1897), 13 T. L. R. 281.

(*q*) *Karberg's Case*, [1892] 3 Ch. 1; *Dadson's Case* (1896), 12 T. L. R. 482.

(*r*) *Ormerod's Case*, [1894] 2 Ch. 475; *Bultfontein Sun Diamond Mines, Ltd.*, [1897] 13 T. L. R. 157; *Brussels Palace Co.* v. *Prockter* (1893), 10 T. L. R. 72. Cf. *Globe Block Gold Mining Co.*, [1895] 12 T. L. R. 92.

CHAPTER VII.

DIRECTORS.

DIFFERENT terms have been employed by judges to describe the legal position of directors. Thus, they have been called trustees (*a*), managing partners (*b*), agents (*c*). It has frequently been said by judges that directors are trustees, but they are not trustees for the individual shareholders, and may purchase their shares without disclosing pending negotiations for sale of the company's undertaking (*d*). "Although directors are not, properly speaking, trustees, yet they have always been considered and treated as trustees of money which comes into their hands or which is actually under their control." Therefore under the Trustee Act, 1888, directors can avail themselves of any Statute of Limitation in proceedings against them for misapplication of the funds of the company (*e*), and in the bankruptcy of a firm which includes in its members a director guilty of any such misapplication the company may prove against both his joint and separate estates (*f*). Although there is a fiduciary relation subsisting between directors and their company, they differ from trustees in many ways—for example, they are not liable for a breach of trust by their co-directors to which they were not parties, nor for failure to get in debts due to the company. Other differences between directors and trustees have been pointed out by judges. "A trustee is a man who is the owner of the property, and deals with it as principal, as owner and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee and who are his *cestuis que trust*. The same individual may fill the office of director, and

(*a*) *Flitcroft's Case* (1882), 21 C. D. 519.

(*b*) *Forest of Dean Coal Co.* (1878), 10 C. D. at p. 451.

(*c*) *Charitable Corporation* v. *Sutton* (1742), 2 Atk. 400.

(*d*) *Percival* v. *Wright*, [1902] 2 Ch. 421.

(*e*) *Lands Allotment Co.*, [1894] 1 Ch. 616. Per Lindley, L. J., p. 631.

(*f*) *Re Macfadyen*, [1908] 2 K. B. 817.

also be a trustee having property; but that is a rare, exceptional and casual circumstance. . . . A director never enters into a contract for himself, but he enters into contracts for his principal, that is, for the company of whom he is a director, and for whom he is acting. He cannot sue on such contracts, nor be sued on them, unless he exceeds his authority" (*g*). "The funds which form the subject of a settlement are intended to be preserved for the benefit of those who may successively become entitled to them, and it is the duty of trustees making advances out of such funds to take care that the securities they obtain are such as will expose the beneficiaries to as little risk of loss as may be. The funds embarked in a trading company, on the other hand, are placed under the control of the directors, in order that they may be employed for the acquisition of gain, and risk (greater or less according to circumstances) is of the very essence of such employment. When the advance of money on security is one of the objects of such a company, the acts of directors with reference to the advances are to be judged, not by the rules which have been laid down as to the investment of settled funds, but (more nearly at all events) by those which regulate the duties of the managing partners of an ordinary trading firm as between themselves and those partners who do not take an active part in the conduct of the firm's business." (*h*)

Directors differ from managing partners in that they cannot by their acts bind the shareholders of the company personally, and are not bound to hold any shares in the company unless required so to do by its special Act, charter, or articles of association (*i*).

It is submitted that the law relating to the rights, powers, duties, and liabilities of directors of companies, or other incorporated bodies, is a branch of the law of principal and agent, and that directors acting as a board are agents of the company.

For the purposes of the Companies Act, 1908, a director is defined as including any person occupying the position of a director by whatever name called (*k*). A company governed by the Companies Acts need not have any directors, but may carry on its business by a manager, who may be a limited company (*l*).

In the case of a company having no regulations as to directors, the nature of the authority entrusted to the directors must depend upon

(*g*) *Smith* v. *Anderson* (1880), 15 C. D., per James, L. J., at p. 275.

(*h*) *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D., per Stirling, J., at p. 798.

(*i*) See *post*, p. 85.

(*k*) C. A. 1908, s. 285.

(*l*) *Bulawayo Market, &c., Co.*, [1907] 2 Ch. 458.

the terms of the resolution of the company in general meeting defining their powers. As, however, nearly every company has regulations defining the powers of its directors, and all persons dealing with a company have constructive notice of its regulations, such persons are fixed with knowledge of the nature of the directors' authority to bind the company. The authorities in support of the view that directors are agents are numerous. Thus it has been said that "directors are a body to whom is delegated the duty of managing the general affairs of the company. A corporate body can only act by agents, and it is, of course, the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such an agent has duties to discharge of a fiduciary character towards his principal, and it is a rule of universal application that no one having such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect" (*m*). "In the case of a joint stock company . . . the very nature of the association renders it indispensable that there should be a directorial body to carry on the business of the company, and the constitution of the body of directors . . . creates a presumption . . . that the whole of the business of the company is to be done by the directors and by nobody else, and in no other way, and the public are entitled to expect that everything that the directors do shall be valid and binding upon the company. No doubt in the case of statutory companies in particular this presumption must yield to fact, and it may be made a fundamental condition of the company's contract of settlement, and a part of its constitution, that the directors shall have certain powers, and shall not have certain other powers . . . and under the Companies Act, 1862, a third party dealing with such a company is bound to make himself master not only of the statute under which the company is incorporated, but of its articles of association, which are registered for the very purpose of being made public" (*n*). "They are persons invested with strictly defined powers of management under the articles of association of a statutory corporation" (*o*). "They are the managing agents of a trading association," and "perhaps the nearest analogy to their position would be that of the managing agent of a mercantile house, to whom control of its property and very large powers for the management of its business are confided" (*p*). The differences between directors acting as a board and

(*m*) *Aberdeen Rail. Co.* v. *Blaikie* (1854), 1 Macq., per Lord Cranworth, at p. 471.

(*n*) *Heiton* v. *Waverley Hydropathic Co.* (1877), 4 Rett., per Lord President Inglis at p. 843.

(*o*) *Imperial, &c., Co., Blackpool* v. *Hampson* (1882), 23 C. D., per Bowen, L. J., at p. 13.

(*p*) *Faure Electric, &c., Co.* (1888), 40 C. D., per Kay, J., at p. 151.

ordinary agents are few, and are mainly owing to the principal being a corporation. For example, as the powers of companies or corporations are limited by the special or general Acts of Parliament under or by which they are incorporated, it is necessary to consider not only whether the acts of directors are within the powers conferred upon them by the company or corporation, but also whether the company or corporation itself is authorized to confer such powers. So, too, all persons dealing with a company are presumed to have notice of the Acts of Parliament affecting the company and of its regulations, and therefore to have notice of any restrictions upon the authority of directors and any formalities prescribed for the exercise of their powers (*q*). Generally speaking, a director cannot bind the company except when acting as one of the board of directors, and hence notice to a director is not necessarily notice to his company (*r*). The appointment of a director, unlike that of an ordinary agent, does not of itself entitle him to be paid for his services (*s*).

The rights of a director against the company consist of his right, if any, to remuneration and his right of indemnity.

1. In the absence of any provision in the regulations of the company, or of any contract by the company to pay a director for his services, he is not entitled to receive any remuneration therefor (*t*).

By the Companies Clauses Act, 1845, s. 91, the remuneration of directors is a matter specially reserved for the determination of the company in general meeting. Directors cannot be considered servants of the company, and as such entitled to remuneration for their labour according to its value (*u*). A company may, by a vote at a general meeting, sanction a part of its funds being applied in giving a gratuity to directors for past services, provided that special notice be given of the intention to propose such a resolution, and provided that the company is a going concern (*x*); but not if the company is about to wind up (*y*). The notice must not be of a misleading nature, or otherwise the Court will grant an interlocutory injunction restraining the proposing of the

(*q*) *Ernest* v. *Nicholls* (1857), 6 H. L. Cas. 419; *Heiton* v. *Waverley Hydropathic Co.* (1877), 4 Rett. 830; *McCollin* v. *Gilpin* (1880), 5 Q. B. D. 390, 393.

(*r*) *Marseilles Extension Co.* (1871), 7 Ch. 161.

(*s*) See *infra*.

(*t*) *George Newman & Co.*, [1895] 1 Ch. 674; *Bodega Co.*, [1904] 1 Ch. 276, 285.

(*u*) *Dunston* v. *Imperial Gas Light and Coke Co.* (1832), 3 B. & Ad. 125; *North Eastern Rail. Co.* v. *Jackson* (1870), 19 W. R. 198; *Hutton* v. *West Cork Rail. Co.* (1883), 23 C. D. 654.

(*x*) *Hutton* v. *West Cork Rail. Co.*, *supra*.

(*y*) *Stroud* v. *Royal Aquarium, &c., Ltd.*, [1903] 89 L. T. 243; *Warren* v. *Lambeth Waterworks* (1905), 21 T. L. R. 685.

resolution to increase remuneration and to grant remuneration for past services (*z*). Payment in excess of the remuneration payable under the articles can only be ratified after the articles have been duly altered so as to allow of such excess being paid (*a*). Directors are entitled as against the company to their fees, although it has been unsuccessful (*b*). Pearson, J., decided that when by the articles of association directors are bound to be members of the company, unpaid fees payable to them as directors are debts due to them as members, and must in the winding-up be postponed to outside creditors under the provisions of the Companies Act, 1862, s. 38, sub-s. 7 (*c*); but it is submitted that this decision is wrong, and in the case of a managing director, Kay, J., held that his fees were not debts due to him as a member under this section (*d*). Wright, J., has so decided in reference to ordinary directors' fees (*e*). Directors commit a breach of trust if they pay themselves remuneration to which they are not entitled (*f*).

In *Ex parte Walford* (*g*) it was held that fees paid to a director in respect of his services before he had acquired the number of shares without which he was not eligible for the office, could not be recovered in the winding-up; and where directors may act before qualifying, they may receive remuneration for so acting (*h*). If, however, a director has ceased to be a director, remuneration paid to him in respect of services after such cesser under the mistake of fact that he continued to be a director may be recovered (*i*). A director of one company whose qualification shares are held by him as trustee for another company is not liable to account to his beneficiary for his director's fees (*k*). Where directors are entitled to a percentage of the net profits remaining after payment of a specified dividend, and the dividend is paid and turns out to be excessive, directors may retain such percentage, although paid out of the capital of the company (*l*).

A promise by directors of a company to act gratuitously, being a promise made without any valuable consideration, is not binding upon them, and does not prevent them from recovering by action the salaries

(*z*) *Jackson* v. *Munster Bank* (1884), 13 L. R. Ir. 118.

(*a*) *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148.

(*b*) *Commercial Life Assurance* (1857), 27 L. J. Ch. 803; *Re Lundy Granite Co., Lewis's Case* (1872), 20 W. R. 519.

(*c*) *Ex parte Cannon* (1885), 30 C. D. 629. The sub-section considered in this case is re-enacted by the C. A. 1908, s. 123, ss. 1 (7).

(*d*) *Dale and Plant, Ltd.* (1889), 43 C. D. 255.

(*e*) *Ex parte Beckwith*, [1898] 1 Ch. 324; *A1 Biscuit Co.*, W. N., [1899] 115.

(*f*) *Oxford Building Society* (1887), 35 C. D. 502; *Leeds Estate Co.* v. *Shepherd* (1887), C. D. 787; *post*, p. 373.

(*g*) (1869), 20 L. T. 74.

(*h*) *International Cable Co.* (1892), 66 L. T. 253; *Salton* v. *New Beeston Cycle Co.*, [1899] 1 Ch. 775.

(*i*) *Bodega Co.*, [1904] 1 Ch. 276.

(*k*) *Dover Coalfield Extension, Ltd.*, [1908] 1 Ch. 65.

(*l*) *Peruvian Guano Co.*, [1892] 3 Ch. 690. Cf. *McConnell's Claim*, [1901] 1 Q. B. 613.

to which they may be entitled under a previous binding agreement (*m*). When, however, the annual remuneration of directors is to be paid at such times as they determine, and the board pass a resolution that the payment of directors' fees shall remain in abeyance for the time being, a director cannot sue for his fees, although they have not been paid for two years (*n*). As shareholders are bound to know the regulations of a company, they cannot complain that the amount payable thereunder to directors for remuneration is excessive (*o*). When articles provide that if any director shall be called upon to perform extra services the board may arrange with him for such special remuneration therefor as they think fit, the burden of proof falls upon the director claiming such remuneration to prove that they have been performed, and that the board arranged with him for their performance (*p*). When the remuneration of directors is to be divided in proportion to their attendances, or as they may determine, they may, after a director has resigned, alter the mode of division, so that he receives less than he would have done had the alteration not been made (*q*). Where the remuneration of directors is to be by way of annual salary, they can pay themselves sums on account of this salary before the expiration of a year from the incorporation of the company (*r*); but they are not entitled to receive anything for a part of a year, as in such a case the remuneration is not apportionable (*s*). As, however, a director does not cease to be a director merely by the company going into voluntary liquidation, the year may be completed after the liquidation commences (*t*). A special resolution, increasing the remuneration fixed by the articles of association, cannot authorize the increase beginning before the date of the resolution (*u*). Where directors' remuneration is to be paid by a percentage on the net profits of the company, profits made on the sale of the whole of the company's undertaking cannot be taken into account (*x*). A payment of directors' fees within three months of the commencement of the winding-up of the company for the purpose of enabling a director to pay his unpaid calls, the company then being in embarrassed circumstances, was held to be a fraudulent preference (*y*).

(*m*) *Lambert* v. *Northern Rail. of Buenos Ayres* (1869), 18 W. R. 180.

(*n*) *Caridad Copper Mining Co.* v. *Swallow*, [1902] 2 K. B. 44.

(*o*) *Anglo-Greek Steam Co.* (1866), 2 Eq. 7.

(*p*) *Lockhart* v. *Moldacot Sewing Machine Co.* (1889), 5 T. L. R. 307.

(*q*) *Gilman* v. *Gülcher Electric Light Co.* (1886), 3 T. L. R. 133.

(*r*) *Wood's Ships, &c., Co.* (1890), 62 L. T. 760.

(*s*) *Salton* v. *New Beeston Cycle Co.*, [1899] 1 Ch. 775; *Central de Kapp Gold Mines*, [1899] 69 L. J. Ch. 18; *Inman* v. *Ackroyd and Best, Ltd.*, [1901] 1 Q. B. 613; *McConnell's Claim*, [1901] 1 Ch. 728; *Bodega Co.*, [1904] 1 Ch. 276.

(*t*) *Shaw, Bryant & Co.*, [1901] W. N. 124, where the year was completed three days after the extraordinary winding-up resolution was passed.

(*u*) *Swabey* v. *Port Darwin Gold Mining Co.* (1889), 1 Meg. 385.

(*x*) *Frames* v. *Bultfontein Mining Co.*, [1891] 1 Ch. 140.

(*y*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

The Court will not appoint by way of equitable execution a receiver of directors' fees, as they can be attached (*z*). Payment of remuneration to directors for acting as receivers and managers of the company's undertaking does not disentitle them from receiving their remuneration as directors (*a*). Unless the articles so provide, directors are not entitled to be paid their remuneration free of income tax (*b*).

2. Directors are entitled to be paid by the company for advances made or expenses properly incurred by them within their authority, and to be indemnified by the company against the consequences of all lawful acts done by them in the exercise of their powers.

The above rule applies (1) where directors are trustees for the company of any property to the holding of which a liability is attached, *e.g.* as lessees (*c*) or shareholders in other companies (*d*), but not as holders of shares in their own company, because the company cannot itself, or by trustees, hold its own shares (*e*); or (2) where they incur on behalf of the company personal liability, *e.g.* upon agreements for purchase of property or other contracts (*f*), or upon negotiable instruments or upon contracts of loan or suretyship (*g*); but a director cannot set off against a call made before the winding-up of the company commenced the amount paid by him thereafter upon a negotiable instrument given by him as surety for the company (*h*); or (3) where they advance their own moneys for the benefit of the company (*i*).

Directors are also entitled to simple interest at 5 per cent. on the sums advanced (*k*).

Where directors pay off as sureties or otherwise a debt of the company, they are entitled to be subrogated to the rights of the creditor; *e.g.* to the rights of the mortgagee (*l*) upon payment of the amount of a mortgage.

(*z*) *Hamilton* v. *Brogden* (No. 2), W. N. (1891), 36.

(*a*) *South Western of Venezuela Ry.*, [1902] 1 Ch. 701.

(*b*) *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148.

(*c*) *Pooley Hall Colliery Co.* (1869), 18 W. R. 201.

(*d*) *National Financial Co.* (1868), 3 Ch. 791; *James* v. *May* (1873), L. R. 6 H. L. 328; *Chapman and Barker's Case* (1867), 3 Eq. 361.

(*e*) See *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*f*) *Gleadow* v. *Hull Glass Co.* (1849), 19 L. J. Ch. 44.

(*g*) *Poole's Case* (1878), 9 C. D. 323; *Gray* v. *Seckham* (1872), 7 Ch. 680.

(*h*) *Brasnett's Case* (1885), 53 L. T. 569.

(*i*) *International Life Assurance Society* (1870), 39 L. J. Ch. 271; *Ex parte Sedgwick* (1856), 2 Jur. N. S. 949; *Lowndes* v. *Garnett Gold Mining Co.* (1864), 33 L. J. Ch. 418; *Ex parte Baker* (1860), 1 Dr. & Sm. 55.

(*k*) *Ex parte Bignold* (1856), 22 B. 143.

(*l*) *Gibb's Case* (1870), 10 Eq. 312.

As sureties for a debt of the company they may, in the ordinary course of its business, pay moneys in reduction of the debt, although the company is in an insolvent state; and for the purpose of providing such moneys may pay up the amount unpaid upon their shares (*m*). The rights of directors and other persons where they advance moneys to a company in excess of its borrowing powers, are treated of at p. 255, *post*.

The Companies Clauses Act, 1845, sect. 100, expressly provides that directors shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity (*n*), and may, if necessary for that purpose, make calls upon the capital remaining unpaid, if any.

Directors who are remunerated for their services are not entitled to be paid their travelling expenses attending board meetings, unless such payment is authorized by the company's articles, or by a general meeting of the company (*o*).

3. Every director of a company has a right to participate in the management of its business.

A director can sustain an action in his own name against his co-directors for an injunction to restrain them from wrongfully excluding him from acting as a director (*p*); but not an action for a mandamus to compel them to ascertain the remuneration payable to him as director (*q*); and directors cannot appoint a committee of themselves to deal with the affairs of the company to the exclusion of one of their number (*r*). Where certain shareholders, who had been appointed directors by a general meeting in the place of the existing directors, brought an action in the name of the company against such directors for an injunction to restrain them from acting, and the action was dismissed with costs, upon the ground that the company had no power under its regulations to remove directors before the expiration of their term of office, the Court allowed the costs of the action to be paid out of the company's assets, as the plaintiffs represented the wishes of the majority of the members (*s*). In another case, where by defective proxies being used three additional

(*m*) *Poole's Case* (1878), 9 C. D. 323.

(*n*) *Ulster Rail. Co.* v. *Bainbridge* (1868), Ir. Rep. 2 Eq. 190.

(*o*) *Young* v. *Naval Society of South Africa*, [1905] 1 K. B. 687.

(*p*) *Pulbrook* v. *Richmond Consolidated Mining Co.* (1878), 9 C. D. 610; *Foster* v. *Greenwich Ferry Co.* (1888), 5 T. L. R. 16; *Kyshe* v. *Alturas Gold Co.* (1888), 4 T. L. R. 331.

(*q*) *Dashwood* v. *Cornish* (1897), 13 T. L. R. 337.

(*r*) *Kyshe* v. *Alturas Gold Co.*, *supra*.

(*s*) *Imperial Hydropathic Hotel Co.* v. *Hampson* (1882), 23 C. D. 1.

directors were elected by a small number of members, the Court refused to restrain the other directors from excluding the persons so elected from acting as directors, upon the other candidates (who would have been elected by a large majority had the proxies been good) giving an undertaking not to act as directors (*t*). Every director has a right to inspect the books and documents of the company (*u*). The Court will not restrain directors from excluding one of their number from acting as a director, when that is the wish of the majority of the members of the company (*x*). Although the Court will restrain directors from acting *ultra vires* of the company, it will not also restrain them from acting as directors when the shareholders have power to remove them, and their removal may be detrimental to the company (*y*).

The liabilities of directors are the subject of Chapters XXVI. to XXIX.

(*t*) *Harben* v. *Phillips* (1882), 23 C. D. 14.

(*u*) *Burn* v. *London and South Wales Coal Co.* (1890), 7 T. L. R. 118.

(*x*) *Bainbridge* v. *Smith* (1889), 41 C. D. 462.

(*y*) *Mozley* v. *Alston* (1847), 16 L. J. Ch. 217; *Hattersley* v. *E. of Shelburne* (1862), 31 L. J. Ch. 873.

CHAPTER VIII.

APPOINTMENT, RETIREMENT, AND REMOVAL OF DIRECTORS.

THE precautions which should be taken by a person before consenting to become a director of a new company are stated elsewhere (*a*). It is sufficient to observe here, that before accepting a directorship of any company a person should satisfy himself as to the standing of the company and the position and reputation of its directors. Having regard to the confidence reposed by shareholders in directors, and their multifarious and serious liabilities, it is desirable not only that a director should have business experience, but that he should also be able to give sufficient time to his duties and be fairly conversant with the principles of company law. This chapter treats of the persons who may be directors, their mode of appointment, and the events which determine their office.

1. In default of and subject to any provision in that behalf contained in any statute or in the regulations of the company, any person may be appointed a director thereof.

It is not lawful for any clergyman holding any cathedral preferment, benefice, curacy, or lectureship, or licensed or allowed to perform the duties of any ecclesiastical office, to act as a director of any company formed to carry on any trade or business for profit; but he may act as a director of a benefit society or a fire or life assurance society (*b*). The statute prescribes a penalty for disobedience, viz., suspension for the first offence for one year, for the second for such period as the judge may think fit, and for the third offence total deprivation, and therefore any offence against it is not indictable. It is also provided that contracts by a spiritual person trading are not void, but may be enforced by or against him.

(*a*) *Post*, p. 369. (*b*) 1 & 2 Vict. c. 106, ss. 29, 31; 4 & 5 Vict. c. 14.

The Companies Clauses Act, 1845, sect. 85, provides that no person shall be capable of being a director if he be not a shareholder, or if he do not hold the prescribed share qualification, or if he hold an office of trust or profit under the company, or be interested in any contract with the company during the time he shall be a director. But a person may be appointed a director by the special Act incorporating a company although he does not hold the requisite share qualification, and he thereby comes under a statutory obligation to take the necessary number of shares (*c*). With that exception it is obvious that under the above section the holding of the prescribed share qualification is a condition precedent to appointment (*d*).

The Companies Act, 1908, does not require that a director shall hold any shares in the company of which he is a director, but it is the exception for articles of association not to provide that directors shall have a certain share holding in the company, although under some articles a director may become qualified by holding debentures or debenture stock of the required amount. Table A provides that the qualification shall be the holding of at least one share (Cl. 70). The Companies Act, 1908, sect. 73, makes it the duty of every director not already qualified to obtain his share qualification (if any) within two calendar months after his appointment or such shorter time as may be fixed by the company's regulations; or in default his office is vacated and he cannot be reappointed a director until he has obtained his qualification, or the articles are altered so as to abolish the qualification (*e*); and if after the expiration of such period an unqualified person acts as director he is liable to pay to the company 5*l*. for every day he so acts. This section does not apply when the qualification has been increased, and a director has not acquired the additional shares representing the increase (*f*). It depends upon the terms of the articles relating to the share qualification of directors whether or not the holding of the necessary number of shares is a condition precedent to their appointment. If the meaning of the articles is that a person must have the shares before he is qualified to be a director, then if in fact he has not those shares at the time of his election, it is wholly void. Thus, in *Barber's Case* (*g*), where the articles provided that no person not recommended by the board for election as a director should be eligible unless at the time of election he had held twenty shares for two months, B. agreed to become a director and was unanimously elected at a general meeting, but as he had not been recommended and did not hold any shares it was held that his

(*c*) *Kincaid's Case* (1870), 11 Eq. 192; *Forbes' Case* (1875), 19 Eq. 353; *Portal* v. *Emmens* (1876), 1 C. P. D. 664; *Tahourdin* v. *Weston-super-Mare, &c., Pier Co.* (1887), 4 T. L. R. 124.

(*d*) *Biron's Case* (1878), 26 W. R. 606.

(*e*) *Boschoek* v. *Fuke*, [1906] 1 Ch. 148.

(*f*) *Molineaux* v. *London Insurance Co.*, [1902] 2 K. B. 589.

(*g*) (1877), 5 C. D. 963.

election was void. This decision was approved in *Jenner's Case* (*h*), where it is stated that the principle upon which this class of cases must be decided was laid down in *Barber's Case*. Where the provision in the articles is "that no person shall be eligible as a director unless he holds as 'registered member' in his own right" the prescribed share qualification, a person registered as the holder of the required number of shares is eligible for election although he has equitably mortgaged them (*i*), or has mortgaged them by an unregistered deed of transfer (*k*). In the latter case, Jessel, M.R., expressed the opinion that under such an article "beneficial ownership" was not necessary; but in *Bainbridge* v. *Smith* (*l*) this *dictum* was questioned by Cotton, L.J., who considered that "beneficial" ownership was necessary though such ownership might be incumbered; while Lindley, L.J., thought that all that was necessary was that the shareholder should hold his shares in such a way as that the company could safely deal with them as his shares. A joint and several holding of shares may be sufficient to qualify (*m*).

The Companies Act, 1908, s. 37 (4) provides that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified therein for being a director where such a qualification is prescribed by the regulations of the company. It is submitted that this section only applies when the articles require a share or stock qualification, and not when they only require the holding of a certain number of share warrants.

Where the articles do not make the acquiring of a qualification a condition precedent to the election of a director, a person may be duly elected and act as a director although not holding the qualifying shares (*n*). Where articles of association prescribe a qualification for directors, it is sometimes expressly provided that subscribers to the memorandum of association shall not be bound to qualify for the purpose of exercising the temporary powers given them until a board be appointed, but this appears to be unnecessary unless the articles provide that the signatories shall be directors until they nominate directors to act in their place (*o*).

2. A person may be appointed a director of a company by (1) the special Act, charter, deed of settlement, or articles of association of the company; or (2) the

(*h*) (1877), 7 C. D. 132.

(*i*) *Cumming* v. *Prescott* (1837), 2 Y. & C. Exch. 488.

(*k*) *Pulbrook* v. *Richmond Mining Co.* (1878), 9 C. D. 610. See *Cooper* v. *Griffin*, [1892] 1 Q. B. 740; *Howard* v. *Sadler*, [1893] 1 Q. B. 1.

(*l*) (1889), 41 C. D. 463. See also *Sutton* v. *English and Colonial Produce Co.*, [1902] 2 Ch. 502; *Boschock* v. *Fuke*, [1906] 1 Ch. 148.

(*m*) *Dunster's Case*, [1894] 3 Ch. 473, 482.

(*n*) *Portuguese Consolidated Mines* (1889), 42 C. D. 160, 164, where an allotment of shares by directors who had not qualified was held good. *International Cable Co.*, [1892] 8 T. L. R. 316.

(*o*) *R. Bolton & Co.*, [1894] 3 Ch. 356.

persons who, by the special Act, charter, deed of settlement, or the subscription of the memorandum of association, are incorporated as a company; or (3) the shareholders in general meeting; or (4) the directors.

It is obvious that in the first two cases the promoters of the company really appoint the directors. No person is capable of being appointed by articles of association director of a company governed by the Companies Act, 1908, other than a private company unless (*p*) before the registration of the articles he or his agent (*q*) authorized in writing has signed and filed with the registrar of companies a written consent to act as director, and has 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 such shares (*r*). The articles of association of a company often prescribe that a majority of the subscribers to the memorandum of association shall appoint the first directors, and that until such appointment the subscribers, or a majority of them, shall exercise all the powers conferred upon the directors. Table A provides (Article 68) that the number of directors, and the names of the first directors, shall be determined in writing by the majority of the subscribers of the memorandum of association. This power continues if the statutory meeting is held and no directors are appointed thereat (*s*); but, *semble*, it ceases when the subscribers have nominated a sufficient number of persons who accept office to form a quorum (*t*). Even supposing that the articles of association exclude Table A, and contain no provisions similar to those stated, yet the subscribers (assuming no shares have been allotted), being the only members of the company, would, it is submitted, be able to appoint the first directors, or, without appointing directors, to exercise the powers vested in the company; but the subscribers can only appoint directors after the company is registered (*u*). The question then arises whether the consent of all the subscribers, or of a majority of them, is requisite, and whether or not such consent must be given at a meeting properly convened. Upon reviewing the authorities it seems to be settled that the concurrence of a majority of the subscribers is necessary and sufficient in order to appoint the first directors. Thus, an appointment of directors by three out of seven subscribers is bad (*x*), but an appointment by four

(*p*) See *ante*, p. 7.

(*q*) The authority must be produced to the registrar and filed.

(*r*) C. A. 1908, s. 72.

(*s*) *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386.

(*t*) *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788, per Lindley, L.J., at p. 800.

(*u*) *Möller* v. *Maclean* (1889), 1 Meg. 274.

(*x*) *Howbeach Coal Co.* v. *Teague* (1860), 5 H. & N. 151; *London and Southern Counties Freehold Land Society* (1885), 31 C. D. 223.

of the seven subscribers is good (*y*). In the latter case, Brett, L.J., says: "I know of no rule of law preventing the majority of a body from binding the minority." In *Hallows* v. *Fernie* (*z*), V.-C. Wood was of opinion that the appointment need not be made at a meeting when all the subscribers concurred in making the appointment; and it has since been held by Stirling, J., that it is sufficient if all the subscribers sign a document appointing the directors (*a*). It seems, however, that unless all concur in the appointment, a meeting is necessary (*b*).

The power to appoint directors, other than first directors, and directors appointed to fill up casual vacancies, is generally only exerciseable by the shareholders in general meeting (*c*). Directors of a company cannot, by any agreement or deed, deprive shareholders of their power of appointing directors (*d*). An appointment of directors at a general meeting of a company which has not been duly convened in accordance with its regulations is invalid (*e*).

The declaration by the chairman of the election of directors of a company is *primâ facie* evidence of the validity of such election. In a case of fraud, however, relief will be granted to the candidates not declared to be elected; but until the return is set aside such candidates have no authority to act as directors, nor can they cause an action to be commenced in the name of the company (*f*). Where a person has been properly elected a director, a mandamus will be granted commanding the company to admit him as a director if the company has refused to do so (*g*).

Articles of association usually provide that any casual vacancy in the number of directors may be filled up by the board; but that every person chosen to fill up such vacancy shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred. "Any casual vacancy" means any vacancy in the office of directors arising otherwise than by retirement in rotation (*h*). This is the meaning also of the phrase "occasional vacancy" in the marginal note to the Companies Clauses Act, 1845, s. 89. Where such a vacancy occurs, *semble* it can, if still existing, be filled up by the shareholders in general meeting; but if

(*y*) *York Tramways Co.* v. *Willows* (1882), 8 Q. B. D. 685. See also *John Morley Building Co.*, [1891] 2 Ch. 386.

(*z*) (1867), L. R. 3 Eq. 520, 537.

(*a*) *Great Northern Salt, &c., Works* (1890), 44 C. D. 472.

(*b*) *Ibid.* See *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788, 803.

(*c*) See Companies Clauses Act, 1845, s. 91, cited *post*, p. 95.

(*d*) *Stace and Worth's Case* (1869), 4 Ch. 682; *James* v. *Eve* (1873), L. R. 6 H. L. 335.

(*e*) *Garden Gully Mining Co.* v. *McLister* (1875), 1 A. C. 39.

(*f*) *Wandsworth and Putney Gas, &c., Co.* v. *Wright* (1870), 18 W. R. 728, where the bill filed in the name of the company on behalf of the candidates claiming to be elected was ordered to be taken off the file, with costs to be paid by the solicitor filing it.

(*g*) *R.* v. *The Government Stock Investment Co.* (1878), 3 Q. B. D. 442.

(*h*) *Munster* v. *Cammell Co.* (1882), 21 C. D. 183, 187.

not so filled up, the power of the board to fill up the vacancy remains (*i*). An interesting question arises in the case of a company whose articles provide "that the number of directors shall not be less than three," and that the board may fill up casual vacancies, and that "the continuing board may act notwithstanding any vacancy in their body," namely, whether if by resignation the board is reduced to two, those two can fill up casual vacancies, the board being empowered to fill them up. The question is considered, but not determined, in *York Tramways Co.* v. *Willows* (*k*).

A resolution purporting to appoint A. and B. or such other persons as the company may nominate directors is nugatory (*l*).

3. A director of a company ceases to hold office upon (1) the expiration of the period for which he was appointed; or (2) the happening of some event whereby, by statute or the terms of his appointment, his office is vacated; or (3) his removal from his office by the shareholders.

The term for which a director is appointed, and the events upon which his office is determinable, are generally provided for by the special Act, charter, or articles of association of the company; but occasionally they are defined by agreement between a director and the company.

To secure the continuity of the policy of the company, and to protect its interests from falling into the hands of persons unacquainted with its affairs, the Companies Clauses Act, 1845, s. 88, and most articles of association, provide that the directors shall retire in rotation, and that the first directors to retire shall be determined by agreement or by ballot among themselves.

Articles of association generally provide that the office of a director shall be vacated if he resign his office; and the Companies Clauses Act, 1845, s. 89, by implication, permits a director to resign. In the absence of such a provision a person appointed with his consent a director for a term of years, and accepting the office, cannot resign without the consent of the company in general meeting (*m*). Where, by the special Act incorporating the company, it is provided that the persons therein named shall be the first directors of the company, and shall continue in office until the first ordinary meeting of the company, they cannot resign

(*i*) *Munster* v. *Cammell Co.*, *supra*.

(*k*) (1881), 8 Q. B. D. 685. Cf. *Newhaven Local Board* v. *Newhaven School Board* (1885), 30 C. D. 350.

(*l*) *Patentwood Keg Syndicate*, [1906] W. N. 164.

(*m*) *Municipal Freehold Land Co.* v. *Pollington* (1890), 59 L. J. Ch. 734.

before the holding of such meeting (*n*). A director may also bind himself to act for a certain period, as is frequently done by vendors to a company, who enter into a contract to act as managing directors for a term of years. In such a case it is clear that the director can only resign with the consent of the company, and if he refuses to act as a director, although the Court cannot compel him to act, he will be liable to the company in damages for breach of contract. If, however, a director appointed a managing director for a term of years ceases to be a director, he necessarily ceases to be a managing director, although the term has not expired (*o*).

Table A (Article 78) provides that the whole of the directors shall retire from office at the first ordinary meeting of the company. This article does not apply to *de facto* directors nor to subscribers of the memorandum of association (*p*). Similar provisions are contained in the Companies Clauses Act, 1845, s. 83.

An article providing that, in the event of a general meeting not being held, the directors who would have retired under the articles if such meeting had been held shall be considered as re-elected, does not apply where at a general meeting not duly convened directors are elected in place of those who ought to retire, although such election is void by reason of the informality of the meeting (*q*).

The Companies Clauses Act, 1845, s. 86, provides that if any director accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or shall cease to hold his qualification shares, he shall thereupon cease to be a director; and sect. 87, that a director shall not be disqualified by reason of his being a member of another company with which the contract is entered into, but that he shall not vote on any question connected with such contract.

The Companies Act, 1908, s. 73, provides that the office of a director shall be vacated if he 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 such period or shorter time he ceases to hold his qualification.

Articles of association usually provide that the office of a director shall be vacated—

> If he accept or hold any other office or place of profit under the company except that of a managing director, manager, or agent of the company;

(*n*) *South London Fish Market Co.* (1888), 39 C. D. 324.

(*o*) *Bluett* v. *Stutchbury's, Ltd.* (1908), 24 T. L. R. 469.

(*p*) *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386.

(*q*) *Garden Gully Mining Co.* v. *McLister* (1875), 1 A. C. 39.

If he become bankrupt or compound with his creditors (*r*);

If he cease to hold the requisite qualification;

If he be found lunatic, or become of unsound mind;

If he be continually absent from the board for more than the prescribed period without the sanction of the board (*s*);

If he resign his office (*t*);

If he be directly or indirectly interested in any contract with the company without duly declaring his interest therein to the board.

It is a question of construction of the words used in the articles whether or not the event has happened upon which the office of a director is vacated. If the event happens, the office is thereupon automatically vacated, and he must, before he can again become a director, be duly re-elected or re-appointed (*u*). The following table shows clauses which have been considered by the Court and the construction put upon them:—

Event upon which the office of director is to be vacated.	*Construction.*
If he shall accept or hold any office under the company other than that of manager.	Does not apply to a secretary elected director, although he continues to do the secretary's work, provided he is not paid as secretary (*x*).
If he holds any other place of profit under the company.	Applies to a director who is a trustee of a deed for securing debentures of the company, and is remunerated by the company for acting as trustee (*y*).
If he cease to hold his qualification shares.	Does not apply where the director has equitably mortgaged his qualification shares (*z*), or holds them in such a way that the company may safely deal with them as his shares (*a*), or where the qualification has been increased and he has not obtained the additional shares (*b*). It applies where the director is an undischarged bankrupt and his trustee in bankruptcy claims his shares (*c*).

(*r*) Such an article does not prevent an undischarged bankrupt being appointed a director. *Dawson* v. *African, &c., Co.*, [1898] 1 Ch. 6.

(*s*) *McConnell's Claim*, [1901] 1 Ch. 728.

(*t*) *Glossop* v. *Glossop*, [1907] 2 Ch. 370.

(*u*) *Bodega Co.*, [1904] 1 Ch. 276, distinguishing *Turnbull* v. *West Riding, &c., Club* (1894), 70 L. T. 92.

(*x*) *Iron Ship Coating Co.* v. *Blunt* (1868), 3 C. P. 484.

(*y*) *Astley* v. *New Tivoli, Ltd.*, [1899] 1 Ch. 151.

(*z*) *Cumming* v. *Prescott* (1837), 2 Y. & C. Exch. 488; *Pulbrook* v. *Richmond Mining Co.* (1878), 9 C. D. 610; *Bainbridge* v. *Smith* (1889), 41 C. D. 462.

(*a*) *Bainbridge* v. *Smith*, *supra*, per Lindley, L.J., at p. 475.

(*b*) *Molineaux* v. *London Insurance Co.*, [1902] 2 K. B. 589.

(*c*) *Sutton* v. *English and Colonial Produce Co.*, [1902] 2 Ch. 502.

If he absents himself from meetings of the directors for a specified time.	Does not apply to absence on account of illness (*d*), but applies when the director being physically able to attend meetings refrains from doing so (*e*).
If he enters into a contract with the company . . . without declaring his interest.	A mere declaration that the director has an interest is insufficient, and unless the nature of the interest is declared the office is vacated (*f*).
If he is concerned in or participates in the profits of any contract with the company (*g*).	Does not apply to a director of a loan company who lends it money at interest to be lent at a profit (*h*).
If he shall directly or indirectly be concerned in any contract with the company.	This applies only to contracts with the company in the execution of its enterprise, and does not prevent the bankers of the company from being directors of the company (*i*).

If the articles of association of a company governed by the Companies Acts contain no power to remove directors before the expiration of their period of office, the articles must be altered by a special resolution (*k*), so as to give that power; and then any of them can be removed by a separate resolution (*l*). It is not necessary to have separate resolutions to alter articles and remove directors, unless the power to remove can only be exercised by special resolution. One resolution may be sufficient to effect both purposes (*m*). Table A (Cl. 86) and most articles of association give express power to the company in general meeting to remove, by an extraordinary resolution, any director before the expiration of his period of office. As the articles of association do not constitute, under sect. 14 of the Companies Act, 1908, a contract between any member of a company and the company, except in his capacity of a member (*n*), the Court will not restrain a company from removing a director under a general power in its articles to remove directors, although another article stipulates that such director shall be irremovable (*o*). *Semble*, a stipulation in a valid contract between a director and the company making him irremovable would not be specifically enforced, but the director would be left to his remedy in damages (*p*). Although the company may not have the power to remove a managing director, yet, if the company in general meeting pass a resolution that they do not desire him to act, the Court

(*d*) *Mack's Claim*, W. N., [1900] 114.

(*e*) *McConnell's Claim*, [1901] 1 Ch. 728.

(*f*) *Imperial Mercantile Association* v. *Coleman* (1873), L. R. 6 H. L. 189. See also *Turnbull* v. *West Riding, &c., Club* (1894), 70 L. T. 92.

(*g*) *Bodega Co.*, [1904] 1 Ch. 276.

(*h*) *Bluck* v. *Mallalue* (1859), 27 B. 398.

(*i*) *Sheffield, &c., Rail Co.* v. *Woodcock* (1841), 7 M. & W. 574 and 582.

(*k*) See *post*, p. 337.

(*l*) *Imperial Hydropathic Hotel Co., Blackpool* v. *Hampson* (1882), 23 C. D. 1.

(*m*) *Campbell's Case* (1873), 9 Ch. 1; *Taylor* v. *Pilsen Joel Electric Light Co.* (1884), 27 C. D. 268. Cf. *Patent Invert Sugar Co.* (1886), 31 C. D. 166.

(*n*) See *post*, p. 219.

(*o*) *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*p*) *Ibid.*

will not restrain his co-directors from excluding him from acting (*q*). Directors of companies to which sect. 91 of the Companies Clauses Act, 1845, is applicable may be removed by the shareholders at a general meeting (*r*). Where the company in general meeting may remove a director for any reasonable cause, the Court will not interfere with the decision of such a meeting duly convened to remove a director, unless, *semble*, fraud be proved (*s*). The Court will refuse to restrain the chairman and director of one company from acting as director of another company in the absence of any agreement, express or implied, binding him not to go on the board of another company (*t*).

(*q*) *Bainbridge* v. *Smith* (1889), 41 C. D. 462.

(*r*) *Isle of Wight Rail. Co.* v. *Tahourdin* (1884), 25 C. D. 320.

(*s*) *Inderwick* v. *Snell* (1850), 2 Mac. & G. 216. Cf. *Hayman v. Governors of Rugby School* (1874), 18 Eq. 28, and cases therein cited.

(*t*) *London and Mashonaland Exploration Co.* v. *New Mashonaland Exploration Co.*, W. N. (1891), 165.

CHAPTER IX.

POWERS OF DIRECTORS—NATURE AND EXTENT OF POWERS.

Before considering in detail the various powers with which directors are invested, it is desirable to state the general principles relating to such powers. The powers of directors are either express or implied. Powers are expressly conferred upon directors by statute, charter, by-laws, rules, deed of settlement, articles of association, or other regulations of the company, or by resolutions passed at general meetings of the company. The powers of directors which are not conferred upon them expressly are such as are necessarily implied from the nature of their office and of the company. In the chapter upon *ultra vires*, it has already been pointed out that in no case can the powers of directors, whether express or implied, exceed the powers of the company (*a*). Generally the regulations of a company provide that the management of the business and affairs of the company shall be vested in the directors, and that they may exercise all the powers of the company except such as are by such regulations or by statute directed to be exercised by the company in general meeting, and subject to any regulations from time to time made by the company in general meeting. Where this is the case the powers of directors may be ascertained by applying the following rule:—

1. Except and subject as aforesaid the board of directors may exercise any power of the company necessary for the management of its business, although not in terms conferred upon them.

The above rule was applied in *Ambergate, &c., Rail. Co.* v. *Mitchell* (*b*), where a call made by directors not in terms empowered to make calls was held to be valid.

(*a*) *Ante*, p. 23.

(*b*) (1849), 4 Exch. 540.

By the Companies Clauses Act, 1845, s. 91, directors cannot (unless the special Act otherwise provides) appoint directors (except to fill up casual vacancies); remove directors, or increase or reduce their number; appoint auditors; determine the remuneration of directors, auditors, treasurer, and secretary; determine the amount to be borrowed on mortgage; increase the capital of the company, or declare dividends. With those exceptions, and except as to matters directed by the special Act to be transacted by a general meeting, the directors may exercise all the powers of the company, subject to the control and regulation of any general meeting specially convened for the purpose, but not so as to invalidate any previous act of the directors (*c*). Directors cannot appoint auditors, except the first auditor, or fill up casual vacancies (*d*). Directors of a company governed by the Companies Acts cannot do anything which requires a special resolution of the company for its validity (*e*).

2. Directors may do whatever is fairly incidental to the exercise of their powers.

Thus they may spend the company's money for the purposes which are reasonably incidental to the carrying on of the business of the company (*f*); they may give gratuities to the servants of the company (*g*). Directors of an insurance company may pay losses from lightning, although not within the risks insured against (*h*). Directors may issue negotiable instruments on the company's behalf if the company has express or implied power to do so (*i*). Directors of a company may without express power enter into a compromise on its behalf (*k*). *Semble*, directors of a company may undertake the costs of a litigation commenced by one of the company's servants arising out of something done by him as the servant of the company, and in so doing do not commit the offence of maintenance (*l*). Directors of a company have no powers by implication except such as are incident to or properly to be inferred from the powers expressed in its special Act, charter, or memorandum and articles of association, and their powers are entirely created by the law and, in the case of companies governed by the Companies Acts, by the contract founded upon the law which enables such companies to be constituted (*m*).

Where the articles of association provide that until directors are

(*c*) Sect. 90.

(*d*) C. A. 1908, s. 112.

(*e*) See *post*, p. 337.

(*f*) *Hutton* v. *West Cork Rail. Co.* (1883), 23 C. D. 654, 665, 671.

(*g*) *Hampson* v. *Price's Candle Co.* (1876), 24 W. R. 754.

(*h*) *Taunton* v. *Royal Insurance Co.* (1864), 2 H. & M. 135.

(*i*) *Peruvian Rail. Co.* (1867), 2 Ch. 617.

(*k*) *Bath's Case* (1878), 8 C. D. 334.

(*l*) *Elborough* v. *Ayres* (1870), 10 Eq. 367.

(*m*) *Oakbank Oil Co.* v. *Crum* (1882), 8 A. C. 65, 71.

appointed the subscribers shall be deemed to be directors, their powers are the same as those of the directors elected by the shareholders, and they may appoint one of themselves the paid manager of the company (*n*); but the article determining the number of directors necessary to form a quorum does not apply to the subscribers (*o*).

The following are the principal rules of law applicable to the exercise by directors of their powers:—

3. Unless the regulations of the company otherwise provide, and subject to Rule 6, the powers of directors can only be exercised by the majority of directors present at a board meeting duly convened and held, at which there is the prescribed quorum.

Whenever any legal act requires for its validity the consent of a number of persons, it is essential to determine whether all of them must join in it, or, if not, how many of them, and how their consent must be given. The regulations of a company usually provide for the convening and holding of meetings of directors, the determination of questions by the majority present at such meetings, and fix the minimum number of directors capable of acting so as to bind the company. The Companies Clauses Act, 1845, s. 92, and Table A, Article 87, provide that in case of an equal division of votes at a directors' meeting the chairman shall have a second or casting vote in addition to his vote as a director. In the absence of such a provision, the chairman is only entitled to one vote. A director is a person appointed with power to bind the company when acting as one of the board, but not otherwise (*p*). But a managing director or a committee of directors may be empowered by the regulations of the company to exercise any of the powers of the board (*q*), and persons dealing *bonâ fide* with a managing director are entitled to assume that he has all such powers as he purports to exercise if they are powers which, according to the regulations of the company, would be exercised by him as a managing director (*r*). Sometimes it is expressly provided that a meeting of directors at which a quorum is present may exercise all or any of the powers vested in the directors generally, but this only expresses what the law implies. Usually the regulations of a company

(*n*) *Eales* v. *Cumberland Blacklead Mine Co.* (1861), 6 H. & N. 481.

(*o*) *London, &c., Freehold Land Co.* (1885), 31 C. D. 223.

(*p*) *Marseilles Extension Rail. Co.* (1871), 7 Ch. 168.

(*q*) *Peruvian Rail. Co.* (1869), 19 L. T. 803; Companies Clauses Act, 1845, ss. 95, 96.

(*r*) *Biggerstaff* v. *Rowatt's Wharf, Ltd.*, [1896] 2 Ch. 93.

either prescribe how many directors shall constitute a quorum, or (as in Table A, Article 88) provide that the directors shall determine the quorum, and fix the quorum until so determined. Where the quorum was altered from three to two at a meeting at which only two directors were present, the Court declined after the lapse of six years to declare a resolution for winding up to be invalid upon the ground that only two directors were present at the meeting of the board which authorized the calling of the meeting (*s*). The Companies Clauses Act, 1845, s. 92, requires that there must be at least a third of the directors present in order to constitute a meeting, unless a quorum is prescribed by the company's special Act. It is submitted that where no provision as to a quorum is made in the articles of association, or where the directors, being empowered to do so, have not fixed the quorum, a majority of the directors present at a board meeting duly convened can exercise the powers vested in the directors of the company. Thus, in *Lyster's Case* (*t*), a forfeiture of shares by two directors at a board meeting, the other four directors being absent, was upheld by the Court. In *Lyon's Case* (*u*), an allotment of shares by three of the directors present at a meeting was held to be valid, although no quorum (subsequently determined to be three) had then been fixed. In the case of *The Portuguese Consolidated Mines, Limited* (*x*), where the articles provided that the directors should determine the quorum necessary for the transaction of business, North, J., held that all the directors must meet and concur in appointing a quorum, and that an allotment of shares made at a meeting by the two directors present thereat, who had resolved that two should be a quorum (the other two directors being absent), was invalid. The Court of Appeal affirmed the decision, but upon the ground that notice of the meeting had not been given to all the directors. Fry, L.J., doubted whether, even if notice had been given, a half of the directors under that article could determine the quorum; but it is submitted that under such an article a majority present at a duly convened meeting could do so (*y*). But such an allotment can be ratified at a subsequent meeting duly convened and held if not repudiated in the meantime (*z*). It is obvious that where no quorum is prescribed there must be at least two directors present to constitute a board meeting (*a*). A call made in pursuance of a resolution passed at a meeting at which less than a quorum is present, but confirmed by a meeting at which there is a quorum, is valid (*b*). But

(*s*) *Southern Counties Deposit Bank* v. *Kirkwood*, [1895] 11 T. L. R. 563.

(*t*) (1867), 4 Eq. 233.

(*u*) (1866), 35 B. 646.

(*x*) (1889), 42 C. D. 160.

(*y*) Cf. observations of Brett, L.J., in *York Tramways Co.* v. *Willows* (1882), 8 Q. B. D. 685, 698.

(*z*) *Portuguese Consolidated Mines, Ltd.* (1890), 45 C. D. 16.

(*a*) Cf. *Sharp* v. *Dawes* (1876), 2 Q. B. D. 26, where it was held that one shareholder could not constitute a meeting under the Stannaries Act, 1869, s. 4.

(*b*) *Austin's Case* (1871), 24 L. T. 932.

where a board meeting is adjourned, it is not necessary to give notice of the adjourned meeting to each director, and calls made at the adjourned meeting are not invalid because no such notice has been given (*c*). A quorum of directors means a quorum competent to transact and vote on the business before the board. Thus a resolution to issue debentures as security to two directors present at a meeting at which only one other director was present, the two directors being disqualified to vote on the resolution, is invalid (*d*).

In *Collie's Claim* (*e*) V.-C. Bacon suggested that there might be circumstances under which a quorum of directors could act without a board meeting; but in a prior case (*f*) V.-C. Wood was of opinion that where the powers of directors are only to be exercised by them as a board, they cannot be exercised except at a board meeting. In *D'Arcy* v. *Tamar Rail. Co.* (*g*), it was held, having regard to the Companies Clauses Act, 1845, s. 90, that a bond was only binding upon the company if sealed by the authority of a board meeting at which the prescribed quorum was present. But in the absence of any special statutory provision the case of *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.* (*h*) and many other cases show conclusively that third persons dealing in good faith with the company are entitled to presume that the internal regulations of the company as to a quorum and otherwise have been duly complied with (*i*). It is, moreover, necessary for directors to bear in mind that not only must there be a quorum of directors present at a meeting of the board, but it must be a quorum present at a duly convened meeting. The provisions (if any) in the regulations of the company as to the convening of directors' meetings should be strictly observed, as otherwise the business transacted at a meeting may be invalid. Thus, where by the regulations of the company it was provided that a meeting of the directors without notice should be held every week, upon a day and hour to be agreed upon, and that any other meeting of the directors should be convened by notice in the manner therein mentioned, it was held that no day and hour having been fixed for the weekly meeting, a call made at a meeting not convened by notice was bad (*k*). Even where the length of notice is not prescribed by the articles, notice may be given in such a way as to prevent the persons attending in pursuance thereof from constituting a board meeting (*l*). Special business may, however, be transacted at a directors' meeting, although no notice of the nature of such business has been given, and

(*c*) *Wills* v. *Murray* (1850), 4 Ex. 843.

(*d*) *Greymouth, &c., Coal Co.*, [1904] 1 Ch. 32.

(*e*) (1871), 12 Eq. 246.

(*f*) *Athenæum Society* (1858), 4 K. & J. 558.

(*g*) (1867), L. R. 2 Ex. 158.

(*h*) [1895] 1 Ch. 629.

(*i*) *Post*, p. 101.

(*k*) *Moore* v. *Hammond* (1827), 6 B. & C. 456.

(*l*) *Homer Gold Mines* (1888), 39 C. D. 546.

directors can at any meeting of the board deal with all affairs of the company then requiring attention (*m*). Notice of a meeting need not be given to a director absent in America (*n*).

As a director, unless so authorized, can only act jointly with his co-directors, it follows that notice to one director is not necessarily notice to the company. Thus, where a person is a director of two companies, one company is not necessarily affected with notice of facts the knowledge of which he has acquired as a director of the other company (*o*), unless it is within the scope of his duty as director of the one company to give notice to the other company and as director of the latter company to receive such notice (*p*); nor does the knowledge of a director affect the company in regard to a transaction in which he was not concerned on its behalf (*q*). The relation between a director and the company may be such as to make notice to him notice to the company (*r*). If information is acquired by directors in their capacity of agents and managers of the company for the purpose of guiding themselves in the course of their action, the company is thereby affected with notice. Thus, where a transferor of shares informed some of the directors about the transfer, and the transfer was discussed at a board meeting, it was sufficient notice to the company to take the shares out of the order and disposition of the transferor (*s*). *Semble*, an admission made by a chairman of a company at a board meeting at which a quorum were present is evidence against the company (*t*). A board of directors has constructive notice of circumstances of which a preceding board has had notice (*u*). If a man is secretary of two companies A and B he, as secretary of company A, only has notice of what he knows as secretary of company B, if it is his duty as secretary of company B to communicate his knowledge to company A (*x*).

4. Where the regulations of the company prescribe that the directors of the company shall not be fewer than a certain number, then, unless such regulations otherwise provide and subject to Rule 6, the

(*m*) *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788.

(*n*) *Halifax Sugar Refining Co.* v. *Francklyn* (1890), 59 L. J. Ch. 591.

(*o*) *Marseilles Rail. Co.* (1871), 7 Ch. 161; *Hampshire Land Co.*, [1896] 2 Ch. 743.

(*p*) *Gale* v. *Lewis* (1846), 9 Q. B. 730; *Hampshire Land Co.*, *supra*; *David Payne & Co.*, [1904] 2 Ch. 608.

(*q*) *Peruvian Rail. Co.* (1867), 2 Ch. 617; *North British Insurance Co.* v. *Hallett* (1861), 7 Jur. N. S. 1263; *Powles* v. *Page* (1846), 3 C. B. 16.

(*r*) *Carew's Estate Act*, No. 2 (1862), 31 Beav. 39, 46; *Gale* v. *Lewis*, *supra*.

(*s*) *Ex parte Worcester* (1868), 37 L. J. Bank. 23.

(*t*) *Ridley* v. *Plymouth Banking Co.* (1848), 2 Ex. 711.

(*u*) *Mechanics Bank* v. *Seton* (1828), Supr. Ct., U. S. A., 1 Peters, 299, 309.

(*x*) *Fenwick Stobart & Co.*, [1902] 1 Ch. 507.

directors being fewer than the prescribed number cannot exercise the powers of the company, even although they exceed the prescribed quorum.

Where the deed of settlement of a company provided that the directors should not be less than five nor more than seven, that three or more should constitute a board and be competent to transact all ordinary business, it was held that where the number of directors became reduced to four they could not do extraordinary business; and, *semble*, not even ordinary business (*y*). In a recent case it was held that such a provision in the articles of association of a company is imperative, and that a call and forfeiture made by all the directors, who were fewer than the minimum specified number, but more than the quorum, were invalid (*z*). But this is not so where there is an article providing that all acts done at any meeting of the directors or by any person acting as a director shall, notwithstanding that it shall be afterwards discovered that there was some defect in the appointment of such directors or persons, or that they or any of them were disqualified, be as valid as if every person had been duly appointed and was duly qualified (*a*). Such an article does not protect persons who act as directors knowing they have not been appointed (*b*), or persons knowingly dealing with them (*c*). Where articles of association provide that the minimum number of directors shall be four, that two directors shall form a quorum, and that the continuing directors may act notwithstanding any vacancy in the board, two directors are competent to allot shares, although at the time of allotment they are the only directors (*d*). Where, by a private Act incorporating a company, it was provided that the business of the company should be carried on by twelve directors, of whom five were to be a quorum, and that upon the ceasing of any director to be a director by any other means than going out of office it should be lawful for the other directors to elect a director in his place, it was held that the provision as to twelve directors was directory, not imperative, and that the number of directors being reduced to seven, five of them might still carry on the business of the company, and *inter alia* make calls (*e*).

(*y*) *Kirk* v. *Bell* (1851), 16 Q. B. 290.

(*z*) *Bottomley's Case* (1880), 16 C. D. 681.

(*a*) *Dawson* v. *African Consolidated Land Co.*, [1898], 1 Ch. 6. *British Asbestos Co.* v. *Boyd*, [1903] 2 Ch. 439. See Table A, Art. 94.

(*b*) *Tyne, &c., Assoc.* v. *Brown* (1896), 74 L. T. 283.

(*c*) *Ex parte Nicholson* (1891), 63 L. T 413. *Patentwood Keg Syndicate*, [1906] W. N. 164.

(*d*) *Scottish Petroleum Co.* (1883), 23 C. D. 413; *Re Bank of Syria*, [1901] 1 Ch. 115. Cf. *Newhaven Local Board* v. *Newhaven School Board* (1885), 30 C. D. 350.

(*e*) *Thames Haven Dry Dock Co.* v. *Rose* (1842), 4 Man. & G. 552, distinguished in *Bottomley's Case* (1880), 16 C. D. 681.

5. If the consent or authority of the company in general meeting or the resolution of the board of directors be required prior to the exercise by directors of any of their powers, such consent or authority should be obtained or such resolution passed, and any formalities prescribed for the exercise of their powers should be strictly complied with, or, subject to Rule 6, the acts done without such consent, authority or resolution being obtained, or without compliance with such formalities, may be invalid.

It occasionally happens that a power is well exercised although some formality prescribed is not observed. This happens where the Court holds that such formality is directory and not imperative; but as no general principle can be laid down by which directory and imperative formalities can be distinguished, it is advisable for directors to observe every form prescribed for the exercise of any of their powers.

Exception to Rules 3, 4 *and* 5.

6. Persons dealing with a company in good faith are not affected by any irregularities which may take place in its internal management, and of which they have no notice, but are entitled to presume that external acts of the company are rightly done when they purport to be done in the mode in which they ought to be performed.

The distinction between requirements pertaining to the internal management of the company and those not so pertaining is clearly pointed out by Vice-Chancellor Wood in *Athenæum Life Society* (*f*); and his observations as to companies governed by a deed of settlement equally apply to companies governed by articles of association. He says, "An important distinction is to be drawn . . . between that which upon the face of it is manifestly imperfect when tested by the requirements of the deed of settlement of the company, and that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be under the common seal of the company, every person contracting with the company can see at once whether that requisition is complied with, and he can do so at once; . . . but where the conditions required by the deed consist of

(*f*) (1858), 4 K. & J. 549.

certain internal arrangements of the company; for instance, resolutions at meetings and the like; if the party contracting with the directors finds the acts which they undertake to do within the scope of their powers under the deed, he has a right to assume that all such conditions have been complied with." This distinction has also been recognized in other cases (*g*). With this doctrine agree the opinions of Lord President Inglis and Lord Shand, that persons dealing with the directors of a joint stock company, although they must be held to have made themselves acquainted with the provisions of the statutes under which it was incorporated and its articles of association, are entitled to assume that, where certain powers of directors require for their validity the consent of the shareholders, and such consent has been given at a meeting of shareholders, everything has been regularly done with regard to the convening of such meeting (*h*). Thus a lender is not bound, where borrowing requires the authority of a general meeting of the company, to see that such authority has been given (*i*).

Where a transfer of shares requires for its validity the consent of the board of directors, to be signified by a certificate in writing signed by three directors, and the transferee is registered as a shareholder in respect of such shares, the directors cannot impeach such transfer upon the ground that it has never been submitted to a board meeting, the transferor not being aware of such formality (*k*). Where, although all the formalities of the deed of settlement with respect to the transfer of shares are not observed, a person becomes owner of shares in a company by transfer from former holders, and treats himself and is treated by the directors as a shareholder in respect of such shares, neither he nor they can dispute his membership (*l*). In several cases notice of the irregularity in the transfers was imputed to the transferors because they were officers of the company (*m*). Where, however, the approval of a general meeting is by statute made requisite to the validity of a contract made by directors, the contract is void without such approval (*n*).

(*g*) *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327; *Prince of Wales' Co.* v. *Harding* (1857), E. B. & E. 183; *Bill* v. *Darenth Valley Rail. Co.* (1856), 1 H. & N. 305; *Agar* v. *Athenæum Life Society* (1858), 3 C. B. N. S. 725; *Land Credit Co. of Ireland* (1869), 4 Ch. 460; *Davies* v. *R. Bolton & Co.*, [1894] 3 Ch. 678; *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.*, [1895] 1 Ch. 629; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314; *Montreal Light and Power Co.* v. *Roberts*, [1906] A. C. 196.

(*h*) *Heiton* v. *Waverley Hydropathic Co.* (1877), 4 Rettie (Scotch S. C., 4th Series), 830.

(*i*) *Colonial Bank of Australasia* v. *Willan* (1874), 5 P. C. 417, 447; *Landowners' Drainage and Inclosure Co.* v. *Ashford* (1880), 16 C. D. 411, 438.

(*k*) *Bargate* v. *Shortridge* (1855), 5 H. L. Cas. 297.

(*l*) *Straffon's Executor's Case* (1852), 1 De G. M. & G. 576. See also *Bargate* v. *Shortridge* (1855), 5 H. L. Cas. 297.

(*m*) *Newcastle-upon-Tyne Co., Ex parte Brown* (1854), 19 B. 97; *ibid. Ex parte Henderson* (1854), *ibid.* 107; *Bush's Case* (1870), 6 Ch. 246.

(*n*) *Ernest* v. *Nicholls* (1857), 6 H. L. Cas. 401, decided under sect. 29 of 7 & 8

In addition to the provisions made by statute (*o*) for the protection of persons dealing with companies, it is generally expressly provided by their regulations that the acts of directors shall be valid notwithstanding it is subsequently discovered that there has been some defect in their appointment or qualification (*p*). But even without such an article the company would, in cases falling within the above rule, be bound. Thus, bankers having funds of a limited company in their hands may in good faith honour the cheques of its directors signed in accordance with a form sent to the bankers by the company, without inquiring whether the persons so signing have been duly elected directors, they having been permitted by the majority of subscribers to the memorandum of association to act as directors (*q*). So a person who insures with a life assurance company in the ordinary course of its business is not bound to inquire whether the persons signing his policy as directors have been legally appointed or are duly empowered to use the seal of the company, if such policy is on the face of it consistent with the regulations of the company and any statutory requirements (*r*). So a mortgagee without notice of the irregularity is not prejudiced by the fact that a quorum was not present at the meeting of the board which authorized the affixing of the company's seal to the mortgage (*s*); and where the articles provide that any debenture bearing the company's seal and issued for valuable consideration shall be binding on the company, notwithstanding any irregularity touching the authority of the directors or officers or servants of the company to issue the same, a debenture so sealed and issued is valid although the resolution to issue the debenture is invalid (*t*). An agreement to pay a commission binds the company, although authorized by its directors separately instead of at a board meeting, the other party to the agreement having no notice of the informality (*u*).

7. Directors of a company, unless expressly authorized so to do by its regulations or by the company in general meeting, cannot delegate to other persons the power of managing its affairs generally, or any

Vict. c. 110, which required the sanction of a general meeting for the validity of any contract with the company in which a director was interested.

(*o*) Companies Clauses Act, 1845, s. 99, C. A. 1908, s. 74.

(*p*) Table A, Art. 94. *Dawson* v. *African Consolidated Land Co.*, [1898] 1 Ch. 6; *British Asbestos Co.* v. *Boyd*, [1903] 2 Ch. 439; *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148; *Patentwood Keg Syndicate*, [1906] W. N. 164.

(*q*) *Mahony* v. *East Holyford Mining Co.* (1875), L. R. 7 H. L. 869.

(*r*) *County Life Assurance Co.* (1870), 5 Ch. 288.

(*s*) *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.*, [1895] 1 Ch. 629.

(*t*) *Davies* v. *R. Bolton & Co.*, [1894] 3 Ch. 678.

(*u*) *Collie's Claim* (1871), 12 Eq. 246.

powers which by statute or by its regulations can only be exercised by the directors personally.

Where the power to allot shares of a company is vested in its directors, they cannot, unless so authorized, delegate such power, and any allotment made under such delegated power will be invalid (*v*). Directors having power to appoint a general manager to perform such duties as they may determine cannot delegate to him powers which are expressly given to them, and which, unless so given, they would not possess (*x*). Where directors of a company are empowered by its articles to delegate any of their powers to a committee of directors, such a committee may validly allot shares in pursuance of a power in that behalf duly delegated to them (*y*); but unless provision is made as to the committee acting by a quorum all acts of the committee must be done in the presence of all its members (*z*). Where the articles of association empower the directors to delegate any of their powers to committees consisting of members of their body, and provide that in the construction of the articles words importing the plural number only shall include the singular, the directors may delegate their power to compromise a claim with a shareholder to a single member of their body (*a*). There is nothing to prevent the delegation by the directors of all their powers to one director as the committee of the board, if the articles of association authorize such delegation (*b*). Where a committee purports to enter into a contract on behalf of the company in excess of its powers, the directors may ratify it so as to make it binding as from the date it was entered into, even although before ratification the other party repudiates the contract (*c*).

8. Any condition precedent to the exercise by the company of its powers must be performed.

Certain conditions are prescribed by statute with regard to the commencement of business and the exercise of borrowing powers by companies governed by the Companies Acts (*d*). If it be provided in the articles of association of a company that the subscription and allotment of a certain number of shares shall be a condition precedent to the association of the

(*v*) *Howard's Case* (1866), 1 Ch. 561.

(*x*) *Cartmell's Case* (1874), 9 Ch. 691. See also *Gibson* v. *Barton* (1875), L. R. 10 Q. B. 329, 336, per Blackburn, J.

(*y*) *Harris's Case* (1872), 7 Ch. 587.

(*z*) *Liverpool Household Stores* (1890), 59 L. J. Ch. 616.

(*a*) *Maclagan's Case* (1882), 51 L. J. Ch. 841.

(*b*) *Taurine Co.* (1883), 25 C. D. 118.

(*c*) *Bolton Partners* v. *Lambert* (1888), 41 C. D. 295; *Portuguese Consolidated Copper Mines* (1890), 45 C. D. 16. It is doubtful, however, whether the decision of the C. A. is good law that ratification can take place after repudiation. See *Fleming* v. *Bank of New Zealand*, [1900] A. C. p. 587, and Fry's Specific Performance, 4th Ed. Additional note A.

(*d*) *Ante*, p. 33.

members for the purposes of the company, directors cannot contract so as to bind the company until that condition is fulfilled (*e*). Nor can they do so if the articles provide that the business of the company shall not be commenced until the whole or a certain part of the capital has been subscribed, until it be subscribed (*f*). Where the articles of association of a company provide "that the directors may commence the business of the company as soon as they see fit, notwithstanding the whole of the capital may not be subscribed or taken," a formal resolution to commence business is not necessary to enable the directors to commence business and to make calls to carry it on, they having *de facto* commenced business (*g*). But where the articles of association provide that in case the whole of the nominal capital shall not be issued, the registered members of the company shall, if the directors by resolution so declare, but otherwise shall not, be and continue associated for the objects thereof . . . and the business of the company may be commenced from that time, but otherwise may not, directors cannot exercise their powers until and unless such capital shall be subscribed or a formal resolution passed (*h*).

Unless otherwise provided by statute or the regulations of a company, the company may exercise its powers although but a small proportion of its capital has been subscribed. Thus a company may make calls (*i*), allot shares (*k*), and commence business (*l*).

9. Directors must exercise their powers in good faith for the benefit of the company, and not for purposes other than those for which they have been conferred.

It follows from the above principle that directors cannot exercise their powers for their own benefit only, nor for the benefit of their co-directors. Thus, where directors of an insolvent company, in pursuance of a power to receive payment of calls in advance, paid the amount owing upon their shares, and on the same day appropriated the amount so paid in payment of their fees, they were not relieved of liability upon their shares (*m*). So a security given by an insolvent company for payment of a debt due

(*e*) *Pierce* v. *Jersey Waterworks Co.* (1870), L. R. 5 Ex. 209.

(*f*) *Ornamental Pyrographic Co.* v. *Brown* (1863), per Wilde, B., 2 H. & C. 63, 71.

(*g*) *Belfast and Ulster Brewing Co.* v. *Trumble* (1872), 9 Sc. S. C. (3rd Series) 604.

(*h*) *North Stafford Steel Co.* v. *Ward* (1868), L. R. 3 Ex. 172.

(*i*) *Ornamental Pyrographic Co.* v. *Brown* (1863), 2 H. & C. 163, overruling the dictum of Martin, B., in *Howbeach Co.* v. *Teague* (1860), 5 H. & N. 151.

(*k*) *Lyons' Case* (1866), 35 B. 646.

(*l*) *Macdougall* v. *Jersey Hotel Co.* (1864), 2 H. & M. 528. But cf. *Elder* v. *New Zealand Co.* (1874), 30 L. T. 285.

(*m*) *Syke's Case* (1872), 13 Eq. 255.

to a director cognizant of the state of the company's affairs may be set aside as an undue preference under sect. 210 of the Companies Act, 1908, even although the director may have pressed for payment of his debt. A director desiring to obtain payment under such circumstances ought to resign his office before applying for payment (*n*). It has been decided by the Supreme Court of the United States that the directors of a corporation incorporated by charter can be restrained from paying illegal taxes, on the ground that such payment is not for the benefit of the company, and constitutes a breach of trust (*o*). Where the directors of a company are authorized by resolution of the company to issue shares for a particular purpose, they cannot issue them for another purpose, nor if their power to issue shares is general can they exercise it for the express purpose of creating votes to influence a coming general meeting (*p*). Directors who are acting in opposition to the resolution of a proper majority of the shareholders will be restrained by injunction from continuing to do so (*q*). An article of association empowering directors to take legal proceedings on behalf of the company, and indemnifying them against the costs thereof, does not authorize directors to pay out of the company's funds the costs of an unsuccessful petition by the company to wind up presented by directors, and of an unsuccessful appeal by the company (*r*). Directors of a company authorized to draw bills for the purposes of the company cannot do so in favour of a third person for purposes other than those of the company, and the company is not liable upon a bill so drawn at the suit of the drawee (*s*).

10. Directors in exercising their powers are not bound to act with more prudence than they would use in similar circumstances when acting on their own behalf (*t*).

11. Directors, although acting on behalf of the company, may enter into contracts so as to make themselves personally liable thereunder (*u*).

12. If a director in the exercise of his powers commits a fraud, or any other wrong, he is personally liable in damages to the person deceived or wronged (*x*).

(*n*) *Gaslight Improvement Co.* v. *Terrell* (1870), 10 Eq. 168.

(*o*) *Dodge* v. *Woolsey* (1855), 18 How. 331.

(*p*) *Fraser* v. *Whalley* (1864), 2 H. & M. 10; *Punt* v. *Symons, &c., Co.*, [1903] 2 Ch. 506.

(*q*) *Exeter Rail. Co.* v. *Buller* (1847), 16 L. J. Ch. 449.

(*r*) *Smith* v. *Duke of Manchester* (1883), 24 C. D. 611.

(*s*) *Balfour* v. *Ernest* (1859), 5 C. B. N. S. 601.

(*t*) *Overend and Gurney Co.* v. *Gibb* (1872), L. R. 5 H. L. 480, per Lord Hatherley, 494. See also *post*, p. 359.

(*u*) See *post*, p. 392.

(*x*) See *post*, p. 394.

13. If a director acts in excess of his powers, he may incur personal liability both to the company and to third persons (*y*).

14. Where a director exceeds his powers, the company is only bound by his acts to the extent of his authority.

This principle is clearly illustrated by the cases on borrowing in excess of limited borrowing powers (*z*). If, by the regulations of the company, directors have certain powers conferred upon them, a secret limitation of their authority does not affect third persons dealing with such directors in good faith and without notice of such limitation (*a*). Every person dealing with a company is presumed to know the statute or charter by which it was incorporated, and the memorandum and articles of association of a company incorporated under the Companies Acts, and therefore to be acquainted with the extent of the directors' powers. Where directors of a company enter into a contract on its behalf, which they may have power to enter into, the burden of proving that they have no such power lies upon the company, and in the absence of such proof the contract will bind the company (*b*).

15. Where directors do acts in excess of their own powers, but not of those of the company, such acts can be ratified, and ratification can be either express or implied.

Such acts can be ratified by the majority of shareholders present at an extraordinary meeting duly called for that purpose; and, *semble*, at an ordinary general meeting, if the shareholders have had notice of the intention of the directors to ask for ratification; but such ratification will not extend the authority of the directors so as to authorize them to do similar acts in future (*c*). And where the acts are not merely in excess of the powers of the directors but contravene the articles of association, the articles must be altered before ratification is possible (*d*).

Ratification may be inferred from circumstances which are reasonably

(*y*) See *post*, pp. 342 and 394.

(*z*) See *post*, p. 253.

(*a*) Cf. *Commercial Marine Insurance Co.* v. *Union Mutual Insurance Co.* (1856), 19 How. 318, decided by the Supreme Court of the United States.

(*b*) *Royal British Bank* v. *Turquand* (1855), 5 E. & B. 248; *Green* v. *Nixon* (1857), 5 W. R. 433; *Totterdell* v. *Fareham Blue Brick Co.* (1866), L. R. 1 C. P. 674.

(*c*) *Irvine* v. *Union Bank of Australia* (1887), 2 A. C. 366; *Grant* v. *United Kingdom Switchback Co.* (1888), 40 C. D. 135. See also *Kent* v. *Jackson* (1852), 2 De G. M. & G. 49.

(*d*) *Boschoek, &c., Co.* v. *Fuke*, [1906] 1 Ch. 148.

calculated to satisfy the Court or a jury that the thing to be ratified came to the knowledge of all who chose to inquire, all the shareholders having full opportunity and means of inquiry. It is not necessary to prove the acquiescence of each shareholder (*e*). This case was decided upon the mistaken ground that the company had power to purchase its shares, although it was *ultra vires* of its directors, and that the company had ratified the purchase; but it is still an authority upon the question of ratification of an act within the power of the company, but not of the directors. Where debentures had been issued by directors *ultra vires*, but *intra vires* of the company, and for two years the debenture debts regularly appeared in the reports of the company, which were confirmed at its annual general meeting by the shareholders, and interest was regularly paid with their consent, ratification was inferred (*f*). An unauthorized issue of capital may be ratified, as where new shares were issued, the capital *de facto* increased, profits made, and dividends paid on the new shares (*g*).

16. Where directors do acts in excess of the powers of the company, such acts are null and void *ab initio*, and are, therefore, incapable of ratification (*h*).

17. In exercising a discretionary power directors should act in good faith, and, if they so act, the Court will not interfere with the exercise of their discretion (*i*).

18. A company is liable for all wrongs committed by its directors, agents or servants, when acting within their powers on behalf of the company and for its benefit.

Thus it has been held, in a case (*k*) where the respondent unsuccessfully sought rescission of his contract to take shares in the company, on the ground that he was induced to do so by the fraudulent misrepresentations of its directors, that a company is as much bound by the acts of its authorized agents as is an individual; and Lord Cranworth said (*l*): "If an incorporated company, acting by an agent, induces a person to enter into a contract for the benefit of the company, that company can no more repudiate the fraudulent agent than an individual could repudiate him,

(*e*) *The Phosphate of Lime Co., Ltd.* v. *Green* (1871) L. R. 7 C. P. 43.

(*f*) *Magdalena Steam Navigation Co.* (1860), John. 690.

(*g*) *Richmond's Case* (1858), 4 K. & J. 305. See also observations of James, L.J., in *Dronfield Silkstone Coal Co.* (1880), 17 C. D. 76, 97.

(*h*) See *ante*, p. 45.

(*i*) See *post*, pp. 176, 194.

(*k*) *New Brunswick, &c., Rail. Co.* v. *Conybeare* (1862), 9 H. L. 711.

(*l*) *Ibid.* at p. 738.

and, consequently, the company is bound by the misrepresentations of its agent." "The principal and the agent are one, and it does not signify which of them made the incriminated statement or which of them possessed the guilty knowledge" (*m*). "If between them the misrepresentation is made so as to induce the wrong and thereby damages are caused, it matters not which is the person who makes the representation or which is the person who has the guilty knowledge" (*n*). In another case (*o*), where a contractor charged the company with fraud, on the ground that he had been induced to enter into the contract with the company by the fraud of its directors in deceiving him as to the nature of the soil to be cut through in making the railway, it was held, that a trading corporation can only accomplish the object for which it is formed through the agency of individuals, and if they act fraudulently in its behalf, the corporation stands in the same situation with respect to the acts of its agents as a private person would have stood had his agent acted fraudulently (*p*). In *Western Bank of Scotland* v. *Addie* (*q*), Lord Chelmsford said: "A contract to take shares in a company, induced by the misrepresentations of its directors, is voidable, and may be rescinded at the election of the person deceived." The principle that a company is liable for the fraud of its agent, committed in the ordinary course of his employment, has been held to include the forgery of a certificate of proprietorship of shares by the secretary of a company (*r*). The following actions, amongst others, may be maintained against a company in respect of the act of its agent when the act is within the scope of his authority and for the benefit of the company, namely, an action of deceit (*s*), an action for malicious prosecution (*t*), for false imprisonment (*u*), trover (*x*), libel (*y*), trespass (*z*), for wrongfully and maliciously obstructing a person in his business of an omnibus proprietor (*a*), and for infringement of a patent (*b*).

(*m*) *S. Pearson & Son, Ltd.* v. *Dublin Corporation*, [1907] A. C. per Lord Loreburn, p. 354.

(*n*) Per Lord Halsbury. *Ibid.* p. 359.

(*o*) *Ranger* v. *G. W. Rail. Co.* (1854), 5 H. L. Cas. 72.

(*p*) See also dicta of Lord Cranworth and Lord St. Leonards in *National Exchange Co.* v. *Drew* (1855), 1 Paterson, at pp. 487, 493.

(*q*) (1867), L. R. 1 H. L. (Scot.) 145.

(*r*) *Shaw* v. *Port Philip Mining Co.* (1884), 13 Q. B. D. 103. As to the authority of a secretary, see *post*, p. 228.

(*s*) *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Ex. 259; *Mackay* v. *Commercial Bank of New Brunswick* (1874), 5 P. C. 394; *Swire* v. *Francis* (1877), 3 A. C. 106.

(*t*) *Edwards* v. *Midland Rail. Co.* (1880), 6 Q. B. D. 287.

(*u*) *Goff* v. *G. N. Rail.* (1861), 3 E. & E. 672; *Yarborough* v. *Bank of England* (1812), 16 East, 6.

(*x*) *Kemp* v. *Courage & Co.* (1890), 7 T. L. R. 50.

(*y*) *Whitfield* v. *S. E. Rail. Co.* (1858), E. B. & E. 115; *Citizens Life Assurance Co.* v. *Brown*, [1904] A. C. 423.

(*z*) *Maund* v. *Monmouthshire Canal Co.* (1842), 4 Man. & G. 452; *Eastern Counties Rail. Co.* v. *Broom* (1850), 6 Ex. 314.

(*a*) *Green* v. *London General Omnibus Co.* (1859), 7 C. B. N. S. 290.

(*b*) *United Telephone Co.* v. *London, &c., Telephone Co.* (1884), 26 C. D. 766.

A company is not liable for the unauthorized and fraudulent act of an agent committed for his own benefit (*e*), nor for the fraud of its managing director not committed by him when acting within the scope of his authority (*d*). "We see no principle on which the company should be liable for what he did, any more than an ordinary employer would be answerable for the act of his agent not acting within the scope of his authority" (*e*). A company is not liable under Lord Tenterden's Act (9 Geo. 4, c. 14, s. 6) for a false representation made in a letter signed by its agent (*f*).

19. With the exceptions hereinafter stated the Court will not at the suit of dissentient shareholders while the company is a going concern restrain directors from acting, or grant any other relief against directors, unless the acts complained of are *ultra vires* of the company (*g*) or contravene its article of association (*h*).

The general rule of the Court is to decline to interfere in the internal management of the company, upon the ground that the proper tribunal to settle disputes of this kind is a general meeting of the shareholders. It is obvious, too, that if the Court were to assume jurisdiction in such matters at the instance of a minority of the members, the majority could confirm an invalid election, or ratify the unauthorized acts if within the powers of the company, or confer upon the directors the power to do the acts in question. The above rule, known as the Rule in *Foss* v. *Harbottle*, has been applied in the following cases:—The Court will not restrain directors from acting upon the ground that there was no board in existence (*i*), or that their election was invalid (*k*); nor will directors be restrained from making or enforcing calls (*l*), or from applying the proceeds of a call in a particular manner (*m*), or from applying the proceeds arising from an issue of new shares to purposes other than those for which the issue was made (*n*), or from otherwise applying the funds of the company within its powers (*o*).

(*c*) *British Mutual Banking Co.* v. *Charnwood Rail. Co.* (1887), 18 Q. B. D. 714.

(*d*) *McGowan & Co.* v. *Dyer* (1873), L. R. 8 Q. B. 141.

(*e*) Per Blackburn, J., at p. 145.

(*f*) *Hirst* v. *West Riding Union Banking Co.*, [1901] 2 K. B. 560.

(*g*) *Ante*, p. 46.

(*h*) *Salmon* v. *Quin & Axtens, Ltd.*, [1909] 1 Ch. 311, Affd. 1909, A. C. 442.

(*i*) *Foss* v. *Harbottle* (1843), 2 Ha. 495.

(*k*) *Mozley* v. *Alston* (1847), 1 Ph. 790.

(*l*) *Bailey* v. *Birkenhead, &c., Rail. Co.* (1849), 12 Beav. 433; *Anglo-Universal Bank* v. *Baragnon* (1881), 45 L. T. 362.

(*m*) *Cooper* v. *Shropshire Union Rail. Co.* (1849), 6 Ry. Cas. 136.

(*n*) *Yetts* v. *Norfolk Rail. Co.* (1849), 3 De G. & Sm. 293.

(*o*) *Taunton* v. *Royal Insurance Co.* (1864), 2 H. & M. 135; *Bank of Turkey* v. *Ottoman Co.* (1866), 2 Eq. 366.

The court will not interfere upon the ground that directors have acted improperly, where such acts have been sanctioned by a general meeting of the company (*p*); nor with the removal of directors by a duly convened general meeting of the company, unless, *semble*, fraud were proved (*q*); nor with the investment of a reserve fund (*r*); nor with the distribution of profits while debts of the company remain unpaid; nor with the manner in which profits are to be ascertained (*s*); nor with the decision of the chairman of a general meeting, that there cannot be a poll on the question of adjourning the meeting (*t*).

Exceptions to the rule in Foss v. Harbottle.

Where the dissensions in the governing body are of such a nature as to make it impossible to carry on the business of the company to its advantage (*y*). Where directors propose to make an inequitable use of their powers for the purpose of preventing shareholders exercising their legal rights; *e.g.* by fixing a particular date for holding the general meeting of the company, for the purpose of preventing shareholders from voting (*z*); by issuing shares for the purpose of securing a majority at the next general meeting of the company (*a*); by rejecting votes of qualified shareholders (*b*). Where the majority of directors exclude the minority from the meetings of the board (*c*). Where the acts complained of are such as a majority cannot sanction so as to bind the minority, and it is impossible to get the company to impeach such acts, *e.g.* a fraudulent sale by promoters to the company (*d*). Where the majority are acting fraudulently towards the minority (*e*). Where the directors are acting in opposition to the resolution of a general meeting (*f*). Where the majority propose to divide the assets of the company among themselves

(*p*) *Lord* v. *Governor and Company of Copper Miners* (1848), 2 Ph. 740.

(*q*) *Inderwick* v. *Snell* (1850), 2 Mac. & G. 216.

(*r*) *Burland* v. *Earle*, [1902] A. C. 83.

(*s*) *Stevens* v. *South Devon Rail. Co.* (1851), 9 Ha. 313; *Browne* v. *Monmouthshire Rail. Co.* (1851), 13 B. 32; *Lambert* v. *Neuchâtel Asphalte Co.* (1882), 30 W. R. 913, per Bacon, V.-C.

(*t*) *Macdougall* v. *Gardiner* (1875), 1 C. D. 13.

(*y*) *Featherstone* v. *Cooke* (1873), 16 Eq. 298; *Trade Auxiliary Co.* v. *Vickers* (1873), *ibid.* 303. In this case receivers were appointed until a meeting could be held to constitute a proper governing body of the company.

(*z*) *Cannon* v. *Trask* (1875), 20 Eq. 669.

(*a*) *Fraser* v. *Whalley* (1864), 2 H. & M. 10; *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506.

(*b*) *Pender* v. *Lushington* (1877), 6 C. D. 70.

(*c*) *Great Western Rail. Co.* v. *Rushout* (1852), 5 De G. & Sm. 290.

(*d*) *Atwool* v. *Merryweather* (1868), 5 Eq. 464, n.; *Duckett* v. *Gover* (1877), 6 C. D. 82; *Mason* v. *Harris* (1879), 11 C. D. 97.

(*e*) *Gray* v. *Lewis* (1873), 8 Ch. 1035; *Spokes* v. *Grosvenor Hotel, &c., Co.* (1897), 13 T. L. R. 431; *Campbell* v. *Australian Mutual Provident Society* (1908), 99 L. T. 3.

(*f*) *Exeter and Crediton Rail. Co.* v. *Buller* (1847), 5 Ry. Cas. 211.

in exclusion of the minority (*g*). *Semble*, where the directors threaten and intend to part with the property of the company so as to cause irreparable injury (*h*). As to who are proper parties to actions which are exceptions to the rule in *Foss* v. *Harbottle*, see Chapter XXX.

It is submitted that the rule in *Foss* v. *Harbottle* is equally applicable to societies incorporated under the Building and Industrial Societies Acts, but directors are further protected from litigation by provisions in those Acts.

20. With the exception stated below, all disputes between any building society and its members must be determined by arbitration (*i*).

This rule applies to a member whose notice to withdraw has expired, where he complains of acts done before withdrawal (*k*); and to disputes between a member and the directors as to acts within their powers (*l*).

Exceptions to Rule 20.

Where one party to the dispute has given notice to proceed to arbitration, and default has been made by the other party. Where the rules of the society direct disputes to be referred to the Court or justices. Where the dispute with a member or his representatives is not with him in his capacity of a member, unless the rules of the society provide to the contrary (*m*). Where the dispute is as to the construction or effect of any mortgage deed, or any contract contained in any document other than the rules of the society (*n*). Where the dispute is whether or not a person is a member of a society (*o*). Where the dispute is with reference to a mortgage by a member to the society (*p*). Where the directors are charged with acting *ultra vires* of the society or in fraud of the society (*q*).

21. All disputes between a friendly or industrial and provident society, or its officers and its members or

(*g*) *Menier* v. *Hooper's Telegraph Works* (1874), 9 Ch. 350.

(*h*) *Normandy* v. *Ind Coope & Co.*, [1908] 1 Ch. 84.

(*i*) 10 Geo. 4, c. 56, ss. 27, 28; 6 & 7 Will. 4, c. 32, s. 4; Building Societies Act, 1874, s. 34.

(*k*) *Huckle* v. *Wilson* (1877), 2 C. P. D. 410; *Walker* v. *General Building Society* (1887), 36 C. D. 777.

(*l*) *Thompson* v. *Planet Building Society* (1873), 15 Eq. 333.

(*m*) Building Societies Act, 1884, s. 2.

(*n*) Building Societies Act, 1884, s. 2; *Western Building Society* v. *Martin* (1886), 17 Q. B. D. 609. By this Act the rule laid down in *Municipal Building Society* v. *Kent* (1884), 9 A. C. 260, was abrogated.

(*o*) *Prentice* v. *London* (1875), L. R. 10 C. P. 679.

(*p*) *Mulkern* v. *Lord* (1879), 4 A. C. 182.

(*q*) *Grimes* v. *Harrison* (1859), 26 B. 435; *Municipal Building Society* v. *Richards* (1888), 39 C. D. 372.

their representatives, must be decided in the manner directed by its rules, or in default by the County Court, or a court of summary jurisdiction (*r*).

22. All the powers of directors cease upon the making of an order to wind up the company, or upon the appointment of liquidators in a voluntary winding-up, except, in the latter case, in so far as the company in general meeting or the liquidators may sanction the continuance of such powers (*s*).

Between the time when a petition for winding-up is presented and a winding-up order made thereon, directors can properly carry on the business of the company in the ordinary course, and any disposition of the property of the company so made and completed before the date of the winding-up order will, as a rule, be upheld by the Court (*t*). In a voluntary winding-up new directors may be appointed for the purpose of enforcing at the request of the liquidator a power to forfeit shares for non-payment of calls made in the winding-up (*u*).

(*r*) Friendly Societies Act, 1875, s. 22; Industrial Societies Act, 1893, s. 49.

(*s*) C. A. 1908, s. 186 (3); *Bolognesi's Case* (1870), 5 Ch. 567.

(*t*) *Wiltshire Iron Co.* (1868), 3 Ch. 443; C. A. 1862, s. 152.

(*u*) *Fairbairn Engineering Co.*, [1893] 3 Ch. 450.

DIRECTORS.

CANADIAN NOTES.

In the absence of agreement it is clear that there is no duty or obligations on the part of a director to pledge his own credit for the benefit of the company, and his failure to do so, even when the company is in temporary difficulties and he is financially capable of obtaining the needed assistance on his own credit, cannot be regarded as a breach of duty on his part. *Christopher* v. *Noxon*, 4 O. R. p. 682.

In the matter of dealing with his shares a director is in general as free as any shareholder. He is not a trustee for the general body of shareholders so as to be unable to deal with his shares in a manner prejudicial to the interests of the shareholders. In a vast variety of circumstances he is just as free to deal with his shares as any other person, with the exception that he cannot deal with his qualification shares without giving up his directorship. *Thompson* v. *Canada Fire Insurance Co.*, 9 O. R. 284.

It is clear that the duty of a director makes it incumbent on him to give his whole ability, business knowledge, exertion and attention to the best interests of the shareholders who place him in that position when these interests are involved, and it is incumbent upon him to assume no part which would be inconsistent with the proper, free and independent discharge of his duties in that respect. No one standing in or occupying a fiduciary relationship can be permitted to do an act on his own personal behalf which might or could be construed to be inconsistent with the fiduciary character which he holds, and a director is no exception. *Re Iron Clay Brick Manufacturing Co.*, 19 O. R. at p. 123.

In *Bennett* v. *Havelock*, 1 O. W. N. 352, 751; 21 O. L. R. 375. When property was conveyed to the company each director received a cheque for $1000, which was applied in payment of the stock subscribed for by them. Held, that they should account for the money received.

It was argued that the defendants were the only shareholders at the time and had assented to what was done. But held, that when there is intended to be an invitation to others to come in and take stock the future shareholders are entitled to the protection of an absolutely independent directorate, and to full disclosure of the actual facts. There is no distinction between the position of promoters and directors in this respect.

Directors' Sale to a Director.

A sale by directors to one of themselves is open to question in an action by a shareholder. Such a sale, on the other hand, may be entirely validated by resolution of the shareholders. Where an action was brought by a shareholder the Court considered it proper before dismissing the action to direct that a meeting of shareholders be called for consideration of the sale and that they be asked to ratify it or express their disapproval of it. An order was made directing the calling of a meeting on a specified date, the president of the company to report fully to the registrar upon affidavit the result of such meeting. *Ellis* v. *Norwich Broom Co.*, 8 O. W. R. 25. See *Kuntz* v. *Silver Spring Co.*, 15 O. W. R. 826.

Where directors issued to themselves debentures of the company at a discount of $25 per cent. in satisfaction of their claims against the company, it was held that other debenture holders had no right of action, and that the company was the only party to complain. *Bank of Toronto* v. *Cobourg Ry. Co.*, 10 O. R. 376.

In *Harris* v. *Sumner*, 39 N. B. R. 204, the directors allotted all the unissued shares at par to the secretary who had subscribed for them and who immediately afterwards disposed of a number of them at par to the directors individually. The plaintiff, a shareholder who had recently purchased a large number of shares, mostly at a premium, claimed that the directors had fraudulently conspired with the secretary to obtain stock at par when it was worth more, and asked that such issue of stock be declared void. Held, that the transaction was not illegal, as the shares were allotted *bonâ fide* to the secretary with intent to further the company's interests and without intent on the part of the directors to profit personally thereby: that the directors were acting within their powers when they exercised their discretion and sold shares at par which might have brought a premium, and that they were not obliged to offer all

unissued shares to the shareholders *pro rata* or put them up at auction before disposing of them to one shareholder at par.

A director is entitled to exercise his voting powers as shareholder in a general meeting called to ratify a contract entered into between himself and the company and which would be voidable if not so ratified. His doing so cannot be deemed oppressive by reason of his individually possessing a majority of the votes acquired in the manner authorized by the constitution of the company, even if they are acquired for the purpose of ratifying the contract. *North-west Transportation Company* v. *Beatty*, 12 A. C. 589, reversing 6 O. R. 300 and 12 S. C. R. 598, and restoring 11 A. R. 203.

A mortgage to a director is not necessarily invalid. *Greenstreet* v. *Paris Hydraulic Co.*, 21 Gr. 229, and see *Smith* v. *Spencer*, 12 C. P. 277.

Upon the appointment of a liquidator for a company being wound up, the fiduciary relation of directors to the company or its shareholders is at an end, and a sale to them by the liquidator of the company is valid. *Chatham National Bank* v. *McKeen*, 24 S. C. R. 348.

Personal Interest. Votes.

No director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested, either as vendor, purchaser, or otherwise.

Non-compliance with this section has been said to render *ipso facto* void all contracts resting upon such voting so as to need no rescission. *Wade* v. *Kendrick*, 37 S. C. R. 58.

The Ontario Act, while it does not authorize the directors to enter into agreements with their company, provides that they shall not vote at a directors' meeting in respect of any such contract, and also that they shall disclose the nature of their interest at the meeting where such arrangement was determined on.

A director is not, however, disqualified by reason only of holding shares or being a director in any other company with which a contract is being made.

In view of this limitation, it is probably wise to insert in the bye-laws a clause authorizing the directors to contract with the

company. Circumstances may arise which may make it in the company's interest to be able to deal with one of its directors.

In *Thorpe* v. *Tisdale*, 13 O. W. R. 1044, each of the four directors claimed to have accounts against a company for services. At a directors' meeting they passed resolutions allowing the accounts and ordering them to be paid, no director voting in respect of his own account. They then took stock for their accounts and sold certain other stock, which was not paid for. Held, an illegal scheme to get control of the company, and the issue of stock was set aside.

Number of Directors.

Under the Ontario Act there must be not less than three directors. The Act originally provided for a minimum quorum of three, but under the amendment of 1908 (8 Edw. VII., ch. 43, sect. 8), a quorum may now consist of two. The Act also provides for the creation of an executive committee in cases of companies having more than six directors, and permits the directors to delegate any of their powers to this executive committee consisting of not less than three directors. See sect. 82. No business may be transacted at a board meeting at which a quorum is not present; and while no provisions to this effect are contained in the Act, it would appear that business cannot be transacted by the executive committee unless a quorum is present. In the absence of any provisions in the bye-laws of the company, it would seem that two are sufficient to form a quorum of the executive committee. See *Toronto Brewing and Malting Company* v. *Blake*, 2 O. R., p. 175. See also *First Natchez Bank* v. *Colman*, 2 O. W. R. 358.

The directors have unlimited powers over the property of the corporation so to deal with it as to pay the just debts of the corporation. And not only have the directors such rights, but it is their duty to take such steps as would preserve the property for the general benefit of all creditors without priority or distinction: and this without the formal sanction of the whole body of shareholders. *Hovey* v. *Whiting*, 14 S. C. R. 515. See also *Merchants' Bank* v. *Hancock*, 6 O. R. 285. They can accordingly make an assignment for the benefit of the creditors of the company. *Hovey* v. *Whiting*, *supra*.

Where individual directors enter into an agreement on behalf of the company which is not in the ordinary course of its business the

company is not bound unless it ratifies it. *Hamilton and Port Dover Ry. Co.* v. *Gore Bank*, 20 Gr. 190, 194.

Such acts of directors may, however, be ratified expressly or by acquiescence. If the company delays after sufficient time for inquiry and deliberation, it will be taken to have acquiesced, and even slight acts referable to the contract will be deemed an adoption of it. *Conant* v. *Mail*, 17 Gr. 574, 580. See *Bridgewater Cheese Co.* v. *Murphy*, 23 A. R. 66; *Merchants' Bank* v. *Hancock*, 6 O. R. 285; *Hereford Ry. Co.* v. *The Queen* (1894), 24 S. C. R. 1.

The board of directors may make an assignment for the benefit of the company's creditors, though it has the effect of terminating the existence of the company and amounts to the winding up of the company, instead of administering its affairs. *Horey* v. *Whiting*, 14 S. C. R. p. 515; *Donley* v. *Holmwood*, 30 C. P. 240, 4 A. R. 555.

It is necessary for directors to employ other persons to act for the company, and where this is the case those persons will also have power to bind the company within the limits of their agency, and, as a rule, their authority cannot be denied unless their employment was beyond the powers of the directors or irregularly made, and unless in the case of such irregularity, the person dealing with the employee had notice of the irregularity. *Thompson* v. *Brantford Electric Co.*, 25 A. R. 340.

Quorum.

Under the Ontario Act if there are less than a quorum in office, the only power of those remaining is to call a meeting on requisition for the election of further directors. So long as a quorum of directors remain in office, vacancies may be filled by the board. See sect. 81: *Sovereen Mitt Co.* v. *Whiteside*, 12 O. L. R. 638.

Where a director is disqualified from voting on a particular matter, there must be a quorum present without counting him. See *Wade* v. *Kendrick*, 37 S. C. R. 58, and in *Nutter Brewery Co.*, 1 O. W. R. 400.

Provisional Directors.

In view of the duty imposed upon provisional directors to call a general meeting of the company, to be held within two months from the date of the letters patent for the purpose of organizing

the company for the commencement of business, the Ontario Court of Appeal was inclined to doubt if it was intended to repose in the provisional directors absolute power to deal with such matters as the transfer of shares. *Re Wakefield Mica Co.*, 7 O. W. R. 104.

This section is very broad in its terms, and its effect is probably to confer upon the provisional directors, for the time being, all the powers properly exerciseable by directors under the Act. *Johnston* v. *Wade*, 11 O. W. R. 598. See *Monarch Life* v. *Brophy*, 14 O. L. R. 1. Prior to the passing of this section in its present form, there was some difference of opinion as to whether the bye-laws might fix the number of directors at a figure different from the number of provisional directors specified in the letters patent. It was held in *Manes Tailoring Co.* v. *Wilson*, 14 O. L. R. 89, that the number must be the same. The present section seems to be a not altogether satisfactory attempt to legislate in the same direction. It would have been simpler to have provided for fixing the number by the letters patent.

Presumably the powers of the provisional directors are of a limited nature, but regard must be had to the exact words of the governing Act in each case. *Johnston* v. *Wade*, *supra*; *Muldowan* v. *German Canadian Land Co.*, 19 Man. R. 667.

Where by the Act incorporating the plaintiff company, certain persons were declared provisional directors who, it was enacted, "may forthwith open stock books, procure subscriptions of stock, make calls on the stock subscribed and receive payments thereon, and shall deposit in a chartered bank in Canada all moneys received by them on account of the company and shall withdraw the same for the purpose only of the company, and may do generally what is necessary to organize the company," it was held that the provisional directors had no right to enter into an arrangement by which to induce a person to subscribe for shares; they were to advance out of the funds of the company moneys to enable the intending subscriber to make payments on the shares, and in the absence of express provision, provisional directors have no power to delegate their powers to committees. *Monarch Life* v. *Brophy*, 14 O. L. R. 1.

As to the powers of provisional directors of a railway company, see *Re North Simcoe Ry. Co.*, 36 U. C. R. 104, and see also *Michie* v. *Erie and Huron Ry. Co.*, 26 C. P. 566; *Re Wakefield Mica Co.*, 7 O. W. R. 104; *Selkirk* v. *Windsor*, 21 O. L. R. 109.

Personal Liability of Directors.

But a representation by a director, founded on a mistaken view of the extent of his authority in point of law, will not render him liable to the person to whom it was made. *Struthers* v. *Mackenzie*, 28 O. R. 381.

As to the personal liability of directors or officers of a company on bills and notes, see *Thames Navigation Co., Ltd.* v. *Reid*, 13 A. R. 303; *Brown* v. *Howland*, 9 O. R. 48, 15 A. R. 750; *Walmsley* v. *Rent Guarantee Co.*, 29 Gr. 484; *Madden* v. *Cox*, 5 A. R. 473.

A party wronged may choose against whom he will proceed, or may proceed against all parties concerned, including the company. While there is, of course, no contribution as between joint tort feasors, there is, apparently, such a right as between co-directors.

Directors must make good to the company as damages any sums which, on winding up, may be required and which cannot be made good by the ostensible transferees who are to be called upon in the first instance. *Re Peterboro' Cold Storage Co.*, 9 O. W. R. 850.

Directors of a company approving of the sale to the company of property at a gross over-valuation are liable to account to the company, whether the consideration is satisfied by cash or by shares or stock of the company. *Boyle* v. *Rothschild*, 10 O. W. R. 696.

Directors' Issue of New Shares to Themselves.

Where, under its Act of incorporation, one-third of the shareholders had certain rights and the directors of the company were desirous of obtaining sufficient shares to give them a two-thirds majority, it was contended by the minority that a new issue of stock should have been offered to existing shareholders *pro rata*. The Court said that a resolution by the shareholders that new stock should be at the disposal of the directors means that the directors shall dispose of theirs in the manner best suited to benefit their *cestuis que trustent*, that is, the whole body of the shareholders. In the present instance it was plain that the action of the directors was to benefit themselves as shareholders. The apportionment of the new shares gave them the absolute control of the corporation's affairs and removed any opposition that might arise from the

minority. The Court apparently held the allotment to be in excess of the powers of the management intrusted to the directors for the benefit of the company, and took the view that it ignored the just claims of many of the shareholders and amounted to a prejudicial encroachment on the voting powers of the minority, and looking to a confiscation of corporate rights or privileges by a majority at the expense of the minority. *Martin* v. *Gibson*, 10 O. W. R. 66.

Judgment was given restraining the voting upon the increased capital shares and declaring that the allotment to the directors and their nominees was in excess of the powers of the directors. See also *Harris* v. *Sumrer*, 39 M. B. R. 204.

Penalties.

Under the Ontario Act a director is subject to the following among other penalties:—

1. Failure to file and post up returns, $20 per day.
2. Allowing use of bills, etc., where word "limited" not set out, $10 for each offence.
3. For commencing business before filing declaration with provincial secretary, $50 per day.
4. For failing to comply with prospectus clauses, $200 and costs.
5. False statement in advertisement, etc., $200 and costs.
6. "No personal liability," failing to use words, $200 and costs (mining companies).
7. Default in making return of allotments, $20 per day.
8. Failure to produce books on government investigation, $20.
9. Refusal to allow inspection of statutory books, $100.
10. Removal of statutory books from head office, $200.

Loans to Shareholders.

Section 93 affords a necessary protection against directors permitting loans by the company to one of their number.

Liability for Wages.

Sect. 94 *Ontario Act.*

A person employed as foreman of works, who hires and dismisses men, makes out pay rolls, receives and pays out money for

wages, and does no manual labour, and in addition to receiving pay for his own services at the rate of $5 per day, payable fortnightly, is paid for use of machinery belonging to him and of horses hired by him, is not a labourer, servant, or apprentice, and cannot recover against the directors personally. *Welch* v. *Ellis*, 22 A. R. 255. Nor is the manager of a company. *Herman* v. *Wilson*, 32 O. R. 60. See also *Re American Tyre Co.*, 2 O. W. R. 29; *Re Ritchie Hearn Co.*, 6 O. W. R. 474, and compare *Fayne* v. *Langley*, 31 O. R. 254, decided on the Ontario Wages Act. See also *George* v. *Strong*, 1 O. W. N. 350.

Qualification.

It would appear that no one can act as a director unless he is a shareholder of the company holding at least one share of stock. Section 83 uses the word "shares," from which it might be inferred that a director must hold more than one share, but the commonly accepted construction is that one is sufficient. Notwithstanding the use of the words "in his own right" it has been held that a director may qualify upon shares standing in his name as trustee.

A director who disposes of his qualifying shares ceases *ipso facto* to be a director, and if his ceasing brings the number below that required by the statute, namely, three, the directorate then becomes incomplete and incompetent to manage the affairs of the company. *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 175.

See *Stephenson* v. *Vokes*, 27 O. R. 691, as to removal of directors.

Resignation.

A director may resign at any time.

Quære as to when his resignation takes effect in the absence of a provision in the bye-laws. See *Re Rodney Casket Co.*, 12 O. L. R. 409.

Election of Directors.

Sects. 84 *and* 85 *Ontario Act.*

An election must be regular. If not, it can be set aside and the acts of the board are tinged with irregularity. If it is obtained by

a trick or artifice, it can, of course, be set aside. The fact that shares are purchased with a view of controlling an election does not affect its irregularity. *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 175. But see *Davidson* v. *Grange*, 4 Gr. 377.

In the case of an irregular election of directors, as is the rule in respect of acts within the powers of the company and those capable of confirmation by the majority of the shareholders, the Court will not interfere at the instance of individual shareholders unless the individual can secure the consent of the company to sue in the company's name, and an action by them to test the election should be dismissed. *Kelly* v. *Electrical Construction Co.*, 10 O. W. R. 704.

So long as a quorum of directors remain in office, casual vacancies in the board may be filled by them (sect. 81, sub-sect. 4). It was formerly held that the power is only exerciseable in the interval between the vacancy arising and the next annual meeting, and that the board would not apparently have power to elect a director after the date of the annual meeting. See *Kely* v. *Kiely*, 3 A. R. 433. The present section could probably not be capable of such a construction.

A shareholder who has participated in the benefit of an illegal act cannot either individually, or suing on behalf of the general body of creditors, maintain an action against the directors of the company. *Stickney* v. *Bucknel*, 6 O. W. R. 751.

Where candidates for the board of directors acted as scrutineers, and exercised their discretion as to the right of certain voters to vote, it was held that the duty of the scrutineers was so plainly in conflict with their interest as candidates that the election was voidable. Candidates cannot act as scrutineers and pass upon the right of other shareholders to vote. *Dickson* v. *McMurray*, 28 Gr. 553.

It was held in early cases that *quo warranto* proceedings could be taken in the case of *quasi* public corporations, but not in the case of an ordinary trading company. *Queen* v. *Hespeler*, 11 U. C. R. 222; *Re Moore*, 14 U. C. R. 365; *Queen* v. *Bank of U. C.*, 5 U. C. R. 338.

As to mandamus, see *Re Moore*, *supra*, and *Queen* v. *Bank of U.C.*, *supra*; *Toronto Brewing Company* v. *Blake*, *supra*. As to a mandatory order for rectification of the register, see *McKain* v. *Birbeck Co.*, 7 O. L. R. 341.

Remuneration.

Sect. 88 *Ontario Act.*

A bye-law for the remuneration of directors must first be passed by the board of directors, who thus make the responsibility of definitely asserting their claim to payment and fixing the amount so claimed. This bye-law must then be laid before a general meeting and passed upon by the body of shareholders. *Beaudry* v. *Reid*, 10 O. W. R. 622. And where shareholders in general meeting assembled voted to certain of directors paid shares as remuneration for services, it was held that this was invalid. *Beaudry* v. *Reid*, *supra*.

The purpose or object of sect. 88 of the Ontario Companies Act, providing that no bye-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting, is that those who govern the company shall not have it in their power to pay themselves for their services without the shareholders' sanction. And where at a general meeting of the shareholders the general bye-laws were confirmed, but at an adjournment later in the day a resolution was passed that the president (the plaintiff) should be paid a certain salary, and then at a subsequent meeting of the elected directors a resolution was passed that, pursuant to the resolution of the shareholders, that salary should be paid to plaintiff, held that there had been a substantive, if not a literal, compliance with the enactment, and the plaintiff was entitled to recover. *Mackenzie* v. *Maple Mountain Mining Co.*, 20 O. L. R. 615. See also *Claudet* v. *Golden Giant Mines*, 13 W. L. E. 348, and *In re Queen City Plate Glass Co.*, 16 O. W. R. 336.

Apart from a bye-law of the company passed by the directors and ratified by shareholders, directors are not entitled to remuneration, and this applies not only to their position *qua* director, but also to any emoluments which they might claim to as officers of the company. *Birney* v. *Toronto Milk Company*, 5 O. L. R. 1; *Re Ontario Express Co.*, 25 O. R. 587; *Livingstone's case*, 14 O. R. 211; 16 A. R. 397; *Benor* v. *Canadian Mail Order Co.*, 10 O. W. R. 899; *Minister of Railways* v. *Quebec Southern Railway Co.*, 12 Ex. C. R. 11.

Unauthorized Remuneration.

Where the president and vice-president of a company drew for several years without proper authority, but with the acquiescence

of their co-directors elected by and closely connected with the majority of the shareholders, large sums ostensibly as salaries as general manager and managing director respectively, it was held that the propriety of the payments could be enquired into at the instance of dissatisfied shareholders, although the majority were prepared to ratify them. It must be borne in mind that there are certain exceptions to the wide powers of the majority to bind the minority, and if it be found that two prominent officials are withdrawing the company's funds and applying them to their own use without legal warrant, and that the same officials hold or control a majority of the shares the Court will not hesitate to protect the minority, otherwise it would be in the power of the majority to defraud the minority with impunity. *Earle* v. *Burland*, 27 A. R. 540 (1902); A. C. 101. See also *Gardner* v. *Canadian Publishing Co.*, 31 O. R. 488.

A director of the company was appointed secretary of the company at a fixed salary, and subsequently resigned that office and was elected vice-president, to which office no salary was prescribed by bye-law or otherwise. He continued, however, to draw the same salary for a number of years as was paid to him as secretary of the company. The Court of Appeal for Ontario held that upon his ceasing to be secretary his salary as such ceased, and as there did not appear to be any resolution of the board or shareholders giving him a salary or compensation as vice-president, and as there was no agreement between him and the company, he was held not entitled to compensation for services rendered in that capacity. They also laid down that he could not be considered as a servant of the company and as such entitled to remuneration for his labour according to its value, and he was ordered to restore to the company the money drawn out by him since ceasing to be secretary. The Privy Council held on appeal that as the directors had allowed him to draw his former salary without any observation until the commencement of the action, the inference might be fairly drawn from all the circumstances of the case that he was intended to retain his salary, although there was a shifting of the officers. *Earle* v. *Burland*, 27 A. R. 563 (1902); A. C. 101. See also *Gardner* v. *Canadian Publishing Co.*, 31 O. R. 488.

It was formerly held that this section applied only to payment for the service of a director *qua* director as for the services of a president as presiding officer of the board. *Re Ontario Express and Transportation Co., Director's case*, 25 O. R. 587. See also *Victor Mutual* v. *Thompson*, 32 C. P. 476. But see *Birney* v. *Toronto*

Milk Co., 5 O. L. R., in which the opposite view was taken. As a director's solicitor's right to costs, see *Mimio Sewer Pipe and Brick Manufacturing Co.; Pearson's Case*, 26 O. R. 289. See also *Benor* v. *Toronto Mail Order Co.*, 10 O. W. R. 899.

Commission.

As to the right of a director to payment of commission on sale of stock, see *Stickney* v. *Bucknel*, 6 O. W. R. 751. In this case a director arranged with the company of which he was a promoter to be paid 12½ per cent. on all stock sold by him. He did not make any sales, but entered into an agreement with an agent by which the latter was to sell the stock on commission of 5 per cent. to be paid by the director. A large amount of stock was sold on which 5 per cent. was paid. The Court held that 5 per cent. was a fair commission and that the 7½ per cent. must be accounted for to the company by the director. *Stickney* v. *Bucknel*, 6 O. W. R. 751.

In *Sydney Land and Loan Co.* v. *Rountree*, 42 N. S. R. 49, directors of the plaintiff company paid the defendant, the manager and secretary of the company, a commission for services rendered in connection with the conversion of the preferred stock into bonds. The defendant would have been bound under the terms of his employment to render the services in question without compensation beyond his salary. Held, that in the absence of ratification by the shareholders the Company was entitled to recover back the amount paid.

Past Services.

A payment of a lump sum by a benevolent society as remuneration covering a period of thirty years for past services was supported in the case of *Bartram* v. *Birtwistle*, 11 O. W. R. 315.

Other Cases.

As to a director's profit made by lease of company's plant, see *Meyers* v. *Cain*, 6 O. W. R. 297, 834. It was held in this case that the company was a necessary party in an action to call upon the directors to account for their profits.

Where a director expended money on behalf of the company under the *bonâ fide* belief that he was doing so under the authority

of the company lawfully given, he was held entitled to receive payments from the company. *Benor* v. *Canadian Mail Order Co.*, 10 O. W. R. 899.

Implied Power of Managing Director.

In the case of *National Malleable Co.* v. *Smith's Falls*, 14 O. L. R. 22, the validity of the contract entered into by the managing director of a company was considered. In that case no bye-law had been passed defining the general powers of the board of directors, or of the managing director, except as to borrowing for the purposes of the company. The Court of Appeal said that the contract being one which the board of directors could have entered into, they could have authorized the manager of the company to do so on behalf of the company. Accordingly in the total absence of bad faith or notice, the plaintiffs were entitled to assume that he had been duly clothed with the real authority which he was ostensibly exercising in entering into the contract in question. See also *Thomas* v. *Standard Bank*, 15 O. W. R. 188.

Manager.

When the bye-laws of the company authorized the general manager to compromise claims and to do other acts which would occasionally require legal advice, it was held to be a reasonable inference that the general manager had implied authority to retain the solicitor whenever it was in his own judgment prudent to do so. *Clarke* v. *Union Fire Insurance Company*, 10 P. R. p. 342.

In *Milne* v. *Ontario Marble Quarries, Limited*, 13 O. W. R. 1137, plaintiff, who worked in defendants' stone quarry, sued for wages. The defendants denied employment. There was no contract under seal. The acting manager of defendants told him to go to work. Three of the directors knew he was working, and the defendants received the benefit of his work. Held that defendants were liable.

In *Armstrong* v. *Tyndall Quarry Co.*, 16 U. L. R. 111, it was held that a general manager has a general authority to enter into a contract of hiring and bind his company although the contract is not under seal.

See also *Tierman* v. *People's Life Insurance Co.*, 26 O. R. 596;

23 A. R. 342; *Laberge* v. *Equitable Life Insurance Society*, 24 S. C. R. 595; *Galloway* v. *Stobart & Sons & Co.*, 35 S. C. R. 301; *Canada Central Railway Co.* v. *Murray* (1882), 8 S. C. R. 314; *Hamilton, etc. Ry. Co.* v. *Gorebank* (1873), 20 Gr. 190.

Notwithstanding the rule as to "holding out," it would be advisable in contracting with an officer of a company for the first time to examine the bye-laws of the company and see the general scope of his authority. See *Bessette* v. *Equitable*, 10 Q. P. R. 260.

President and Secretary.

The president of a company has no more power apart from that conferred in the bye-laws, and merely by virtue of his office, than an ordinary director of the company. See *Almon* v. *Law* (1894), 26 N. S. 340; *North-west Transportation Co.* v. *Beatty*, 12 App. Cas. 589.

Parties dealing with the president of a company must take notice that he has but a limited authority. *Ellis* v. *Midland Railway Co.*, 7 A. R. 462; *Bridgewater Cheese Factory Co.* v. *Murphy*, 26 O. R. 327; 23 A. R. 66; 26 S. C. R. 443; *Hereford Railway Co.* v. *The Queen*, 24 S. C. R. 1. But see *Thomas* v. *Standard Bank*, 15 O. W. R. 188. As to the secretary, see *Hamilton and Port Dover R. W. Co.* v. *Gore Bank*, 20 Gr. 190.

See also the following cases: *Great North-west Central Railway* v. *Charlebois* (1899), A. C. 114; *Thornton* v. *Sandwich Plank Road Co.*, 25 U. C. R. 591; *Real Estate Co.* v. *Metropolitan Building Society*, 3 O. R. 476; *Great Western Railway* v. *Preston*, 17 U. C. R.; *Fairchild* v. *Ferguson*, 21 S. C. R. 484; *McCausland* v. *Hill*, 23 A. R. 738; *Walmsley* v. *Rent Guarantee Co.*, 29 Gr 484.

CHAPTER X.

PROSPECTUSES.

The usual way of raising the share or loan capital of a company is by the issue of a prospectus to the public setting forth the advantages of investing in the shares, debentures or debenture stock of the company, and inviting applications for the same.

The following observations have been made by judges with respect to the duty of persons who issue prospectuses. It is essential that with regard to prospectuses "there should be *uberrima fides*—a most complete disclosure of the facts—on the part of those who induce the public to invest their money" (*a*). Lord Chelmsford has very clearly stated the duties incumbent on directors and promotors in preparing a prospectus (*b*): "Some allowance must always be made for the sanguine expectations of the promoters of the adventure, and no prudent man will accept the prospects which are always held out by the originators of every new scheme without considerable abatement. But, although in its introduction to the public some high colouring and even exaggeration in the description of the advantages which are likely to be enjoyed by the subscribers to an undertaking may be expected, yet no misstatement or concealment of any material facts or circumstances ought to be permitted. In my opinion, the public who are invited by a prospectus to join in any new adventure ought to have the same opportunity of judging of everything which has a material bearing on its true character as the promoters themselves possess. It cannot be too frequently or too strongly impressed upon those who, having projected any undertaking, are desirous of obtaining the co-operation of persons who have no other information on the subject than that which they choose to convey, that the utmost

(*a*) *Ross* v. *Estates Investment Co.* (1866), 3 Eq., per V.-C. Wood, at p. 136. This was an action by a shareholder seeking to be relieved of his shares on the ground of misrepresentation contained in the prospectus issued by the company.

(*b*) *Central Rail. Co. of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. at p. 113.

candour and honesty ought to characterize their published statements. As was said by V.-C. Kindersley (*c*): 'Those who issue a prospectus, holding out to the public the great advantage which will accrue to persons who will take shares in a proposed undertaking, 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 abstain 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.' If persons publishing a prospectus use such careless language that their statements, literally read, are untrue, although this literal sense is different from what they intended, this amounts to a misrepresentation, for which they may be responsible to any one who is deceived or injured by it; provided that the words used, whether taken alone or read with the context, are free from ambiguity" (*d*).

In issuing a prospectus of a company governed by the Companies Acts the provisions of the Companies Act, 1908 (*e*), should be strictly complied with. They apply whether the issue is by or on behalf of the company or by or on behalf of any person who is or has been engaged or interested in the formation of the company. The expression "prospectus," as used in that Act, means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares, debentures or debenture stock of a company (*f*). The Act applies to prospectuses issued (1) by a company, or (2) in relation to an intended company, and whether by (3) the directors or other agents of a company, or (4) by or on behalf of a promoter of a company as a purchaser or allottee or intended purchaser or allottee of its shares, debentures or debenture stock (*g*). The Act, therefore, cannot be evaded by a promoter selling property to a company for fully paid shares, or for debentures or debenture stock, or by his taking fully

(*c*) *New Brunswick and Canada Rail. Co.* v. *Muggeridge* (1860), 1 Dr. & Sm. at p. 381. The rule so laid down was described by V.-C. Wood in *Henderson* v. *Lacon* (1867), 5 Eq. 262, as a "golden legacy."

(*d*) Per Lord Chelmsford, *Hallows* v. *Fernie* (1868), 3 Ch. 476.

(*e*) See ss. 80–84.

(*f*) C. A. 1908, s. 285. Farwell, J., held that when the offer is sent solely to the shareholders or debenture holders of a company there is no offer to the public: *Burrows* v. *Matabele Gold Reefs, &c., Co.*, [1901] 2 Ch. 23, 27. The offer must be made by the company or its agents duly authorized. An offer made by an individual on his own behalf does not come within this definition: *Sherwell* v. *Combined, &c., Syndicate* (1907), 23 L. T. 482.

(*g*) *Ibid.* ss. 80 and 81.

paid shares, debentures or debenture stock in payment under a works contract, and then offering them for subscription.

Every prospectus must be dated and filed with the Registrar of Companies before issue, and such date is to be taken, unless the contrary be proved, as the date of publication of the prospectus (*h*). No person's name should appear in the prospectus of a company issued within one year from the date at which the company is entitled to commence business (*i*), as a director or proposed director, unless before such date he has by himself, or by his agent duly authorized in writing, signed and filed with the registrar a consent in writing to act as such director, and either signed the memorandum for not less than his share qualification (if any) or signed and filed with the registrar a contract in writing to take from the company and pay for the same (*k*). A copy of every prospectus must be signed by every person named therein as a director or proposed director of the company, or by his agent authorized in writing, on or before the date of its publication, and until so dated and signed a prospectus cannot be registered, and until registered should not be issued (*l*).

Sub-section 1 of sect. 81 of the Companies Act, 1908, requires certain particulars to be stated in prospectuses issued by companies governed by the Companies Act. This sub-section is in the following terms:—

(1) Every prospectus (*o*) issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the 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 respectively (*m*); 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 (*n*); 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 (*n*); and

(*h*) *Ibid.* s. 80.

(*i*) *Ibid.* s. 87. See *ante*, p. 33.

(*k*) *Ibid.* s. 72.

(*l*) C. 1908, s. 80. As to penalty in default of compliance with this section, see *post*, p. 403.

(*m*) Where the prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the memorandum or the signatories thereto or the number of shares subscribed for by them: *Ibid.* s. 81, sub-s. (5).

(*n*) The particulars, stated in paragraphs (*a*), (*b*), (i), and (*m*), are not required in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business: C. A. 1908, s. 81, sub-s. 8.

(*o*) Except a circular or notice issued to existing members or holders of debentures

(*c*) the names, descriptions and addresses of the directors or proposed directors (*n*); 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 the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures or debenture stock which within the two preceding 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 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 (*p*) 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, debentures or debenture stock to the vendors, and where there is more than one separate vendor, or the company is a sub-purchaser (*pp*), 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

or debenture stock of the company whether with or without the right to renounce in favour of other persons but including any prospectus whether issued in or with reference to the formation of a company or subsequently (*Ibid.* s. 81, sub-s. 7). As to meaning of "prospectus," see *ante*, p. 115.

(*p*) For the purposes of s. 81 every person is deemed to be a vendor who has entered into any contract absolute or conditional for the sale or purchase or for any option of purchase of any property to be acquired by the company in any case where (1) the purchase-money is not fully paid at the date of issue of the prospectus or is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus, or (2) the contract depends for its validity or fulfilment on the result of that issue (sub-s. 2). Where the property is to be taken on lease by the company, "vendor" includes the lessor, the "purchase money" includes the consideration for the lease, and "sub-purchaser" includes a sub-lessee (sub-s. 3).

(*pp*) See *Brookes* v. *Hansen*, [1906] 2 Ch. 129.

cash, shares, debentures or debenture stock, for any such 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 commission for subscribing or agreeing to subscribe, or procuring, or agreeing to procure, subscriptions, for any shares in, or debentures or debenture stock 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 (*n*); 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 intended 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

(*l*) 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 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, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company (*n*); 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 by the several classes of shares respectively.

Section 81 of the Companies Act, 1908, reproduces sect. 10 of the Companies Act, 1900, as amended by the Companies Act, 1907. Section 10 of the Act of 1867 was enacted in substitution for sect. 38 of the Companies Act, 1867, which was repealed by sect. 33 of the Act of 1900. Section 38 provided that—

"*Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company or the promoters, directors or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same, shall be deemed fraudulent on the part of the promoters, directors and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.*"

It is instructive to notice the principal points of difference between this section and sect. 81 of the Act of 1908.

(1) Section 38 was not limited to a prospectus inviting the *public* to subscribe for shares.

(2) It only required a specification of the dates and the names of the parties to any contracts entered into by the company or the promoters, directors or trustees thereof before the issue of the prospectus, and it was not necessary to offer copies of such contracts for inspection.

(3) It did not require the specification of any of the particulars set out in sub-sect. 1 of sect. 81, except as to contracts.

(4) *Primâ facie* it included any contracts entered into in the ordinary course of business of the company, although the company might have been in existence for many years previously to the issue of the prospectus.

(5) It only applied to prospectuses offering *shares* for subscription.

(6) It specified the remedy for non-compliance with its provisions.

(7) Its requirements could be waived.

It is proposed now to consider separately the material paragraphs of sub-sect. 1 of sect. 81 (*q*).

(a) Prior to the passing of the Act of 1900 the London Stock Exchange Committee, before granting a quotation, required in the case of limited companies that the prospectus should contain a copy of the memorandum of association. It now requires a certificate, verified by a statutory declaration of the chairman and secretary, stating that the prospectus complies with the provisions of the Companies Acts, 1908 (*r*). Having regard to this paragraph it will be necessary now, except where the prospectus is published as a newspaper advertisement, to print the contents of the memorandum of association, the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively. In practice the seven persons who usually subscribe

(*q*) For Form of Prospectus, see Appendix II., and as to liabilities for non-compliance with s. 81, see *post*, p. 389.

(*r*) See Appendix III. (App. 26*g*).

the memorandum of association are clerks or friends of the promoters, who sign their names at the request of the promoters, without intending to take any further part or interest in the matter (*s*). In order to obviate the difficulty caused by companies being unable before the passing of the Act of 1900 to pay for underwriting their shares, it was formerly the practice to obtain subscriptions for founders' shares, to which valuable rights were attached in consideration of the subscribers for such shares undertaking to pay the preliminary expenses and underwrite the capital of the company. Sometimes this was effected by inserting clauses in the memorandum of association binding the founders to pay such expenses and to underwrite the shares, and the founders were required to sign the memorandum of association for the founders' shares which they respectively agreed to take. It is usual for the memorandum of association of a company to define the nature and extent of the interests of holders of founders' shares in the property and profits of the company, so as to prevent such rights being altered (*t*), as they might have been if they were only inserted in the articles of association (*u*). Where, however, the rights are only defined in the articles of association, a copy of all the articles conferring such rights must be printed in the prospectus. Management shares are not usually met with in articles of association of companies which invite the public to subscribe for their shares. The alteration in the law made by this paragraph is beneficial to intending shareholders, because the rights attached to founders' or management shares may be such as to give the holders of such shares the control of the company and the principal share of its profits and assets. Formerly the omission to make any reference to founders' shares in the prospectus did not entitle a subscriber for ordinary shares upon the terms of the prospectus to obtain any relief, because he had constructive notice of the regulations of the company, and was, therefore, presumed to know what in fact he did not know.

(b) It was formerly the practice to fix the remuneration of the directors by the articles of association, and not to make any reference in the prospectus to the amount of such remuneration. Companies therefore were frequently bound to pay large remuneration to directors nominated by the promoters without having had any voice in the fixing of such remuneration, or any knowledge as to the amount thereof before they subscribed for their shares, and shareholders could not complain, because they had constructive notice of the amount of such remuneration (*v*). Articles of association generally provide that directors must have a share qualification (*x*), and under this paragraph the nature of the qualification must be stated in the prospectus.

(*s*) *Salomon* v. *Salomon & Co.*, [1897] A. C. at p. 51.

(*t*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(*u*) See *ante*, p. 26.

(*v*) See *ante*, p. 80.

(*x*) As to qualification shares generally, see *ante*, p. 85.

(e) A misrepresentation in the prospectus as to the persons who are the directors of the company may be a material misrepresentation (*y*), and this paragraph is intended to secure for intending subscribers information as to the directors.

(d) See *post*, p. 147, as to the minimum subscription.

(e) The particulars required to be stated in the prospectus apply only to shares, debentures and debenture stock issued or agreed to be issued as fully or partly paid up for a consideration other than cash within the two years preceding the date of issue of the prospectus (*z*). This paragraph adds to the difficulties of persons responsible for the issue of prospectuses, having regard to the decisions under sect. 25 of the Companies Act, 1867, as to the extent to which it is necessary to specify the consideration in a contract filed under that section (*a*). It is significant that the words in this paragraph are "the consideration," and not "the nature of the consideration," and it will be safer to set out the clauses of the contracts stating the consideration for which the shares or debentures or debenture stock have been or are to be issued. This paragraph is inserted for the purpose of procuring for the public fuller information of the kind intended to be secured by the repealed sect. 25 of the Companies Act, 1867.

(f) This paragraph is intended to procure for subscribers information as to the persons who are selling or leasing property to the company.

(g) This paragraph apparently only applies to a case in which by the agreement for sale the amount to be paid for the goodwill is separately stated, or it is to be ascertained by a separate valuation.

(h) It may be that this paragraph only applies to the amount (if any) paid or payable as commission by the company (*b*), and does not apply to any commission paid or payable by the vendor to the company. It would, however, be the prudent course for any director or person who is responsible for the issue of the prospectus, if he knows that any commission is being paid for underwriting other than for sub-underwriting by any person or company other than the company, to state it in the prospectus. If he has no knowledge of any such commission he cannot be liable for not disclosing it (*c*). If the rate of commission is stated, it may be necessary also to state the amount in respect whereof the commission is payable.

(i) No definition of preliminary expenses is given in the Act, and it is not stated whether such expenses are preliminary to the formation of the company or to the first general allotment of its shares. It is submitted that "preliminary expenses" are intended to include all expenses

(*y*) See *post*, pp. 378, 380.
(*z*) As to what is a cash payment, see *post*, p. 165.
(*a*) See *post*, p. 149, *et seq.*
(*b*) See C. A. 1908, s. 89.
(*c*) See sub-s. 6 of s. 81.

connected with the preparation, printing, and registration of the memorandum and articles of association of the company, including fees payable on registration, legal expenses and broker's fees and brokerage, and also the expenses of and incident to the preparation, printing and publication of the prospectus (*d*). Sometimes a vendor or promoter agrees to pay all preliminary expenses. Even in this case it is necessary to give particulars of the amount paid or payable for such preliminary expenses, or, if that is not possible, to make an estimate of such amount.

(j) It has already been pointed out that promoters of a company necessarily incur expenses in relation to the formation of a company, and that the company, although only liable to pay such expenses if it enters into a contract for that purpose, may properly pay to a promoter legitimate expenses incurred by him in forming or bringing out the company (*e*). A promoter also may be interested as a vendor to the company. In either case it is necessary to specify in the prospectus the amount to be paid or intended to be paid to him within the two preceding years and the consideration for the payment. As to who is a promoter, see *ante*, p. 61.

(k) Sect. 38 of the Companies Act, 1867, only required the dates of and names of parties to contracts to be specified in a prospectus, but this paragraph requires that a prospectus shall also specify a reasonable time and place at which the material contracts or copies thereof can be inspected.

In the Companies Bill introduced into the House of Lords in the session of 1899, a clause was inserted defining the expression "material contract" as being every contract which would influence the judgment of a prudent investor in determining whether he would subscribe for the shares or debentures offered by the prospectus. There were, however, so many objections to this definition that it was considered better to leave it to the Court in every case to decide whether a contract not specified in the prospectus is or is not material. Underwriting contracts appear to be material contracts, because, if the underwriters are well known and the commission payable to them is large, it shows that they do not think highly of the company's prospects; and if some of the underwriters are "one man" companies with small assets, it would be likely to deter persons from subscribing for the company's shares. The same observations equally apply to contracts for placing shares. There is a very important exception to this paragraph, viz. that it is not to apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of the publication of the prospectus. In actions brought by debenture holders there have

(*d*) Cf. *Lydney Iron Co.* v. *Bird* (1886), 33 C. D. 85; see *ante*, p. 66.

(*e*) See *ante*, p. 66.

been several decisions upon the meaning of the words "in the ordinary course of business" (*f*), and these words have also been considered by the Court in bills of sale cases (*g*). It is a question of fact in each case whether a contract falls within this description (*h*). It is submitted that the contracts excepted are contracts incidental to the carrying on of the business of the company as distinguished from contracts necessary for starting or establishing the business of a company. Only the dates and names of the parties to material contracts are required to be disclosed, but an opportunity must be given for inspection. As the subscription list frequently closes within two or three days of the issue of the prospectus it is unlikely that many persons will avail themselves of this right of inspection, except persons who wish to get information for the press. The cases decided under sect. 38 of the Companies Act, 1867 (*i*), are useful in considering what are material contracts within the meaning of this paragraph. Some of the opinions expressed by judges upon the meaning of the word "contract" in sect. 38 are as follows:—

"Contracts calculated to influence persons reading a company's prospectus in making up their minds whether or not they will apply for shares in it," and the contracts to be disclosed are not limited to those "imposing burdens on the company," or those "entered into by the company or its promoters, directors, or trustees as such" (*k*).

"Every contract made with a person who afterwards becomes a promoter or director, provided the company have become entitled to the benefit of the contract, or have become liable to perform the provisions of the contract before the prospectus was issued" (*l*).

"Every contract made before the issue of the prospectus, the knowledge of which might have an effect upon a reasonable subscriber for shares in determining him to give or withhold faith in the promoter, director, or trustee issuing the prospectus, whether such contract was made by such promoter, director, or trustee before or after he became a promoter, director, or trustee, and whether or not such contract was made on behalf of, or so as, if adopted, to impose a liability on the company" (*m*).

"Every contract relating to the formation of a company, or to its capital, property, or business, when formed, or to the position, pecuniary or otherwise in regard to the company or its promoters or

(*f*) See *post*, p. 259.

(*g*) See *post*, p. 243.

(*h*) See cases cited in note (*g*), *post*, p. 243.

(*i*) See *ante*, p. 119.

(*k*) *Twycross* v. *Grant* (1877), 2 C. P. D., per Coleridge, C.J., and Grove and Lindley, JJ., at p. 485.

(*l*) See *Gover's Case* (1875), 1 C. D. 182, per Mellish, L.J., at p. 191.

(*m*) *Gover's Case* (1875), 1 C. D., per Brett, J., at p. 200. This view was indorsed by Cockburn, C.J., in *Twycross* v. *Grant*, *supra*, at p. 539, and repeated by Brett, L.J., in the same case at p. 546.

vendors, of the directors or other officers of the company, and which is material to be made known to persons invited to take shares, in order to enable them to form a judgment as to the policy of so doing . . . provided that one of the parties to it is at its date, or subsequently becomes, a promoter, director, or trustee of the company" (*n*).

"Every contract which, upon a reasonable construction of its purport and effect, would assist a person in determining whether he would become a shareholder in the company" (*o*).

"Any contract affecting the position of the promoters, directors, or trustees of the company which it is material for intending shareholders and the public to know" (*p*).

The following contracts were held to be within sect. 38:—A contract between directors and promoters to register shares of nominal value in the names of the directors, or otherwise to provide their necessary qualification (*q*); contracts between promoters and vendors to a company to pay part of the purchase-money to the promoters (*r*); a contract between promoters and a trustee for the company to pay him an annual salary for acting as trustee (*s*); a contract between promoters and a director to appoint him managing director (*t*); a contract by promoters to purchase concessions for a sum part whereof was to be satisfied by the issue of fully-paid shares of a company to be formed for acquiring the concessions (*u*); a contract by promoters to receive promotion-money from contractors out of the price to be paid by the company for the construction of tramways (*v*); a contract by a promoter (who was also one of the vendors to the company) to give persons fully-paid shares in consideration of their agreeing to become directors (*w*); a contract for the purchase of property by a director, which he afterwards sold to the company (*x*); and a contract for the sale of a patent to a trustee on behalf of the company by a promoter and chairman of the company (*y*). It was immaterial whether the contract was made in writing or verbally (*z*), but there had to be a contract existing at the

(*n*) *Sullivan* v. *Mitcalfe* (1875), 5 C. P. D., per Thesiger, L.J., at p. 461.

(*o*) *Ibid.*, per Baggallay, L.J., at p. 465.

(*p*) *Jury* v. *Stoker* (1881), 9 L. R., Ir. 385; affirmed 404, per Sullivan, M.R., at p. 401.

(*q*) *Charlton* v. *Hay* (1874), 31 L. T. 437.

(*r*) *Ibid.*; *Capel* v. *Sims' Ships Composition Co.*, *infra*.

(*s*) *Charlton* v. *Hay*, *supra*.

(*t*) *Ibid.*

(*u*) *Twycross* v. *Grant* (1877), 2 C. P. D. 469.

(*v*) *Twycross* v. *Grant* (1877), 2 C. P. D. 469.

(*w*) *Jury* v. *Stoker*, *supra*.

(*x*) *Askew's Case* (1874), 22 W. R. 762; reversed, but not on this ground, see 9 Ch. 664.

(*y*) *White* v. *Haymen* (1883), 1 Cab. & El. 101.

(*z*) *Jury* v. *Stoker* (1881), 9 L. R. Ir. 404; *Capel* v. *Sims' Ships Composition Co.* (1888), 57 L. J. Ch. 713.

time the prospectus was issued, a mere understanding not being sufficient (*a*).

A *bonâ fide* belief that the publication of particulars of certain contracts was not required by sect. 38 did not justify the omission of any reference to those contracts in the prospectus (*b*), even if the omission were made relying on the advice of counsel (*c*). If a person responsible for the issue of the prospectus wilfully abstained from making inquiries as to the contents of contracts he was liable (*d*). If an abridged prospectus were issued, *e.g.* by advertisement in a newspaper, which did not contain the required particulars of contracts which ought to be disclosed, the omission was wrongful, although the abridged prospectus stated where a full copy of the prospectus could be obtained and such prospectus complied with the section (*e*).

The interests to be disclosed include an interest in underwriting or placing the shares of the company, a right to a "call" on any of the company's shares, debentures or debenture stock, any interest in any property to be sold to the company or in any contract made or to be made with the company, any interest in property adjoining that to be acquired by the company which will be directly benefited by the company's operation, any interest as a shareholder in another company which has entered into any material contract with the company issuing the prospectus, and any interest in or right to founders' or management shares or other shares having exceptional privileges.

Every prospectus, including any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith should in order to enable persons responsible for its issue to avoid liability under sect. 84 of the Act of 1908 (*f*) satisfy the following requirements, viz.:—

(1) All statements of fact therein contained, not purporting to be made on the authority of an expert or of a public official document or statement, should be accurate, so far, at least, as such statements are material;

(2) every statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert should fairly represent the

(*a*) *Arkwright* v. *Newbold* (1881) 17 C. D. 301, 308.

(*b*) *Twycross* v. *Grant*, *supra*, per Cockburn, C.J., at p. 541; *Watts* v. *Bucknall*, [1903] 1 Ch. 766.

(*c*) *Broome* v. *Speak*, [1903] 1 Ch. 586, 1904, A. C. 342.

(*d*) *Watts* v. *Bucknall*, *supra*.

(*e*) *White* v. *Haymen* (1883), 1 C. & E. 101.

(*f*) See *post*, p. 368, as to the liabilities of directors and promoters under this section.

statement or be a fair and correct copy or extract, and the expert whose report or valuation is relied upon should be qualified to give an opinion upon the subject-matter of his report or valuation;

(3) every 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, should be a correct and fair representation copy or extract.

PROSPECTUSES.

CANADIAN NOTES.

Where after a prospectus for the sale of shares in a company has been issued a mortgage was made to secure an indebtedness existing at the time of the issue of the prospectus, and the existence of the mortgage was not communicated to a purchaser of shares, this was held to be no such concealment or misrepresentation as would entitle him to succeed in an action for rescission. The Court held that the mortgage having been given after the prospectus was issued it could not have been mentioned in the prospectus, and, moreover, that the shareholders were not damnified by it as the new company would have been equally liable for the debt if the mortgage had not been given. *Petrie* v. *Guelph Lumber Co.*, 11 S. C. R. 450.

A company in its prospectus made the representation that the Dominion Government had agreed to the selection by the company of a "compact choice tract of land" in the territories "comprising 2,000,000 acres for the purpose of settlement free from the use of intoxicating liquors." The defendant on the faith of these representations entered into two agreements with the company agreeing "to purchase land" and paid certain instalments thereon. It was proved that the company never had and could not obtain the choice compact tract stated or any special privileges as to the exclusion of liquor, and it was held that these were material misrepresentations: and the defendant having been induced to enter into the agreements thereby was therefore entitled to have them rescinded and to recover back the money paid by him. *Temperance Colonization Co.* v. *Fairfield*, 16 O. R. 544,

Rescission of Contract.

He must, however, act promptly upon the discovery of the misrepresentation, and a short delay has been held to be sufficient to deprive him of the right to rescind. *Petrie* v. *Guelph Lumber Co.*,

11 S. C. R. 450; *Silliker Car Coy., Ltd.* v. *Donohue*, 44 N. S. R. 315; *Beatty* v. *Nealon*, 12 A. R. 50. He may also lose his right or rescission by conduct such as attending or voting at a meeting of shareholders, or by attempting to dispose of his shares or executing a transfer of same, or by making a payment on account of the stock. *Nelles* v. *Ontario Investment Association*, 17 O. R. 129.

The fact that a plaintiff has sold part of his shares will not debar him from obtaining rescission as to the remainder. *Nelles* v. *Ontario Investment Association*, *supra*.

The payment of money on account of shares, the act of participating in the affairs of the company, the knowingly allowing the name to appear as shareholder or director, and the like have always been considered as important, but not conclusive evidence. Each case must depend upon and be governed by its own circumstances. *Bank of Hamilton* v. *Johnston*, 7 O. W. R. 111, *and McCallum* v. *Sun Savings and Loan Co.*, 1 O. W. R. 226.

Where a shareholder in action for calls has put in a counterclaim for rescission, he is entitled to raise all defences in the winding-up that he could have raised in such action. *Re Pakenham*, 6 O. L. R. 582.

Effect of Ontario Legislation Regarding Prospectuses.

Every company incorporated in Ontario must now file a prospectus if it has ten shareholders over and above those who signed the petition for incorporation, or if its debentures or other securities are held by more than ten persons. Every foreign corporation which has more than ten shareholders or holders of debentures or other securities within Ontario must also file a prospectus. These provisions are most sweeping in their nature, affecting as they do practically all corporations, foreign and domestic, having their shares listed on any exchange in Ontario. They would also appear to apply to many of the companies whose shares are dealt in on the New York Stock Exchange, as transactions in these stocks in Ontario are probably more numerous than in shares of local companies. The penalty for non-compliance with these provisions is $200, and every provisional director, director or other person responsible for the issue of such prospectus is liable for such penalty.

No subscription for stock is binding unless the subscriber first received a copy of the prospectus. Furthermore, all purchases of

shares or securities shall be deemed to be induced by the prospectus.

The prospectus must be signed by everyone named as a director, and filed with Provincial Secretary, on or before the date of its publication.

Under the English Act a broker can purchase from the company privately a large block of stock on his own terms or any terms, and sell it on his own behalf to the public, and is under no obligation to file a prospectus. This cannot be done under the Ontario Act if the broker is or has been engaged or interested in the formation or promotion of the company. Nor can it be done in relation to an "intended company" apparently by any person whatsoever. It would appear, however, that an incorporated company could sell privately a portion of its stock to a broker, who is in no sense a promoter of the company, and that he may offer his stock for sale to the public, but the moment that the company has allotted stock to more than ten shareholders, it would, under the provisions of sect. 97, be bound to file a prospectus. The broker would then be limited still further under these provisions, and could not cause his stock to be transferred to those who purchased it from him until he had completed his flotation.

A director escapes liability if he was not cognizant of the false statement contained in the prospectus, or if he has made an honest mistake of fact. See sect. 100 of the Ontario Act.

As to the right of existing shareholders to participate in a new issue of stock, see *Martin* v. *Gibson*, 10 O. W. R. 66.

Rex v. *Garvin*, 18 O. L. R. 49.

A mining company incorporated on the 17th November, 1908, pursuant to the provisions of the Ontario Companies Act, filed a prospectus with the Provincial Secretary on the 27th November, 1908, and subsequently inserted an advertisement in certain newspapers for which the defendant, one of the directors, was responsible, giving particulars about the organization of the company but not complying in all respects with the requirements of the Act as regards a prospectus and not filed with Provincial Secretary. Held, that the advertisement was a prospectus within the meaning of sect. 99 of the Act, being an advertisement to accomplish the purpose mentioned in sect. 95 (7), and that the defendant was liable to the penalty imposed by sect. 100.

CHAPTER XI.

AGREEMENTS TO TAKE SHARES.

Before stating the principal rules of law with respect to agreements to take shares, it is convenient to consider the question of qualification shares. Many cases have been decided as to the liability of directors in respect of the shares necessary, under the regulations of the company, to qualify them for their office. Sometimes such regulations do not apply to original directors (*a*) or local directors with limited authority (*b*), and they cannot apply to persons improperly elected directors (*c*). A resolution altering the future qualification of directors does not apply to the persons who were directors of the company at the time it was passed (*d*). Cases as to qualification shares are sometimes treated as if they were quite distinct from agreements to take shares, but, with the exception hereafter mentioned, such cases are really examples of what facts are sufficient or insufficient to constitute an agreement, either express or implied, or an agreement by estoppel. The exception above referred to is, that every person who is appointed by statute, with his consent, director of a company, where the statute also provides that every person who is a director must hold the stated number of shares, becomes a member of the company in respect of such shares, and is liable to pay the nominal amount thereof (*e*); and the consent to the appointment is presumed in the case of a promoter of a company (*f*). Where, however, all the share capital has been allotted to other persons, the director is not liable (*g*). The fact

(*a*) *Consolidated Copper Co.* v. *Peddie* (1877), 5 Rett. 393.

(*b*) *Cotterell's Case* (1862), 32 L. J. Ch. 66.

(*c*) *Shaw's Case* (1876), 34 L. T. 715; *Molineaux* v. *London Insurance Co.*, [1902] 2 K. B. 589.

(*d*) *Hamilton's Case* (1873), 8 Ch. 548.

(*e*) *Kincaid's Case* (1870), 11 Eq. 192; *Forbes' Case* (1875), 19 Eq. 353; *Portal* v. *Emmens* (1876), 1 C. P. D. 664; *Tahourdin* v. *Weston-super-Mare, &c., Pier Co.* (1887), 4 T. L. R. 124.

(*f*) *Portal* v. *Emmens, supra.*

(*g*) *Kipling* v. *Todd* (1878), 3 C. P. D. 350.

that a person is a director of a company whose regulations require its directors to have a share qualification, may be evidence in determining whether he has agreed to take such shares (*h*). And the articles may be so framed as to make that evidence conclusive (*i*). It was once thought that where a director was a member of the company an article of association requiring each director to hold the stated number of shares constituted, by virtue of the Companies Act, 1862, s. 16 (*k*), a contract between the company and the directors to acquire such shares, as by that section a member of a company is deemed to covenant to conform to all the regulations contained in the articles of association. But it is now settled that the contract made by sect. 16 was not a contract between the company and its members, except in their capacity of members of the company (*l*). Even if this were not so, it is clear that a clause in the articles of association requiring directors to hold a minimum number of shares cannot constitute a contract binding the company to allot and the directors to take such shares from the company, because there is nothing to prevent a director acquiring such shares by transfer instead of allotment (*m*), and also because the company is not bound to allot such shares (*n*). If, therefore, a director applies to the company to allot to him his qualification shares, and the company *bonâ fide* declines to allot them, no agreement to take shares can be implied (*o*).

Omitting the exceptional case where there is a statutory obligation to take qualification shares, the cases may be divided into three classes:—(1) Where the holding of the qualification shares is a condition precedent to appointment as a director. In this class of cases no agreement to take shares can be inferred from a person accepting the office of director, as unless he is the holder of the qualification shares he cannot be elected a director (*p*). (2) Where the question for decision is, whether or not the director in fact agreed to take the shares. The ordinary rules as to agreements apply to this class, and the question of liability for qualification shares generally arises where it is sought to make out a contract

(*h*) *Ex parte Lord Inchinquin*, [1891] 3 Ch. 28.

(*i*) *Isaacs' Case*, [1892] 2 Ch. 158; *Hercynia Copper Co.*, [1894] 2 Ch. 403. See also C. A. 1908, s. 73, and *Molineaux and London, &c., Insurance Co.*, [1902] 2 K. B. 589.

(*k*) See now C. A. 1908, s. 14.

(*l*) *Post*, p. 219.

(*m*) See observations in *Brown's Case* (1873), 9 Ch. 105; *Karuth's Case* (1875), 20 Eq. 506, 509.

(*n*) *Chapman's Case* (1866), 2 Eq. 567; *Hutchinson's Case*, [1895] 1 Ch. 226.

(*o*) *Carmichael and Hewett's Case* (1882), 30 W. R. 742.

(*p*) *Ante*, p. 85; *post*, p. 138.

from the conduct of the director (*q*). (3) Where the director is estopped from denying that he agreed to take the shares, although no actual agreement can be proved. Cases of this class are illustrations of the law of estoppel and not of the law of contract, as in such cases an allotment by a quorum of directors is not necessary in order to make the director liable for his qualification shares.

An agreement to take shares may be either express or implied. An express agreement may be made either in writing or verbally (*r*). To constitute an express agreement there must be an absolute and unqualified acceptance of a proposal to take or allot shares, and a communication of such acceptance to the proposer. An implied agreement is one which is inferred from the conduct of the parties. The following are the principal rules with respect to agreements to take shares:—

1. Unless the regulations of the company otherwise provide, an allotment of shares to an applicant for such shares does not constitute a contract, unless such allotment is duly authorized by a resolution of the board of directors (*s*).
2. A person who applies for and accepts an allotment of shares as agent for another person, but without disclosing his agency, is personally liable in respect thereof (*t*).

If a person without authority agrees on behalf of another person to take shares in a company, he is liable, unless the other person ratifies his act (*u*) to pay damages to the company for breach of warranty of authority, and the measure of damages in the case of an insolvent company is the nominal amount of the shares (*x*). A parol authority is sufficient (*y*).

3. An agreement with an infant to take shares is voidable at his election upon attaining his majority (*z*);

(*q*) *Post*, pp. 137, 138.

(*r*) Contracts to allot shares are not within sect. 4 of the Sale of Goods Act, 1893, and therefore do not require to be made in writing. *Bloxam's Case* (1864), 33 B. 529.

(*s*) See *post*, pp. 149, 150.

(*t*) *Ex parte Bird* (1864), 4 De G. J. & S. 200.

(*u*) *G. H. Levita's Case* (1870), 5 Ch. 489.

(*x*) *Ex parte Panmure* (1883), 24 C. D. 367.

(*y*) *Leishman* v. *Cochrane* (1863), 9 L. T. 104.

(*z*) *Newry, &c., Rail.* v. *Combe* (1849), 3 Ex. 565; *Hamilton* v. *Vaughan, Sherrin, &c., Co.*, [1894] 3 Ch. 589. See *post*, p. 213.

but if they are registered in his name and he, after attaining his majority, acts as the holder of the shares (*a*), or does not within a reasonable time after he attains his majority repudiate the shares, he cannot subsequently do so (*b*).

As to what is a reasonable time, see *Ebbett's Case* (*b*), where the infant was held liable, he not having repudiated his shares before the company was wound up in June, 1865, though he became twenty-one years old in April, 1864. If a director knowingly allots shares to an infant, he is liable to make good any loss thereby caused to the company (*c*).

4. An agreement by a married woman to take shares, made on or after the 5th December, 1893, is binding on her separate property whenever acquired, to which a restraint on anticipation is not attached, whether she is or is not at the time it is made possessed of or entitled to any separate property, and is also enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to (*d*).

After the Act of 1882 came into operation, viz. the 1st January, 1883, and before the 1893 Act was passed, such an agreement was only binding on the separate property of a married woman if the company could prove that at the time it was made she had separate property not subject to a restraint on anticipation (*e*), and the onus of proving that she had such separate property, and contracted with reference to it, was on the company, and if this was not proved the money owing on the shares was irrecoverable (*f*).

5. An agreement by one company to take shares in another company is only binding if the former

(*a*) *Lumsden's Case* (1868), 4 Ch. 31.

(*b*) (1870), 5 Ch. 302. See also *Cork and Bandon Rail. Co.* v. *Cazenove* (1847), 10 Q. B. 935; *Mitchell's Case* (1870), 9 Eq. 363; and *Yeoland Consols* (1888), 58 L. T. 922.

(*c*) *Ex parte Wilson* (1872), 8 Ch. 45.

(*d*) Married Women's Property Act, 1893, s. 1.

(*e*) Married Women's Property Act, 1882, ss. 1 (3) and (4) and 19; *Palliser* v. *Gurney* (1887), 19 Q. B. D. 519; *Re Shakespear* (1885), 30 C. D. 169; *Harrison* v. *Harrison* (1888), 13 P. D. 180; *Leak* v. *Driffield* (1889), 24 Q. B. D. 98.

(*f*) *Palliser* v. *Gurney*, *supra*.

company has power to become a shareholder in the latter company (*g*).

6. In order to constitute a contract to take shares, an application therefor must be accepted (*h*), and such acceptance must either be unqualified or the qualification must be agreed to by the applicant.

In the cases below mentioned there was no complete agreement, because the acceptance of the application was qualified by the introduction of the following new terms:—that unless payment was made before a certain time the shares would be forfeited (*i*); that the shares and deposit would be forfeited unless the applicant signed the articles of association (*k*); that a certain sum payable on the shares should be paid before a certain day (*l*). Where the applicant applied for 20*l*. shares and was allotted 40*l*. shares, it was held that there was only a contract to take 20*l*. shares (*m*). Where the acceptance is qualified the agreement is complete if the applicant subsequently pays for the shares (*n*).

7. An allotment of shares other than those applied for does not constitute a contract unless the applicant accepts the allotment.

This rule holds good whether the difference is as to (1) kind, *e.g.* shares already allotted for unallotted shares (*o*); (2) liability, *e.g.* partly paid-up or unpaid shares for fully paid-up shares (*p*); or shares credited as paid up to a certain amount for shares credited as paid up to a different amount (*q*); or (3) number, *e.g.* fewer shares than applied for (*r*).

8. If an application for shares is conditional, the condition, if precedent and not waived, must be

(*g*) *Salomons* v. *Laing* (1849), 12 B. 339; *Great Western Rail. Co.* v. *Metropolitan Rail. Co.* (1863), 32 L. J. Ch. 382; *British National Life Ass. Association* (1878), 8 C. D. 679.

(*h*) *Adelphi Hotel Co.* (1865), 34 L. J. Ch. 523.

(*i*) *Addinell's Case* (1865), 1 Eq. 225; *Jackson* v. *Turquand* (1869), L. R. 4 H. L. 305.

(*k*) *Oriental Steam Co.* v. *Briggs* (1861), 4 De G. F. & J. 191.

(*l*) *Pentelow's Case* (1869), 4 Ch. 178; *Ex parte Capper* (1850), 1 Sim. N. S. 178.

(*m*) *Gustard's Case* (1869), 8 Eq. 438; *Beck's Case* (1874), 9 Ch. 392.

(*n*) *Ex parte Barrett* (1865), 2 Dr. & Sm. 415.

(*o*) *Blake* v. *Mowatt* (1856), 21 B. 603.

(*p*) *Arnott's Case* (1887), 36 C. D. 702; *Almada and Torito Co.* (1888), 38 C. D. 415; *New Eberhardt Co.* (1889), 43 C. D. 118.

(*q*) *Wynne's Case* (1873), 8 Ch. 1002; *Beck's Case* (1874), 9 Ch. 392.

(*r*) *Ex parte Roberts* (1852), 1 Drew. 204; *Re Barber* (1851), 15 Jur. 51.

performed before the agreement to take shares is complete.

In each of the following cases it was held there was no complete agreement, the conditions not performed being—that the applicant should be appointed an officer or agent of the company (*s*); that the applicant should have a contract with the company (*t*); that the company should be floated (*u*); that a contract for purchase should be carried out (*x*); that the shares should be paid for out of the applicant's commission on a second issue of shares (*y*); that the total number or a specified number of the shares offered to the public for subscription should be applied for (*z*). The performance of the condition by the company may be waived either expressly or by the conduct of the applicant (*a*); but if not so waived the applicant, although the shares are allotted to him and his name is placed on the register, is not a member of the company (*b*).

9. If the condition attached to the application for shares is a condition subsequent, the agreement to take shares is complete, although the condition is never performed by the company.

It is sometimes difficult to distinguish between conditions precedent and subsequent; but the condition is subsequent when it is that something shall be done after the applicant becomes a shareholder. The following are examples of subsequent conditions:—that the calls on the shares should be paid in goods to be supplied to the company (*c*), or out of salaries or commissions to be earned from the company (*d*); that the applicant should be credited with a certain sum per share (*e*); that the shares should be bought back if the applicants ceased to be the brokers of the company (*f*).

(*s*) *Roger's Case* (1868), 3 Ch. 633. Cf. *Harrison's Case, ibid.*; *Wood's Case* (1873), 15 Eq. 236; *Re Mogridge* (1888), 57 L. J. Ch. 932; *Ex parte Sahlgreen and Carrall* (1867), 16 W. R. 121.

(*t*) *Ex parte Wood* (1858), 3 De G. & J. 85; *Simpson's Case* (1869), 4 Ch. 184.

(*u*) *Ex parte Harwood* (1869), 20 L. T. 736.

(*x*) *Simpson* v. *Heaton's Steel Co.* (1871), 19 W. R. 614.

(*y*) *Gorrissen's Case* (1873), 8 Ch. 507.

(*z*) *Tomlin's Case* (1897), 14 T. L. R. 53; *Ex parte Harwood* (1869), 20 L. T. 736.

(*a*) *Rankin* v. *Hop and Malt Exchange Co.* (1869), 20 L. T. 207; *Ex parte Perrett* (1873), 15 Eq. 250.

(*b*) *Spitzel* v. *Chinese Corporation* (1899), 15 T. L. R. 281.

(*c*) *Elkington's Case* (1867), 2 Ch. 511; *Wheatcroft's Case* (1873), 42 L. J. Ch. 853.

(*d*) *Bridger's Case* (1870), 5 Ch. 305; *Thomson's Case* (1865), 4 De G. J. & S. 749.

(*e*) *Fisher's Case* (1885), 55 L. J. Ch. 497.

(*f*) *Mare* v. *Anglo-Indian S. S. Co.* (1886), 3 T. L. R. 142.

10. Notice of allotment of shares must be communicated to the applicant, or otherwise the contract to take the shares is not complete, although the applicant's name is placed on the register (*g*).

It has been held that the allotment of shares must follow the application, and that allotment to a person of shares before he applies does not constitute a contract, although the number allotted is the same as those applied for, he not being aware of such allotment and having subsequently withdrawn his application (*h*).

Rules 11 and 12 apply where the applicant for shares, expressly or impliedly, authorizes the employment of the post as a means of communicating notice of the allotment. An application by post implies authority to send notice of allotment by post (*i*). It is submitted that an application by telegraph implies authority to give notice of allotment by telegraph (*k*).

11. Notice of allotment sent by post is sufficient notice, even although, without default of the company, such notice is never received by the applicant (*l*).

12. If an applicant for shares gives notice to the company withdrawing his application before notice of allotment is posted to him, there is no complete contract (*m*); but if the notice of withdrawal is not received by the company until after the notice of allotment has been posted, the contract is complete (*n*).

(*g*) *Gunn's Case* (1867), 3 Ch. 40; *Sahlgreen and Carrall's Case* (1868), 3 Ch. 323; *Wallis's Case* (1868), 4 Ch. 325, n.; *Robinson's Case* (1869), 4 Ch. 322; *Ex parte Gull* (1869), 20 L. T. 736; *Ward's Case* (1870), 10 Eq. 659; *Plimsoll's Case* (1871), 24 L. T. 653.

(*h*) *Northern Electric, &c., Co.* (1890), 2 Meg. 288.

(*i*) *Godwin* v. *Francis* (1870), L. R. 5, C. P. 295; *Quenerduaine* v. *Cole* (1883), 32 W. R. 185.

(*k*) See *Cowan* v. *O'Connor* (1888), 20 Q. B. D. 640.

(*l*) *Household, &c., Insurance Co.* v. *Grant* (1879), 4 Ex. D. 216 [overruling *Ex parte Finnicane* (1869), 17 W. R. 813; *Reidpath's Case* (1870), 11 Eq. 86; *British and American Telegraph Co.* v. *Colson* (1871), L. R. 6 Ex. 108]. See also *Townsend's Case* (1871), 13 Eq. 148; *Dunlop* v. *Higgins* (1848), 1 H. L. C. 381.

(*m*) *Gledhill's Case* (1861), 3 De G. F. & J. 713; *Ex parte Miles* (1864), 4 De G. J. & S. 471; *Ex parte Wilson* (1869), 20 L. T. 962; *Hebb's Case* (1867), 4 Eq. 9; *Ex parte Jones*, [1900] 1 Ch. 220; *Metropolitan Fire Insurance Co.* (1900), 16 T. L. R. 513.

(*n*) *Townsend's Case* (1871), 13 Eq. 148; *Harris's Case* (1872), 7 Ch. 587, 592; *Steel's Case*, (1879), 49 L. J. Ch. 176; *Household, &c., Insurance Co.* (1879), 4 Ex. D. 216; *Maclagan's Case* (1882), 51 L. J. Ch. 841; and see *Hebbs' Case* (1867), 4 Eq. 9; and *Wall's Case* (1872), 15 Eq. 18.

This rule obtains although the applicant is a director (*o*), and the application is in writing and the notice of withdrawal is verbal (*p*). It also applies where the shares applied for are qualification shares (*q*). Where, by the post office regulations, postmen are prohibited from receiving letters to put into the post, a notice handed to a postman for that purpose is not "posted" within the meaning of this rule, and the onus lies upon the company of proving that the notice was duly posted before the withdrawal was received (*r*).

13. Notice of allotment given to the agent of the applicant for the purpose of receiving such notice is sufficient (*s*).

In *Harward's Case* (*t*) an allotment committee was held to be the agent of a director for this purpose.

14. A notice of allotment must bear a sixpenny stamp (*u*).

An allotment letter, although unstamped, has been received as evidence that the allottee had notice of allotment (*x*). Evidence of the secretary that on the day when notices of allotment were sent out he posted a letter to the alleged shareholder, which he believed contained a notice of allotment, was held to be sufficient (*y*).

15. Notice of allotment may be implied from the conduct of the applicant, although no formal notice has been given.

Notice of allotment has been implied—where the application was for shares necessary to qualify the applicant as one of the officers of the company, and he obtained the appointment, and paid a deposit on his shares (*z*); where the application was for qualification shares, upon

(*o*) *Ex parte Wilson, supra; Ritso's Case* (1877), 4 C. D. 774; *Truman's Case*, [1894] 3 Ch. 272.

(*p*) *Ritso's Case, supra.*

(*q*) *Chapman's Case* (1866), 14 L. T. 752.

(*r*) *Ex parte Jones, supra.*

(*s*) *G. H. Levita's Case* (1870), 5 Ch. 489; *Ex parte De Rosaz* (1869), 21 L. T. 10.

(*t*) (1871), 13 Eq. 30.

(*u*) 62 & 63 Vict. c. 9, s. 9.

(*x*) *Steel's Case* (1879), 49 L. J. Ch. 176, decided under the Stamp Act, 1870, s. 17, but having regard to the different language of the corresponding section of the Stamp Act, 1891, viz., sect. 14, it is doubtful whether this decision would be followed.

(*y*) *Sparling's Case* (1877), 26 W. R. 41.

(*z*) *Richards* v. *Home Assurance Association* (1871), 6 C. P. 591; *Davies' Case* (1872), 41 L. J. Ch. 659.

obtaining which the applicant was to be appointed director, and he was so appointed and acted as director (*a*); *à fortiori* where the director paid a deposit on the shares, and was present at a meeting at which the board ordered shares to be allotted to him (*b*); where the applicant, after allotment, executed a blank transfer of the shares (*c*); where the applicant was a director of the company (*d*); where notice was given to a person that he was entitled to shares, accompanied by a form of application therefor, which he signed and returned to the company (*e*). But where a person elected a director left his application for his qualification shares, together with the amount of the deposit thereon, with the chairman of the company to await such person's decision as to accepting office, and he subsequently withdrew his application, and the deposit was returned, it was held there was no contract to take the shares, although in the meantime he acted as director (*f*).

16. If there is unreasonable delay in accepting an application for shares, the applicant is entitled, within a reasonable time after receiving notice of allotment, to repudiate the shares (*g*).

He cannot, however, repudiate after the commencement of the winding-up of the company (*h*).

17. A person subscribing the memorandum of association of a company under the Companies Acts limited by shares thereby irrevocably agrees to take from the company the number of shares placed opposite his signature (*i*).

Sect. 24 of the Companies Act, 1908, provides that the subscribers of the memorandum of association of a company governed by the Companies Act shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members on its register of members. A subscriber cannot escape liability upon the ground that his subscription was induced by misrepresentation (*k*).

(*a*) *Purcell's Case* (1880), 29 W. R. 170; 25 C. D. 291.

(*b*) *Fletcher's Case* (1867), 17 L. T. 136.

(*c*) *Crawley's Case* (1869), 4 Ch. 322.

(*d*) *Levita's Case* (1867), 3 Ch. 36.

(*e*) *Brown and Tucker's Case* (1871), 20 W. R. 88.

(*f*) *Ex parte Eve* (1868), 37 L. J. Ch. 844.

(*g*) *Ramsgate Victoria Hotel Co.* v. *Montefiore*, *Same* v. *Goldsmid* (1866), L. R. 1 Ex. 100; *Baily's Case* (1868), 3 Ch. 592. But see *Boyle's Case*, *infra*.

(*h*) *Boyle's Case* (1885), 54 L. J. Ch. 550.

(*i*) *Alexander* v. *Automatic Telephone Co.*, [1899] 2 Ch. 302.

(*k*) *Lord Lurgan's Case*, [1902] 1 Ch. 707.

Unless and until all the shares of the company are duly allotted, the subscriber remains liable in respect of such shares, although his name is never entered on the register of members (*l*), but unless otherwise agreed subscribers are only bound to pay anything upon the shares they sign for in respect of calls duly made by the directors or the liquidator (*m*). Their liability ceases if all the share capital of the company has been duly allotted to other persons (*n*). A person who subscribes for preference shares may take an equivalent amount of ordinary shares instead (*o*). Where a person subscribes for ordinary shares, and for shares to be allotted as fully paid-up shares, he is only liable for the former (*p*). *Semble* if he had subscribed for the latter only, he would have been liable for them as unpaid (*p*). While sect. 25 of the Companies Act, 1867, remained in force the shares so subscribed for could only be paid for in cash (*q*), but after 31st December, 1900, they may be paid for in money's worth as they could have been before that Act was passed (*r*). Directors cannot pay for such shares out of fees paid to themselves *ultra vires* (*s*), nor out of the moneys of the company paid to other persons *ultra vires* (*t*). The obligation of the subscriber to take shares is not satisfied by a transfer of shares to him, or by an allotment of shares to him credited as fully paid up to which a third person is entitled (*u*). Where a person subscribes in his own name, but on behalf of his firm, his obligation to take the shares is satisfied by his firm taking the number subscribed for (*x*). Where a person has subscribed the memorandum, and subsequently applies for and obtains an allotment of shares, such allotment, unless otherwise agreed, includes the shares for which he has subscribed (*y*). Where the articles of a company contain no power to accept surrenders of shares, an agreement between the directors and certain subscribers of the memorandum of association that none of the shares subscribed for by them shall be allotted is *ultra vires*, and all such subscribers will be placed on the list of contributories (*z*). The subscription of the memorandum may be made by an agent duly authorized in that behalf, and a verbal authority is sufficient (*a*). If the number of shares for which the

(*l*) *Evans' Case* (1867), 2 Ch. 427; *Sidney's Case* (1871), 13 Eq. 228; *Ex parte Watson* (1886), 54 L. T. 233.

(*m*) See note (*i*), *ante*, p. 135.

(*n*) *Mackley's Case* (1875), 1 C. D. 247.

(*o*) *Duke's Case* (1876), 1 C. D. 620.

(*p*) *Baron de Beville's Case* (1868), 7 Eq. 11.

(*q*) *Dalton Time Lock* v. *Dalton* (1892), 66 L. T. 704.

(*r*) *Drummond's Case* (1869), 4 Ch. 772; *Pell's Case* (1869), 5 Ch. 11; *Baglan Hall Colliery Co.* (1870), 5 Ch. 346; *Jones's Case* (1870), 6 Ch. 48; *Maynard's Case* (1873), 9 Ch. 60.

(*s*) *Ex parte Currie* (1862), 11 W. R. 46.

(*t*) *Hay's Case* (1875), 10 Ch. 593. Cf. *Eastwick's Case* (1876), 34 L. T. 84.

(*u*) *Migotti's Case* (1867), 4 Eq. 238; *Forbes and Judd's Case* (1870), 5 Ch. 270.

(*x*) *Dunster's Case*, [1894] 3 Ch. 473.

(*y*) *Re Freen & Co., Ex parte Elliot* (1866), 15 W. R. 166; *Gilman's Case* (1886), 31 C. D. 420.

(*z*) *London and Provincial Coal Co.* (1877), 5 C. D. 525.

(*a*) *Whitley Partners, Ltd.* (1886), 32 C. D. 337.

subscriber signs is not placed opposite his signature, he must, having regard to sect. 3 of the Companies Act, 1908, be deemed to have subscribed for one share.

18. An agreement by a person to take shares may be implied from his conduct, although there is no written or verbal contract to that effect.

It is sometimes difficult to distinguish cases where an agreement to take shares is implied, from cases where a person is estopped from denying his liability on shares. When shares cannot be duly allotted except in pursuance of a resolution of directors at a board meeting, and a person is held to be liable in respect of shares not so allotted, it is clear that his liability arises by estoppel. Where the shares have been duly allotted to a person who has not expressly agreed to take them, then he is only liable in respect of them if by his conduct he authorized such allotment or accepted the shares so allotted. Where a person's name is entered in the share register of a company as the holder of shares which have been allotted, but without his authority and not in pursuance of any agreement to take the shares, no agreement to take them will be implied although notice of the allotment is given to him, provided he does not act as the holder of such shares or in any other way expressly or by necessary implication accept such shares (*b*). *A fortiori* will this be so if the allottee forthwith repudiate the shares (*c*). The allottee, even although a winding-up has supervened, will be entitled to have his name removed from the register in respect of such shares (*d*). A contract to take shares at a discount is *ultra vires* and cannot be enforced (*e*), and if the shares are allotted, and the allottee is registered as the holder of such shares, he may have the register rectified (*f*); but if he acts as the owner of them (*g*) an agreement to accept and pay for such shares in full will be implied (*g*); and in distributing any surplus assets among the members of the company in the winding-up, the members of each class must first receive back what they have paid on the shares in excess of the sum paid on the shares issued at a discount, before the holders of the latter shares receive any part of the surplus (*h*).

(*b*) *Chapman and Barker's Case* (1867), 3 Eq. 361, 365; approved in *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 350, 351; *Somerville's Case* (1871), 6 Ch. 266; and *Wynn's Case* (1873), 8 Ch. 1002; *Baillie's Case*, (1898), 1 Ch. 110.

(*c*) *Austin's Case* (1866), 2 Eq. 435; *Imperial Land Credit Co., Eve's Case* (1868), 16 W. R. 1191.

(*d*) *Ships' Case* (1865), 2 De G. J. & S. 554; *Arnot's Case* (1887), 36 C. D. 702.

(*e*) *Almada and Tirito Co.* (1888), 38 C. D. 415. This point was not decided in *Addlestone Linoleum Co.* (1887), 37 C. D. 191.

(*f*) *Midland Electric Light Co.* (1889), 37 W. R. 471; *Zoedone Co., Ex parte Higgings* (1889), 60 L. T. 383.

(*g*) *Ex parte Sandys* (1889), 42 C. D. 98.

(*h*) *Weymouth, &c., Packet Co.*, [1891] 1 Ch. 66.

An agreement to take qualification shares cannot be implied *merely* from a person accepting the office of director (*i*); nor from his accepting and acting as a director (*k*); nor where the director applies for his qualification shares, but the company refuses to allot them (*l*); nor, *à fortiori*, where the holding of such shares is a condition precedent to election as a director (*m*). Nor can such an agreement be implied from the transfer into the name of a director, in pursuance of an agreement between the vendor and the directors, of paid-up shares forming part of the consideration due to the vendor for the sale of a property to the company (*n*). But where a person agrees to be or acts as a director, he is deemed to have notice of the company's memorandum and articles of association, and from them an agreement to take qualification shares may be implied, *e.g.* where the articles of association provide that a first director may act before acquiring his qualification shares, but shall in any case acquire them within a specified time from his appointment; and unless he shall do so he shall be deemed to have agreed to take the said shares from the company, and the same shall be forthwith allotted to him accordingly (*o*), but if under such an article a director resigns within the period he is not liable (*p*). Where articles were altered so as to increase the qualification an agreement by a director to acquire the additional shares necessary for his qualification was implied from his subsequently signing a prospectus for filing under sect. 9 of the Companies Act, 1900, his name, although without his knowledge, having been entered on the register as the holder of the additional shares (*q*). The memorandum and articles of association may be evidence of a contract to take shares, *e.g.* where they provide that every original holder of a founder's share shall apply for and take fifty ordinary shares, and it was held that a person by subscribing for founders' shares thereby agreed to take fifty ordinary shares (*r*). A statement in a prospectus that the directors will take all the ordinary shares not taken by the vendors is not sufficient evidence of a contract by the directors to take such ordinary shares (*s*).

(*i*) *Marquis of Abercorn's Case* (1862), 4 De G. F. & J. 78.

(*k*) *Brown's Case* (1873), 9 Ch. 102; *Green's Case* (1874), 18 Eq. 428; *Hallmark's Case* (1878), 9 C. D. 329; *Hewitt's Case* (1883), 25 C. D. 283; *Wheal Buller Consols* (1888), 38 C. D. 42; *Ballina Rail. Co.* (1888), 21 L. R. Ir. 497; *Hutchinson's Case*, [1895] 1 Ch. 226.

(*l*) *Onslow's Case* (1887), 55 L. T. 612; affirmed, 3 T. L. R. 551.

(*m*) *Biron's Case* (1878), 26 W. R. 606; *Hamley's Case* (1877), 5 C. D. 705; *Jenner's Case* (1877), 7 C. D. 132.

(*n*) *Brown's Case* (1873), 9 Ch. 102; *Carling's Case* (1875), 1 C. D. 123; *Innes & Co.*, [1903] 2 Ch. 254.

(*o*) *Isaacs' Case*, [1892] 2 Ch. 158; *Hercynia Copper Co.*, [1894] 2 Ch. 403.

(*p*) *Self-Acting Sewing Machine Co.* (1886), 54 L. T. 676; *Ex parte Cammell*, [1894] 2 Ch. 392; *R. Bolton & Co.*, [1894] 3 Ch. 356.

(*q*) *Molineaux* v. *London Insurance Co.*, [1902] 2 K. B. 589.

(*r*) *Phosphate Association* v. *Horrocks*, [1892] 8 T. L. R. 350.

(*s*) *Moore Brothers & Co.*, [1899] 1 Ch. 627.

19. A person may be estopped by his conduct from denying that he agreed to accept an allotment of shares.

In the following cases, where there was no formal allotment of shares, and no share register, the respondents were held liable as contributories:—At a directors' meeting, at which R. was present, a list of subscribers for shares, including himself, was read out, and an entry of the names and subscriptions was made in the minutes, which was signed by R. at the next directors' meeting, and he was held liable as a contributory in respect of the shares attributed to him (*t*); but another director whose name was read out, but who was not present at the meeting and denied all knowledge of the list, escaped liability (*u*). Where a person signed a duplicate of the subsequently registered memorandum and articles of association as a subscriber for 1000 shares, and was a party to the issue of a prospectus stating that he had subscribed for that number, he was held liable in respect of such shares, although he neither signed the registered memorandum nor applied for shares (*x*).

A person registered as the holder of shares will be liable in respect thereof, although the shares form part of an irregular or invalid issue of capital, if he deals with the shares as his own, *e.g.* by paying calls or receiving dividends thereon, or by attempting to transfer such shares (*y*).

20. A company may for valuable consideration agree to give a valid option to any person to take all or any of its shares.

The giving of such an option does not fetter the company in any way with regard to carrying on its business, or prevent the company, if so authorized, from selling the whole of its undertaking and assets and going into voluntary liquidation. The option may be exercised after the commencement of the winding-up, and if exercised by the person entitled thereto, the liquidator has power to issue the shares and receive the money payable in respect thereof, and to place his name on the share register and on the list of contributions. If the liquidator refuses to issue the shares, the measure of damages is the difference between the amount which the person would have received as his share of the assets if the shares had been issued to and paid for by him, and the amount

(*t*) *Re Roney* (1864), 33 L. J. Ch. 731.
(*u*) *Tothill's Case* (1865), 1 Ch. 85.
(*x*) *New Brunswick Land Co.* v. *Boore* (1858), 3 H. & N. 249; *Palmer's Case* (1868), Ir. Rep. 2 Eq. 573.
(*y*) *Campbell's Case* (1873), 9 Ch. 15.

which he was to pay for them if the former exceeded the latter amount (*z*).

An agreement by a company to give a person an option to subscribe for shares at not less than par in consideration of his subscribing at par for other shares is not prohibited by sect. 89 of the Companies Act, 1908 (*a*).

21. Where a person is induced to take an allotment of shares by a material misrepresentation of fact made by or on behalf of a company, he is entitled as against the company to an order for the rescission of his contract to take the shares, and to a return of the money paid in respect thereof with interest, provided that he commences proceedings for that purpose within a reasonable time after he discovers the misrepresentation and before the commencement of the winding-up of the company (*b*), unless another shareholder has commenced proceedings for such relief and there is an agreement between the company and such person that he will stand or fall by the result of such proceedings (*c*).

In order to obtain relief a shareholder must, *inter alia*, prove (1) that the misrepresentations were made to him by the directors or other the general agents of the company entitled to act and acting on its behalf, *e.g.* by issuing a prospectus inviting subscriptions for the shares; or (2) that the misrepresentations were made by a special agent of the company while acting within the scope of his authority, *e.g.* by an agent specially authorized to obtain on behalf of the company subscriptions for shares, including a person constituted agent by a subsequent adoption of his acts; or (3) that the directors in allotting the shares knew in fact that the application for them was induced by misrepresentation, even

(*z*) *Hirsch* v. *Burns* (1887), H. L. 77 L. T. 377.

(*a*) *Hilder* v. *Dexter*, [1902] A. C. 474, overruling *Burrows* v. *Matabele Co.*, [1901] 2 Ch. 23.

(*b*) *Bwlch-y-Plwm Mining Co.* v. *Baymes* (1867), L. R. 2 Ex. 324; *Venezuela Rail. Co.* v. *Kisch* (1867), L. R. 2 H. L. 99; *Henderson* v. *Lacon* (1867), 5 Eq. 249; *Western Bank of Scotland* v. *Addie* (1867), L. R. 1 H. L. (Sc.) 145; *Reese River Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64; *Pentelow's Case* (1869), 4 Ch. 178; *Anderson's Case* (1881), 17 C. D. 373; *London and Staffordshire Fire Insurance Co.* (1883), 24 C. D. 149; *Wainwright's Case* (1890), 63 L. T. 429; *Karberg's Case*, [1892] 3 Ch. 1; *Aaron's Reef* v. *Twiss*, [1896] A. C. 273.

(*c*) *Pawle's Case* (1869), 4 Ch. 497; *Scottish Petroleum Co.* (1883), 23 C. D. 414.

though made without authority; or (4) that the contract was made on the basis of certain representations, whether the particulars of those representations were known to the company or not, and some of the representations were material and untrue, even though the prospectus containing such representations was issued without the authority of the company or before its formation, and even if its contents were unknown to the company (*d*). A signatory of the memorandum of association cannot on the ground of misrepresentations by a promoter obtain rescission of the contract thereby made (*e*).

The misrepresentation need not be fraudulent in order to obtain rescission. It is sufficient if there is a material misrepresentation of fact, although it is not made with intent to deceive (*f*). The omission of material facts is not of itself sufficient to entitle the shareholder to rescission; the omission must be such as to make a statement of a material fact misleading (*g*). The cases as to what constitutes a material misrepresentation of fact will be found collected at p. 378. Where a person seeks to rescind a contract to take shares on the ground of misrepresentation, it is not necessary that he should prove that if the misrepresentation had not been made he would not have taken the shares; it is sufficient if there be evidence to show that he was materially influenced in taking shares by the misrepresentation (*h*).

A shareholder is also entitled to rescission where he applies for shares in a company before it is registered on the faith that the objects of the company are those stated in the prospectus, and there is a substantial variance between the objects as so stated and those stated in the memorandum of association when registered (*i*). The shareholder is, however, bound within a reasonable time to ascertain the contents of the memorandum and articles of association, or else he loses his right to rescind (*k*). The right of repudiation does not arise when the misrepresentation complained of is that the objects of the company, as stated in the prospectus, substantially differ from those stated in the memorandum of association, if the prospectus is published after the

(*d*) The above rules are in substance those laid down by Romer, J., in the case of *Lynde* v. *Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178. See *Karberg's Case*, [1892] 3 Ch. 1; and *Canadian Direct Meat Co.*, W. N. (1892), 146.

(*e*) *Lord Lurgan's Case*, [1902] 1 Ch. 707, distinguishing *Karberg's Case*, *supra*.

(*f*) *Smith's Case* (1867), 2 Ch. 614, 615; *London and Staffordshire Fire Insurance Co.* (1883), 24 C. D. 149; *Mathias* v. *Yetts* (1882), 46 L. T. 506.

(*g*) *McKeown* v. *Boudard Peveril Gear Co.* (1896), 65 L. J. Ch. 735. See *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273; *Components Tube Co.* v. *Naylor*, [1900], 2 Ir. 1, where the omission was of that character.

(*h*) *Carling* v. *London and Leeds Bank* (1887), 56 L. J. Ch. 321; 35 W. R. 345.

(*i*) *Stewart's Case* (1866), 1 Ch. 574; *Webster's Case* (1866), 2 Eq. 748; *Langham* v. *East Wheal Rose Mining Co.* (1868), 37 L. J. Ch. 253.

(*k*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325; *Wilkinson's Case* (1867), 2 Ch. 536; *Peel's Case* (1867), 2 Ch. 674.

registration of the company (*l*); and the present practice is to issue the prospectus after the company is registered, and, since the passing of the Companies Act, 1900, the contents of the memorandum of association must appear in the prospectus (*m*).

A person who is registered to his knowledge as the holder of shares for which he has been induced to subscribe by misrepresentation will lose his right to rescission (1) by doing something after notice of the misrepresentation which is inconsistent with repudiation (*n*); or (2) by the commencement of the winding-up of the company (*o*); or (3) by the company becoming insolvent and stopping payment (*p*), unless, in cases (2) and (3), he has previously repudiated the shares and proceedings for rectification have been commenced by him or by some other person, and he has, in the latter case, agreed with the company to be bound by such proceedings (*q*), or he has previously repudiated the shares and filed an affidavit setting up the misrepresentation in resisting an application under Ord. XIV. in an action for calls (*r*); or (4) by not repudiating his shares within a reasonable time after he first discovers the misrepresentation (*s*). The holder is also debarred in cases (2) and (3) from obtaining damages (*t*).

(*l*) *Dicta* of Wood, V.-C., in *Ross* v. *Estate Investment Co.* (1866), 3 Eq. 132; *Hallows* v. *Fernie* (1867), 3 Eq. 520, 534.

(*m*) See now C. A. 1908, s. 81.

(*n*) Attempting to sell the shares: *Ex parte Briggs* (1886), 1 Eq. 483; receiving dividends thereon: *Scholey* v. *Central Rail. Co. of Venezuela* (1868), 9 Eq. 266, n.; making further payments on the shares: *Ex parte Shearman* (1896), 66 L. J. Ch. 25; but doing these things before notice of the fraud will not bar the right of repudiation: *Ex parte Sheffield* (1887), 3 T. L. R. 556; *Ex parte West* (1887), 56 L. T. 662; nor, after the shareholder has taken proceedings for rectification, will attending a meeting of the company or opposing a winding-up petition as a shareholder bar the right: *Ex parte Edwards* (1891), 64 L. T. 561; *Foulkes* v. *Quartz Hill Co.* (1884), Cab. & E. 156; *Tomlin's Case*, [1898] 1 Ch. 104.

(*o*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325; *Kent* v. *Freehold Land Co.* (1868), 3 Ch. 493; *Burgess's Case* (1880), 15 C. D. 507; *Ex parte Storey* (1890), 6 T. L. R. 357; *Scottish Petroleum Co.* (1883), 23 C. D. 436.

(*p*) *Tennent* v. *City of Glasgow Bank* (1879), 4 A. C. 615, where notice was given a day before the winding-up commenced. Cf. *Carling* v. *London and Leeds Bank* (1887), 56 L. J. Ch. 321, where the notice was good, the company being insolvent but not having stopped payment.

(*q*) *Pawle's Case* (1869), 4 Ch. 497; *Scottish Petroleum Co.* (1883), 23 C. D. 414.

(*r*) *Whiteley's Case*, [1900] 1 Ch. 365. Cf. *Ex parte Stevenson* (1867), 16 W. R. 95; *Persse's Case* (1871), Ir. R. 6 Eq. 298.

(*s*) As to what is a reasonable time, which is a question of fact, see *Taite's Case* (1867), 3 Eq. 795; *Whitehouse's Case* (1867), 3 Eq. 790; *Lawrence's Case, Kincaid's Case* (1867), 2 Ch. 412; *Heyman* v. *European Central Rail. Co.* (1868), 7 Eq. 154; *Scholey* v. *Central Rail. Co. of Venezuela* (1868), 9 Eq. 266, n.; *Pawle's Case* (1869), 4 Ch. 497; *Ashley's Case* (1870), 9 Eq. 263; *Sharpley* v. *Louth Rail. Co.* (1876), 2 C. D. 663; *Cargill* v. *Bower* (1878), 10 C. D. 502; *London and Staffordshire Fire Insurance Co.* (1883), 24 C. D. 149; *Ex parte Hale* (1887), 55 L. T. 670.

(*t*) *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317. Cf. *Addlestone Linoleum Co.* (1887), 37 C. D. 191; overruling *Mudford's Claim* (1880), 14 C. D. 634; and *Ex parte Appleyard* (1881), 18 C. D. 587.

When the application for shares is unconditional, and they are allotted, the contract is good although such application was induced by a promise made by a third person and unfulfilled, *e.g.* where the promoter promises that the applicant shall be the broker of the company (*u*). The secretary of a company has no general authority to make representations to induce persons to take shares in a company, and if without authority he makes misrepresentations for that purpose, the company cannot be sued by the person deceived thereby either for rescission or damages (*x*). As a general rule, a transferee of shares cannot obtain rescission on the ground of misrepresentation in the prospectus (*y*).

Where the contract is rescinded the applicant is entitled to a return of the amount paid for his shares with interest at 4 per cent. per annum (*z*), but the money so paid is not held by the company or its directors in trust for the applicant (*a*). When rescission is granted after the beginning of the winding-up the applicant is entitled to prove for the amount paid on the shares and the costs of the application (*b*).

Upon payment of unpaid calls and interest an interim injunction will be granted to restrain the company from forfeiting shares in respect of which rescission is being sued for (*c*).

22. An allotment made in contravention of sect. 85 of the Companies Act, 1908, is voidable at the instance of the applicant at any time before the expiration of one month after the holding of the statutory meeting of the company, notwithstanding that the company is in course of being wound up (*d*).

It is not necessary to commence legal proceedings within the month if within that time notice of repudiation is given and is followed by prompt legal proceedings after the month has expired (*e*).

23. Until the name of an applicant for shares is placed upon the register of the members of the company,

(*u*) *Ex parte Felgate* (1865), 11 L. T. 613.

(*x*) *Newlands* v. *National Employers' Association* (1885), 54 L. J. Q. B. 428.

(*y*) *Hyslop* v. *Morrel Bros., Ltd.*, W. N., [1891] 19. Cf. *Andrews* v. *Mockford* (No. 1), [1896] 1 Q. B. 372.

(*z*) *Ex parte Wainwright* (1890), 59 L. J. Ch. 281; *Karberg's Case*, [1892] 3 Ch. 1.

(*a*) *Stewart* v. *Austin* (1868), 3 Eq. 299.

(*b*) *British Gold Fields of West Africa*, [1899] 2 Ch. 7.

(*c*) *Lamb* v. *Sambas Rubber, &c., Co.*, [1908] 1 Ch. 845.

(*d*) See *post*, p. 148.

(*e*) *National Motor Mail Coach Co.*, [1908] 2 Ch. 228.

a contract to take shares may be rescinded by agreement between the company and the applicant (*f*).

This rule applies even although the applicants are also directors (*g*). *À fortiori* is it the case where the contract is *ultra vires* (*h*).

If the action of directors in rescinding the contract is not reasonable, they may be liable to the company for misfeasance, and possibly for breach of trust, if they return any moneys subscribed on the shares. If a valid contract to take shares is made, and the person taking shares is placed on the register of members, the directors have no power to rescind the contract (*i*). *Secus*, where the contract to take shares is voidable at the option of the shareholder, or where it is *ultra vires*, or where the rescission is made in pursuance of a *bonâ fide* compromise (*k*). In *Duff's Executors' Case* (*l*), it was held that if directors, in pursuance of a contract, allot and register shares in the names of the executors individually, they cannot, at the request of the executors, rescind the contract and register such shares in the name of the testator.

24. A company can, at the request of the other party to the contract to take shares in it, and before his name is entered on the register in respect thereof, allot the shares to his nominees with their consent (*m*).

25. A valid agreement to allot and take shares can be specifically enforced, or damages may be obtained for breach thereof (*n*).

Though specific performance of a valid contract to allot and accept shares has been refused (*o*), on the ground that the decree might be inoperative, as the shares could be immediately transferred, according to more recent decisions such contracts will be enforced (*p*), even after the company goes into liquidation (*q*).

(*f*) *Nicol's Case, Tufnell and Ponsonby's Case* (1885), 29 C. D. 421.

(*g*) *Ibid.*; *Kipling* v. *Todd* (1878), 3 C. P. D. 350; *Whiteley's Case* (1889), 1 Meg. 154.

(*h*) *Barnett's Case* (1874), 18 Eq. 507. Cf. *Sahlgreen's Case* (1868), 3 Ch. 323; cf. *Esparto Trading Co.* (1879), 12 C. D. 191. The decision in *Nicol's Case* overrules *Adam's Case* (1872), 13 Eq. 474.

(*i*) *Wheatcroft's Case* (1873), 42 L. J. Ch. 853; *Ex parte Joseph Wright* (1871), 20 W. R. 45.

(*k*) See *post*, p. 209.

(*l*) (1886), 32 C. D. 301.

(*m*) *Nicol's Case* (1883), 29 C. D. 421; *Brown's Case* (1873), 9 Ch. 102; *Carling's Case* (1875), 1 C. D. 115. See *London and Colonial Finance Corporation* (1897), 77 L. T. 146.

(*n*) *Hirsch* v. *Burns* (1897), 77 L. T. 377.

(*o*) *Sheffield Gas Co.* v. *Harrison* (1853), 17 B. 294; *Bluck* v. *Mallalue* (1859), 27 B. 398.

(*p*) *Odessa Tramways Co.* v. *Mendel* (1877), 8 C. D. 235.

(*q*) *Davies' Case* (1872), 41 L. J. Ch. 659; *Winstone's Case* (1879), 12 C. D. 239.

The right to specific performance may, however, be barred by the conduct of the parties, or by the Statute of Limitations (*r*). An agreement *ultra vires* of the company, *e.g.* to issue shares at a discount, cannot be enforced (*s*).

The measure of damages as against a company refusing to allot is the excess of the value of the shares above what is payable for the shares (*t*). In the case of an allottee or other person who in breach of contract has refused to take shares, the company can complete the contract by placing the allottee's name on the register (*u*); but where he is bankrupt and his trustee disclaims the contract to take shares, the company or the liquidator may recover the damages caused to the company by such disclaimer (*x*).

(*r*) *Nicol's Case* (1883), 29 C. D. 421.

(*s*) *Ex parte Sandys* (1889), 42 C. D. 98; and *Arnot's Case* (1887), 36 C. D. 702.

(*t*) *Hirsch* v. *Burns, supra*; *Van Diemen's Land Co.* v. *Cockerell* (1857), 1 C. B. N. S. 732.

(*u*) *Isaacs' Case*, [1892] 2 Ch. 158; *Hercynia Copper Co.*, [1894] 2 Ch. 403.

(*x*) Bankruptcy Act, 1883, s. 55; *Re Hooley, Ex parte United Ordnance Co.*, [1899] 2 Q. B. 579.

CHAPTER XII.

ISSUE OF SHARES.

With respect to the issue of shares, the following rules should be borne in mind:—

1. No allotment should be made of any share capital of a company governed by the Companies Acts which is offered by the company (*a*) to the public for subscription, unless the following conditions have been complied with (*b*):—

These conditions in the case of an allotment of share capital which has been for the first time after the 31st December, 1900, offered for public subscription, whether the company was registered before (*c*) or after that date, are—

(1) Subscription in full of the amount (if any) fixed by the memorandum or articles of association and named in the prospectus (*d*) as the minimum subscription (*e*) upon which the directors may proceed to allotment, or if no amount is so fixed and named (*d*) the total amount of the share capital so offered for subscription. The amount and whole amount aforesaid are to be reckoned exclusively of any amount payable otherwise than in cash.

(2) Payment to the company in cash (*f*) of the sum payable on

(*a*) *Sherwell* v. *Combined Incandescent Mantles*, [1907] 23 T. L. R. 482.

(*b*) C. A. 1908, s. 85, replacing C. A. 1900, s. 4, as amended by C. A. 1907, s. 1 (3).

(*c*) *Finance & Issue, Ltd.* v. *Canadian Produce Corporation*, [1905] 1 Ch. 37.

(*d*) "Prospectus" means the document offering share capital to the public for subscription on the faith of which the applicant has subscribed. It is not sufficient that other prospectuses state the minimum subscription: *Roussell* v. *Burnham*, [1909] 1 Ch. 127.

(*e*) The minimum subscription is sufficiently stated by a statement that unless 10 per cent. of the shares offered to the public are subscribed no allotment will be made: *West Yorkshire Darracq Agency*, [1908] W. N. 236.

(*f*) If the sum is paid by cheques, they must be cleared before allotment:

application for the amount so fixed and named, or for the whole amount offered for subscription, as the case may be.

(3) The sum payable on application on each share must not be less than 5 per cent. of the nominal amount of each share.

Only the third condition applies to subsequent allotments.

If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus (*d*), all money received from applicants for shares must be forthwith repaid to them without interest (*g*); and if any such money is not so repaid within forty-eight days after such issue, the directors of the company are jointly and severally liable to repay the same with interest at the rate of 5 per cent. per annum, to commence from the expiration of the forty-eighth day, but so that no director is to be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part (*h*). Before the 1st January, 1901, moneys paid on application for shares became the moneys of the company, and available for the payment of its creditors generally, so that directors were not liable to a shareholder who had obtained rescission of his contract to take shares (*h*), although they were liable if they stated that deposits paid on application would be returned if no allotment was made and the event happened (*i*).

2. A first allotment of share capital payable in cash of a company governed by the Companies Acts which does not issue any invitation to the public to subscribe for its shares should not be made unless the following conditions have been complied with (*b*) :—

(1) Subscription in full of the amount (if any) fixed by the memorandum or articles, and named in the statement in lieu of prospectus (*k*) as the minimum subscription upon which the directors may proceed to allotment, or if no amount is fixed and named, the total amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash.

(2) Payment in cash (*f*) to the company of not less than five per cent. of the nominal amount of each share so subscribed.

If shares are allotted to any applicant in contravention of the

Mears v. *Western Canada Pulp, &c., Co.*, [1905] 2 Ch. 353; *National Motor Mail Coach Co.*, [1908] 2 Ch. 515.

(*g*) This repayment cannot be made after allotment: *Burton* v. *Bevan*, [1908] 2 Ch. 240. But if the allotment has been made in contravention of s. 85, the "remedy" is given by s. 86. See *post*, p. 148.

(*h*) *Stewart* v. *Austin* (1866), 15 L. T. 407.

(*i*) *Mosely* v. *Cressey's Co.* (1865), 1 Eq. 405, 409.

(*k*) C. A. 1908, s. 87. See App. I., p. 541.

conditions above set forth in rules 1 and 2, such allotment is voidable at the instance of the applicant within one calendar month after the holding of the statutory meeting (*l*) of the company and not later, and is so voidable notwithstanding that the company is in course of being wound up (*k*). Any director of a company knowingly contravening or permitting or authorizing the contravention of any of the conditions above set forth in rules 1 and 2 is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby, but so that proceedings to recover the same are not to be commenced after the expiration of two years from the date of the allotment (*k*). Any condition requiring or binding any applicant for shares to waive compliance with any of the conditions aforesaid in rules 1 and 2 is void (*m*).

If an allotment is made in contravention of sect. 85, and the allottee's name is placed on the register of members as the holder of the shares so allotted, he becomes a member of the company, as by sect. 86 the allotment is not avoided but is only voidable. In order to avoid the contract to take shares, the allottee must, within the time prescribed, repudiate his shares. It is not *ultra vires* for the directors in such a case to cancel the allotment and return the application money (*n*). If the company refuse to rescind the contract the allottee must take proceedings for the rescission of his contract and the return of the moneys paid by him in respect of the shares and rectification of the register. In the action he can obtain an interim injunction restraining the company from parting with the moneys so paid (*o*). In addition to this remedy the allottee is entitled to the remedy expressly given by the section, and can combine in one action his claim against the company and the directors. The allotment being only voidable the allottee will lose his right of rescission if, after he is aware of the facts which entitle him to rescission, he acts as a shareholder of the company in respect of the shares so allotted to him (*p*). The allottee can, however, affirm the allotment and recover from a director liable under the section compensation for any loss, damages or costs which he may have sustained or incurred thereby. Where an allottee repudiates an allotment, and is unable to recover from the company the moneys paid by him in respect of the shares or the costs of the proceedings against the company, he will be able to recover from the director liable such moneys and costs and also the costs of the action against the director. If the allottee affirms the allotment he will be entitled to recover from the director so liable the difference between the value of the shares allotted to him and their true value, and the costs of the action against the director.

(*l*) As to Statutory Meeting, see *post*, p. 325.

(*m*) *Ibid.* s. 85 (5).

(*n*) *Finance and Issue, Ltd.*, v. *Canadian Produce Corporation*, [1905] 1 Ch. 37.

(*o*) *Mears* v. *Western Canada Pulp Co.*, [1905] 2 Ch. 353.

(*p*) See *ante*, p. 142.

Section 85 applies to a company which, although registered before the 1st January, 1901, issues for the first time after that date a prospectus inviting the public to subscribe for its shares, but the limit of time imposed by sub-sect. 1 of sect. 5 is not applicable in such a case. The remedy of rescission is, however, available but, *semble*, the shareholder must rescind within a reasonable time after he is aware of the facts which entitle him to rescission, and the remedies given by sect. 86 to a shareholder and to the company are applicable (*u*).

3. A company limited by shares governed by the Companies Acts must within one month after any allotment of its shares file with the registrar of companies (*q*)—

(*a*) A return stating the number and nominal amount of the shares allotted, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share.

(*b*) In the case of shares allotted as fully or partly paid up for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment together with any contract (*q*) in respect of which such allotment was made, or if the contract has not been reduced to writing the prescribed particulars thereof in writing (*r*), such contracts or particulars being duly stamped.

(*c*) A return stating the number and nominal amount of the shares so allotted, the amount treated as paid up thereon, and the consideration for such allotment.

Every director, manager, secretary, liquidator (*s*), or other officer of the company who is knowingly a party to any default in complying with these requirements is liable to a fine of £50 for every day during which the default continues, but the company or any defaulter, if the default was accidental or due to inadvertence or it is just and equitable to grant relief, may obtain from the Court an extension of time for filing (*t*).

4. Unless the regulations of the company otherwise provide, shares can only be allotted in pursuance of

(*q*) This is the contract for sale, services or other consideration in respect whereof the allotment was made. Cf. *Kharaskhoma Case*, [1897] 2 Ch. 451.

(*r*) See Order of the Board of Trade, dated 29th March, 1909, Form 52, for the prescribed particulars. These particulars are deemed to be instruments within the Stamp Act, 1891, and before filing them the registrar may require the duty payable thereon to be adjudicated under s. 12 of that Act: C. A. 1908, s. 88 (2).

(*s*) *X Company*, [1907] 2 Ch. 92.

(*t*) C. A. 1908, s. 88.

a resolution passed by a majority of directors at a duly convened meeting at which the prescribed quorum at least is present.

If the persons purporting to allot shares as directors have not been legally appointed, the allotment is bad, but if the holding of the prescribed number of shares is not a condition precedent to the election of directors, they may allot shares before acquiring their qualification (*u*). An allotment is bad as against the company if made at a board meeting of which proper notice has not been given to each director (*x*). As to the position of directors where no quorum has been prescribed, see *ante*, p. 97. A quorum of directors may allot shares, although the number of directors is less than the prescribed minimum, provided that the articles empower directors to act notwithstanding any vacancy in the board (*y*).

5. Unless the regulations of the company otherwise provide, a power to directors to allot shares cannot be delegated to other persons.

Where the directors, three of whom formed a quorum, delegated the power to allot shares to two of their number and the manager of the company, an allotment made by the delegates was held to be void (*z*).

6. Directors in issuing shares must act in good faith and for the benefit of the company, and not for purposes other than those for which the power to issue shares has been given to them.

If directors of a company are authorized to make an issue of shares for a particular purpose, they cannot issue them for a different purpose (*a*); nor can they issue shares for the express purpose of creating votes to enable them to influence a coming general meeting (*b*).

7. The proposed issue must not exceed, with the issues already made (if any), the authorized capital of the company.

(*u*) *Portuguese Consolidated Mines* (1889), 42 C. D. 160, 164.

(*x*) *Ibid.* p. 167; *Homer Gold Mines* (1888), 39 C. D. 546.

(*y*) *Scottish Petroleum Co.* (1883), 23 C. D. 413.

(*z*) *Howard's Case* (1886), 1 Ch. 561; and see *ante*, p. 103.

(*a*) *Fraser* v. *Whalley* (1864), 2 H. & M. 10; *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506.

(*b*) *Ibid.*

If the shares to be issued are part of the original capital, it should be seen that no more than the unissued capital is offered for subscription or allotted. If new capital is to be issued, it should be seen that such new capital has been duly created (*c*). An issue of shares in excess of the authorized capital of the company is void (*d*) unless such issue is ratified by creating sufficient new capital (*e*).

8. The power to issue new capital should be strictly followed.

Where the consent of the company in general meeting is necessary to such issue, it should be obtained; and if the new capital is to be offered in the first place to members, this should be done. "Members" may include a deceased registered shareholder so that his legal personal representatives, so long as his name remains on the register, may be entitled to claim an allotment of new shares (*f*).

9. Shares may be issued although share certificates have not been issued to the allottee (*g*).

It was held that an allottee of shares was entitled to have a share certificate issued to him within a reasonable time after allotment (*h*). And now it is provided by statute (*i*) that a company governed by the Companies Acts must within two months after the allotment or transfer of any of its shares complete and have ready for delivery the certificate of such shares unless the conditions of issue otherwise provide. A share certificate is usually under the seal of the company, and states that the person therein described is the registered holder of the shares therein mentioned and whether they are fully paid, or, if not, how much has been paid on each share. Allottees are generally entitled to receive such certificates without payment, but upon the issue of new certificates upon transfer or transmission, or to replace lost or worn-out certificates, a small fee is usually chargeable (*k*).

10. Shares having preferential rights can only be issued by a company to such an amount and with such

(*c*) *Ante*, p. 48.

(*d*) *Bank of Hindustan, China, and Japan* v. *Alison* (1870), 6 C. P. 222; but see *Campbell's Case* and *Hippisley's Case* (1873), 9 Ch. 1, where the same issue was held to be valid.

(*e*) *Sewell's Case* (1867), 3 Ch. 131.

(*f*) *James* v. *Buena Ventura Nitrate Syndicate*, [1896] 1 Ch. 456. See *ante*, pp. 48 and 49.

(*g*) *Blyth's Case* (1876), 4 C. D. 140.

(*h*) *Burdett* v. *Standard Exploration Co.*, [1899], 16 T. L. R. 112.

(*i*) C. A. 1908, s. 92.

(*k*) See *post*, p. 188.

privileges as are authorized by its special Act, or, in the case of a company governed by the Companies Acts, by its memorandum or articles of association.

It is an implied term of the contract which exists between members of a company that they are entitled to rank equally as to dividends and in other respects in proportion to their interests in the company (*l*). It is not by implication from the construction of the memorandum that the equality of the shareholders arises, but by the implication which the law raises between partners (*m*). This implication may be rebutted in the case of a company governed by the Companies Acts, if the memorandum of association or the articles of association give preference or priority to a certain class of shares (*n*).

In the absence of any provision to the contrary, shareholders are entitled to dividends in proportion to the number of shares held by them, assuming that such shares are of equal nominal amount, irrespectively of the amount paid up on such shares (*o*). Articles of association may be amended by special resolution so as to permit of the issue of preference shares (*p*). When the articles authorize the issue of preference shares on such terms as the company may by special resolution determine, an issue of preference shares without such a resolution may be ratified by a special resolution (*q*).

It is a question of construction as to whether the memorandum or articles of association permit of the issue of preference shares. Before the decision in *Andrews* v. *Gas Meter Co.* (*p*) it was decided that where the articles provided that the capital, with the sanction of a special resolution, might be increased by the issue of new shares of such nominal amount and on such conditions as the resolution might determine, a special resolution could not authorize the creation of additional preference shares (*r*). A company empowered by its articles to increase its capital by the issue of new shares, to be of such value and subject to such conditions as to payment of calls or proportion of profits as may be determined, cannot issue preference shares (*s*). Where the respective

(*l*) *Hutton*, v. *Scarborough Hotel Co.* (1865), 2 Dr. & Sm. 514, 521; 4 De G. J. & S. 672; *Harrison* v. *Mexican Railroad Co.* (1875), 19 Eq. 358, 364.

(*m*) *Guinness* v. *Land Corporation of Ireland* (1882), 22 C. D. 377; *South Durham Brewery Co.* (1885), 31 C. D. 261.

(*n*) *Harrison* v. *Mexican Railroad Co.*, *supra*; *South Durham Brewery Co.* (1885), 31 C. D. 261; and *Bridgewater Navigation Co.* (1888), 39 C. D. 1; (1889), 14 A. C. 525.

(*o*) *Wilkinson* v. *Cummins* (1853), 11 Ha. 337; *Oakbank Oil Co.* v. *Crum* (1882), 8 A. C. 65.

(*p*) *Andrews* v. *Gas Meter Co.*, [1897] 1 Ch. 361; overruling *Hutton* v. *Scarborough Hotel Co.*, *supra*.

(*q*) *London and New York Investment Corporation*, [1895] 2 Ch. 860.

(*r*) *Melhado* v. *Hamilton* (1873), 29 L. T. 364.

(*s*) *Moss* v. *Syers* (1863), 32 L. J. Ch. 711.

rights of different classes of shareholders as to dividends are defined by the memorandum of association, they cannot be altered by the shareholders or directors (*u*) unless power to do so is conferred by the memorandum (*x*). A power to alter rights is strictly construed. The rights can be altered under sects. 45 or 120 of the Companies Acts, 1908 (*y*).

In the case of a company incorporated according to the law of a foreign State for purposes to be carried into effect within that State, and having both preference and ordinary shareholders, even although most of them are English and its chief office is in England, an ordinary shareholder cannot obtain from an English Court an injunction restraining the directors from applying to the foreign legislature for power to increase the number of preference shares (*z*); nor will such an injunction be granted if the company is an English company, and the directors apply for an Act of Parliament for the same purpose (*a*), although they would be restrained from applying the funds of the company for such a purpose if inconsistent with the constitution of the company (*b*).

Where the only preference expressly conferred upon shares is as to dividend, they are not entitled to priority in the distribution of surplus assets (*c*). In *Bridgewater Navigation Co.* (*d*) it was held that the surplus assets arising from a compulsory sale of the company's undertaking were not profits arising from the business of the company, and that in the absence of express agreement such assets, after returning the paid-up capital, were divisible among the preference and ordinary shareholders in proportion to the nominal amount of such shares.

If the regulations of the company so provide, there is nothing to prevent a preponderating voting power being given to holders of certain shares or certain classes of shares, as is often done in the case of management and founders' shares, or some of the members being deprived of any voting power, or, as in the case sometimes of preference shareholders, being prohibited from voting except upon questions directly affecting their interests.

11. The names of the persons entitled to have shares issued to them, and the number and distinguishing numbers of shares to which they are respectively

(*u*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(*x*) *Underwood* v. *London Music Hall*, [1901] 2 Ch. 309; *Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

(*y*) *Hemans* v. *Hotchkiss Ordinance Co.*, [1899] 1 Ch. 115; *Gill* v. *Arizona Co.*, [1900] 2 Fr. 843.

(*z*) *Bill* v. *Sierra Nevada Co.* (1859), 6 Jur. N. S. 184.

(*a*) *Ibid.*

(*b*) *Lyde* v. *Eastern Bengal Rail. Co.* (1866), 36 B. 10.

(*c*) *London India Rubber Co.* (1867), 5 Eq. 519.

(*d*) (1889), 14 A. C. 525.

entitled, should be entered on the company's register (*e*).

The persons so entitled are (1) the persons who by the special Act or charter incorporating the company are constituted members thereof; (2) such of the holders of scrip certificates entitling the bearers thereof to receive shares from the company as apply for an allotment of such shares; and (3) those who have agreed to take shares from the company.

(*e*) Companies Clauses Act, 1845, s. 9; C. A. 1908, s. 25; and see *post*, p. 155.

CHAPTER XIII.

SHAREHOLDERS.

THE members of a company are the persons who, for the time being, collectively constitute the company. Members are often referred to as shareholders, proprietors, or corporators.

There are various ways of becoming a member of a company, some of which depend on the mode in which the company is created. Thus, a person may become a member of a company, created by special Act of Parliament or charter, by being named in the Act or charter as a member, or, without being expressly named, by being included in a class of persons who, upon fulfilling certain conditions, become members of the company in pursuance of the provisions of a special Act or any general Act incorporated therewith or of the charter. A person may also become a member by agreement between him and the company (*a*) and the entry of his name in the company's register of members (*b*), by subscribing the memorandum of association of a company formed under the Companies Acts (*c*), by transfer or transmission (*d*) and registration (*e*). Every company governed by the Companies Acts is bound to keep in one or more books a register of its members containing their names, addresses and occupations, and, when it has a capital divided into shares, the number and distinguishing (*f*) numbers of, and the amount paid or agreed to be considered as paid (*g*), on the shares of such members, the respective

(*a*) See Chap. XI.

(*b*) Sect. 24 of the C. A. 1908 provides that every 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. To become a member entry on the register is necessary, unless there is a subsisting contract to take shares capable of being specifically enforced. See *East Gloucestershire Rail. Co.* v. *Bartholomew* (1867), 3 Ex. 15; *Portal* v. *Emmens* (1876), 1 C. P. D. 201; *Florence Land Co.* (1883), 29 C. D. 421; *Re Macdonald, Sons & Co.*, [1894] 1 Ch. 89.

(*c*) C. A. 1908, s. 24. See *ante*, p. 135.

(*d*) See Chap. XVI.

(*e*) See note (*b*).

(*f*) C. A. 1908, s. 22 (2). As to what constitutes a register, see *Weikersheim's Case* (1873), 8 Ch. 831, 836; *Ex parte Cammell*, [1894] 2 Ch. 392.

(*g*) As to payment for shares, see Chap. XIV.

dates at which each person was entered in the register as a member, and ceased to be a member (*h*). A similar provision is contained in the Companies Clauses Act, 1845 (*i*). The annual list of members and summary (*k*) must be kept in a separate part of the register (*l*). No notice of any trust, express, implied, or constructive, is to be entered on the register, or is receivable by the registrar in the case of companies registered in England or Ireland (*m*). The register must be kept at the registered office of the company, and except when closed under the provisions of the Act (*n*), must be open to the inspection of any member gratis, and of any other person on payment of not more than one shilling (*o*). The register is *primâ facie* evidence of any matters by the Act directed or authorized to be inserted therein (*p*). The register may be rectified by the Court (*q*).

Any company having a share capital governed by the Companies Acts, 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 (*r*). The company is bound to give to the registrar of companies notice of the situation and change and discontinuance of the office where any colonial register is kept. It is to be deemed to be part of the company's register, and is to be kept in the same manner as the principal register is to be kept, except that the advertisement, before closing the register, is to be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony shall have power to rectify the register, and that the offences of refusing inspection or supplying copies of a colonial register, may be prosecuted summarily before any tribunal of the colony having summary jurisdiction (*s*). A company is bound to keep a duplicate register of the colonial register at its registered office. The shares registered in the colonial register are to be distinguished from the shares registered in the principal register, and transactions with respect to any shares registered in the colonial register shall be registered in no other register. The company may discontinue a colonial register, and thereupon all entries therein must be transferred

(*h*) C. A. 1908, s. 25. As to penalty on default, see *post*, p. 401.

(*i*) Sect. 9. *East Gloucestershire Rail. Co.* v. *Bartholomew* (1867), 3 Ex. 15.

(*k*) See *post*, p. 288.

(*l*) C. A. 1908, s. 26 (4).

(*m*) *Ibid.* s. 27.

(*n*) *Ibid.* s. 30.

(*o*) *Ibid.* s. 30. See *post*, p. 402.

(*p*) *Ibid.* s. 33. See *British Medical Association* (1888), 396 C. D. 61.

(*q*) *Ibid.* s. 32. See Chap. XVIII.

(*r*) *Ibid.* ss. 34-36. By the Interpretation Act, 1889, s. 18 (3), "Colony" is defined as "any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall for the purposes of this definition be deemed to be one colony," and by the C. A. 1908 colony expressly includes British India and the Commonwealth of Australia (s. 34).

(*s*) C. A. 1908, s. 35.

to some other colonial register kept by the company in the same colony, or to the principal register; and subject to the provisions of the Act, any company may by its articles make such provisions as it may think fit respecting the keeping of the colonial register (*s*). An instrument of transfer of a share registered in a colonial register, unless executed in any part of the United Kingdom, is exempt from British stamp duty, and the shares so registered of a deceased member are only to be liable for British duties if he dies domiciled in the United Kingdom (*t*).

The Companies Clauses Act, 1845, s. 8, provides that every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or who has otherwise become entitled to a share in the company, and whose name has been entered on the register of shareholders, shall be deemed a shareholder of the company. This section is not, as a rule, excluded by the special Act incorporating a company; and the special Act generally provides, in addition, that certain persons, naming them, and all other persons who have already subscribed or shall hereafter subscribe to the undertaking, are by the Act united into a company. Where this is so, the subscribers become members by virtue of the special Act, although they subscribed before it became law. An agreement with other people to subscribe in case the bill becomes law is sufficient (*u*). Nor can one subscriber withdraw his subscription before the Act is passed without the consent of his co-subscribers (*v*). His liability continues until the transferee of his share is registered in his place (*w*); and his liability is not discharged because of some slight variance between the undertaking subscribed for and that sanctioned by the Act. Nor is his liability discharged because a collateral agreement with the provisional directors of the company, that he should do certain work for the company and receive the shares subscribed in part payment therefor, was abandoned (*y*). Nor can directors get rid of their liability by transferring the shares to the secretary in trust for the company (*z*). Nor can they apply the funds of the company in payment of the amount of their subscriptions (*a*).

Sometimes before the special Act incorporating a company is obtained scrip certificates are issued to subscribers, entitling the bearers of such certificates, when the Act is passed, to an allotment of the shares represented by such certificates. Sometimes also after the Act is

(*t*) *Ibid.* s. 36.

(*u*) *Thames Tunnel Co.* v. *Sheldon* (1827), 6 B. & C. 341, 348; *Ex parte Bowen* (1853), 22 L. J. Ch. 856; *Burke* v. *Lechmere* (1871), L. R. 6 Q. B. 297.

(*v*) *Kidwelly Co.* v. *Raby* (1816), 2 Price 93.

(*w*) *Midland G. W. Rail. Co.* (*Ireland*) v. *Gordon* (1847), 16 M. & W. 804; *Cork and Youghal Rail. Co.* v. *Paterson* (1856), 18 C. B. 414; *Nixon* v. *Green* (1858), 3 H. & N. 695.

(*y*) *Davidson's Case* (1858), 4 K. & J. 688.

(*z*) *Mangles* v. *Grand Collier Dock Co.* (1840), 2 Ry. Cas. 359.

(*a*) *Spackman* v. *Lattimore* (1860), 3 Giff. 16.

obtained scrip certificates are issued to applicants for shares, entitling the bearers to receive shares in exchange therefor upon payment of certain instalments (*b*). When scrip certificates to bearer are issued, the company cannot place the allottee's name on the register as a shareholder after he has transferred such scrip (*c*), nor even before he has transferred it, without his consent (*d*). *Semble*, the directors, unless they give notice to the scripholders, must leave unissued the number of shares required for such holders; but if, after the company has offered to register them, they do not ask for registration, they lose the right to the shares (*e*).

Where, however, a person has become a member and scrip has been then issued to him in respect of the shares he holds, he cannot, by transferring such scrip, prevent the company from entering his name on the register (*f*). Where a person applied for shares, and received notice that scrip would be allotted, which was not done, but his name was entered on the register, it was held that it was properly entered (*g*).

Scrip certificates should be stamped with a penny stamp (*h*).

Shares of companies which can only be transferred by deed cannot be transferred by the registered holder by delivery of scrip certificates (*i*).

A person ceases to be a member of a company upon his name being lawfully removed from its share register. As the entry of a person's name on the share register is necessary to make him a member, it follows that removing his name from the share register is necessary before he ceases to be a member. Articles of association usually provide that the company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and that in the case of a transfer the transferor is to be deemed to be the holder of the share until the name of the transferee is entered in the register in respect thereof. The mere removal of the name from the register is not of itself sufficient; it must be removed in pursuance of some lawful authority duly given. A person's name may be lawfully removed from the register of a company upon the registration of a transfer of his shares, or upon a valid forfeiture or surrender of his shares, or where his shares have been extinguished upon a reduction of capital duly sanctioned by the Court, or where rectification

(*b*) Such certificates are apparently transferable by delivery: *Rumball* v. *Metropolitan Bank* (1877), 2 Q. B. D. 194.

(*c*) *Eustace* v. *Dublin Trunk Rail. Co.* (1868), 6 Eq. 182.

(*d*) *McIlwraith* v. *Dublin Trunk Rail. Co.* (1871), 7 Ch. 134. See *Omerod's Case* (1867), 5 Eq. 110, where the company was incorporated under the Companies Acts; *Ex parte Collum* (1869), 9 Eq. 236, where the company was incorporated by Charter.

(*e*) *McIlwraith* v. *Dublin Trunk Rail. Co., supra*; *Daly* v. *Thompson* (1842), 10 M. & W. 309.

(*f*) *Midland G. W. Rail. Co.* (*Ireland*) v. *Gordon* (1847), 16 M. & W. 804.

(*g*) *Ex parte Gregg* (1866), 15 W. R. 82.

(*h*) Stamp Act, 1891.

(*i*) *McEuen* v. *West London Wharves Co.* (1871), 6 Ch. 655.

of the register has been directed by the Court. It has been decided that in cases of mutual mistake directors can themselves rectify the register without application to the Court, if the circumstances are such that the Court would direct rectification (*k*).

Rights of Shareholders.

The rights of a shareholder may be divided into rights to which he is entitled (1) by the regulations of the company, (2) by statute, (3) at common law, and (4) in equity.

The regulations of a company governed by the Companies Acts determine the rights of a member with regard to dividends on his shares (*l*), the transfer and transmission of his shares (*m*), participation in allotment of new capital (*n*), attending and voting at meetings of the company (*o*), appointment of directors (*p*) and auditors (*q*), and removal of directors (*r*), and participation in the surplus assets of the company.

The statutory rights of a member of a company governed by the Companies Acts include his right to inspect at the registered office of the company and require from the company a copy of the company's share register (*s*) and register of mortgages and charges (*t*); to inspect and require a copy of any documents filed with the registrar of joint stock companies (*u*); to obtain a copy of the company's memorandum and articles of association on payment of not more than a shilling (*x*); to obtain rectification of the share register of the company (*y*); to obtain the appointment by the Board of Trade of an inspector to examine into the affairs of the company (*z*); to recover compensation for misrepresentations by directors or promoters (*a*); to obtain relief in respect of shares issued as fully paid without complying with the provisions of the Companies Act, 1867, s. 25 (*b*); to obtain relief against the company and its directors and promoters in respect of invalid allotments of shares (*c*); to petition for a winding-up order (*d*); to take proceedings for misfeasance against directors and officers of the company in a winding-up (*e*); to make applications to the Court in a winding-up (*f*); to become a dissentient member under sect. 192 of the Companies Act,

(*k*) *Hartley's Case* (1875), 10 Ch. 157; *Smith* v. *Brown*, [1896] A. C. 622.
(*l*) See Chap. XXIV.
(*m*) See Chap. XVI.
(*n*) See *ante*, p. 151.
(*o*) See Chap. XXV.
(*p*) See Chap. VIII.
(*q*) See Chap. XXIV.
(*r*) See *ante*, p. 89.
(*s*) C. A. 1908, s. 30.
(*t*) See *post*, p. 237.
(*u*) See C. A. 1908, s. 243. See Chap. XXII.
(*x*) See *post*, p. 401.
(*y*) See Chap. XVIII.
(*z*) C. A. 1908, ss. 109-111.
(*a*) See *post*, p. 368.
(*b*) See *post*, p. 169.
(*c*) See *ante*, p. 147.
(*d*) See *post*, p. 435.
(*e*) See *post*, p. 461.
(*f*) See *post*, p. 509.

1908 (*g*); to vote at meetings of shareholders in a winding-up (*h*); and to have calls made for the purpose of adjusting the rights of contributories *inter se* (*i*).

The statutory rights of a member of a company incorporated by a special Act which incorporates the Companies Clauses Act, 1845, includes his right to have a copy of the shareholders' address book supplied to him, and the right may be enforced by a mandatory injunction, and the Court has no jurisdiction to inquire into his motives for making the request (*k*).

The common law rights of a member include his right to recover damages for fraudulent misrepresentation whereby he was induced to take his shares in the company (*l*), and to obtain an injunction to restrain directors acting *ultra vires* of the company, or in fraud of his rights (*m*).

The equitable rights of a member include his right to obtain a rescission of his contract to take shares, and rectification of the share register, together with a return of the money paid by him on the shares, where he has been induced to take the shares by the misrepresentation of the company (*n*).

Liabilities of Shareholders.

The liability of a shareholder in a company limited by shares is limited to the amount for the time being remaining unpaid on his shares (*o*). The liability of a member of a company limited by guarantee is limited to the amount which he undertakes by the memorandum of association to subscribe to the assets of the company (*o*), although by the articles of association he may, as regards his fellow members, incur an additional liability (*p*), while the liability of a member of an unlimited company is only limited to the amount of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up of the company.

A member of a company limited by shares becomes liable to pay the nominal amount of his shares, either by agreement with the company or in pursuance of calls duly made by the directors of the company while the company is a going concern (*q*), or of calls duly made by the liquidator in the winding-up of the company (*r*). Although a prospectus states that it is not intended to call up more than a specified amount per share, the company is still entitled to call up the balance (*s*), and even if the

(*g*) See *post*, p. 514.
(*h*) See *post*, p. 444.
(*i*) See *post*, p. 476.
(*k*) *Davis* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708.
(*l*) See *post*, p. 365.
(*m*) See *ante*, pp. 46, 111.
(*n*) See *ante*, p. 140.
(*o*) C. A. 1908, s. 123, sub-s. 1 (4); *Randt Gold Mining Co.*, [1904] 2 Ch. 468.
(*p*) See *ante*, p. 22.
(*q*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.
(*r*) See *post*, p. 476.
(*s*) *Accidental Insurance Corporation* v. *Davis* (1866), 15 L. T. 182.

articles of association provide that a certain amount shall not be called up except in a winding-up, it is competent by special resolution to alter the articles of association so as to give power to the directors to call up all the money unpaid upon the shares (*t*).

A company may, however, in pursuance of the Companies Act, 1908, s. 59, by a special resolution determine that any portion of its uncalled capital shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon such portion of capital becomes incapable of being called up except as aforesaid.

A person cannot become a member of a company in a representative capacity so as to be free from personal liability in respect of his shares (*u*), although, if the investment is authorized by the trust instrument or by statute, he is entitled to be indemnified out of the trust estate. Moreover, if the person beneficially entitled to the shares is *sui juris* and cannot disclaim the shares, he is personally bound to indemnify the trustees (*x*).

The liability of a member of a company governed by the Companies Acts in respect of the amount uncalled upon his shares ceases upon his ceasing to be a member of the company unless a winding-up supervenes within twelve months thereafter. In such a case he remains liable to a certain extent, but before he can be called upon to pay anything it must be shown that the existing members of the company are unable to satisfy the contributions required to be made by them in pursuance of the Act, and in no case is he liable to contribute in respect of any debt or liability contracted after the time at which he ceased to be a member, or to a larger amount than that left unpaid upon his shares (*y*). A contributory in the winding-up of a limited company, whether compulsory, under supervision, or voluntary, is not entitled to set off against the calls made by the liquidator any debt due from the company to him (*z*) until all the creditors have been paid in full (*a*).

A contributory in the winding-up of an unlimited company may set off against any moneys due from him to the company (except for calls made in the winding-up) any moneys due to him from the company otherwise than as a member in respect of any dividend or profit, and, if creditors are paid in full, any debt whatever due to him from the company against any subsequent call (*b*). Where, however, a contributory

(*t*) *Malleson* v. *National Insurance Corporation*, [1894] 1 Ch. 200.

(*u*) *Dobson's Case* (1866), 1 Ch. 231. See also *Buchan's Case* (1879), 4 A. C. 549, where the liability was unlimited.

(*x*) *Hardoon* v. *Belilios*, [1901] A. C. 118.

(*y*) C. A. 1908, s. 123. See *post*, p. 469.

(*z*) *Grissell's Case* (1866), 1 Ch. 528; *Black & Co.'s Case* (1872), 8 Ch. 254; *Whitehouse & Co.'s Case* (1878), 9 C. D. 595.

(*a*) C. A. 1908, s. 165.

(*b*) *Ibid.*

becomes a bankrupt a debt due from the company to him may be set off against calls (*c*).

The liability of a shareholder to make payments in respect of shares issued before the 1st January, 1901, was a liability to pay in cash unless the mode of payment had been otherwise determined by a contract duly filed with the registrar of joint stock companies before the issue of the shares (*d*). As shares subscribed for by a subscriber to the memorandum of association are deemed to be issued at the time of the registration of the company such shares could only be paid for in cash (*e*). As the Companies Act, 1900, not only repealed sect. 25 of the Act of 1867, but also prohibited any proceedings being taken under that section (*f*), it is competent for the company to agree with any shareholder to accept payment of money remaining uncalled upon his shares in money's worth. Unless the regulations of the company otherwise provide, there is no immediate liability to pay for the shares, but only to pay in pursuance of calls duly made in accordance with the articles of association or by the liquidator in a winding-up (*g*). The liability of a member of a company formed under the Companies Acts can only be enforced by the directors of the company or by the liquidator in a winding-up. The creditors of a company incorporated by special Act of Parliament can, however, in certain cases, directly enforce payment by any shareholder of moneys remaining unpaid on his shares. If any execution has been issued against the property or effects of the company, and there is not sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent to which their shares in the capital of the company are not then paid up, but so that no such execution can issue against any shareholder, except upon an order of the Court in which the action or other proceeding shall have been brought or instituted, made upon motion in open Court after sufficient notice in writing to the persons sought to be charged. If by means of any such execution any shareholder has paid any sum of money beyond the amount then due from him in respect of calls, he is forthwith to be reimbursed such additional sum by the directors out of the funds of the company (*h*), but in such a proceeding a shareholder cannot set off against the amount of calls money due to him from the company (*i*). The members liable are those who are members of the company at the time of the sheriff's return of *nulla bona* (*k*).

(*c*) *Re Duckworth* (1867), 2 Ch. 578; *Ex parte Strang* (1870), 5 Ch. 492.

(*d*) C. A. 1867, s. 25. See Chap. XIV.

(*e*) *Dalton Time Lock Co.* v. *Dalton* (1892), 66 L. T. 704.

(*f*) C. A. 1900, s. 33.

(*g*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

(*h*) Companies Clauses Act, 1845, ss. 36, 37; R. S. C. Order 42, r. 23.

(*i*) *Wyatt* v. *Darenth Valley Rail. Co.* (1858), 2 C. B. N. S. 114.

(*k*) *Nixon* v. *Green* (1856), 11 Ex. 550.

CHAPTER XIV.

PAYMENT FOR SHARES.

THE word "capital," as applied to a company, has three distinct meanings, viz. nominal capital, issued capital, and paid-up capital. Shares may be issued upon the terms that no more than a certain percentage of their nominal value shall be called up; and in that case, except in the winding-up of the company (*a*), or (if the company is incorporated by special Act) under sect. 36 of the Companies Clauses Act, 1845, the shareholders cannot be compelled to pay more than the stipulated sum per share. A limited company governed by the Companies Acts may by special resolution determine that any portion of its share capital not already called up shall be incapable of being called up, except in the event, and for the purposes of the company being wound up, and thereupon such portion of capital becomes incapable of being called up except in such event and for such purposes (*b*), or of being mortgaged or charged (*c*); but a declaration to that effect contained in the company's articles of association is not sufficient, and the article containing the declaration may, before the special resolution is passed, be repealed (*d*). In other cases where shares are issued on which only a part of their nominal value is paid, the holders of such shares are, while the company is a going concern, as well as in the winding-up proceedings, liable to pay the balance unpaid upon their shares. It is important, therefore, to determine what constitutes payment. Is it a good payment to pay a part of the face value of a share as the consideration for having it allotted as a fully paid share? Must the nominal amount of a share be paid in cash, or can it be paid in money's worth? The rules of law applicable to the solution of these questions are as follows:—

(*a*) *Cordova Union Gold Co.*, [1891] 2 Ch. 580.

(*b*) C. A. 1908, s. 59.

(*c*) *Bartlett* v. *Mayfair Property Co.*, [1898] 2 Ch. 28.

(*d*) *Malleson* v. *National Insurance Corporation*, [1894] 1 Ch. 200.

1. The shares or stock of a company limited by shares incorporated by special Act of Parliament can be issued at a discount and for a consideration other than a cash payment, except, *semble*, original shares which, by such Act, are to be offered for subscription (*e*).

Under the Companies Clauses Act, 1863, sect. 21, as amended by the Companies Clauses Act, 1869, sects. 5 and 6, a company may issue at a discount any of its new shares or stock or any undisposed of original capital authorized to be raised before the 2nd August, 1869.

And original shares and stock can be issued at a discount as fully paid and for other than a cash consideration (*e*).

2. The shares of a company limited by shares governed by the Companies Acts cannot be issued at a discount, nor can any commission be paid on such issue, except under sect. 89 of the Companies Act, 1908 (*f*).
3. Any share of a company limited by shares governed by the Companies Acts may be paid for in cash or by agreement with the company in money's worth (*g*), except shares forming part of the "minimum subscription," which must be paid for in cash (*h*).

Under sect. 25 of the Companies Act, 1867, every share of a company governed by the Companies Acts was issued and held subject to the payment of the whole nominal amount thereof in cash unless otherwise determined by a contract duly made in writing and filed with the registrar at or before the issue of such share. This section was repealed by sect. 33 of the Companies Act, 1900, which also provided that no proceedings could be taken under sect. 25 after the 31st January, 1900.

The object of sect. 25 of the Companies Act, 1867, was to enable any person to ascertain (1) how much of the capital of a company had been

(*e*) *Statham* v. *Brighton Marine Palace Co.*, [1899] 1 Ch. 199; *Webb* v. *Shropshire Rail. Co.*, [1893] 3 Ch. 307.

(*f*) See *ante*, p. 41.

(*g*) C. A. 1900, s. 33; *Drummond's Case* (1869), 4 Ch. 772; *Pell's Case* (1869), 5 Ch. 11; *Baglan Hall Colliery Co.* (1870), 5 Ch. 346; *Jones's Case* (1870), 6 Ch. 48; *Maynard's Case* (1873), 9 Ch. 60; *Mosely* v. *Koffyfontein Mines*, [1904], 2 Ch. 108. Per Vaughan Williams, L. J. 114. Proving in bankruptcy is not payment: *West Coast Gold Fields*, [1905] (*Rowe's Trustee's Claim*), 1 Ch. 597.

(*h*) C. A. 1908, s. 85. See *ante*, p. 146.

issued otherwise than for a cash payment; and (2) for what consideration it was issued (*k*). The same end is now obtained by requiring any company limited by shares to file with the registrar within one month after allotting shares in whole or in part for a consideration other than cash certain contracts and a return (*l*). The decisions under sect. 25 are still useful as showing what is treated as being a cash payment and the nature of the contracts which ought to be filed and are only cited for that purpose. Although sect. 25 has been repealed shares must still be paid up in money in the absence of a valid agreement for payment in money's worth, and proof in bankruptcy is not payment in cash unless followed by dividend and then only to the extent of the dividend paid (*m*). A payment must, in order to be a cash payment, be such as would, under the system of pleading formerly in use, have supported a plea of payment, and not merely a plea of accord and satisfaction (*n*); the following rule states what is sufficient for that purpose:—

(1) An agreement between a company and a holder of its shares to credit as paid thereon the amount of a liability then owing and payable in cash by the company to him in satisfaction of such liability, and in payment of an equal amount due on such shares (*o*), is equivalent to a payment in cash.

The following are examples of agreements between the company and the shareholder which have been held to be equivalent to payments in cash:—to credit a shareholder in respect of his shares with the amount then payable to him for property sold by him to the company (*p*); to credit a shareholder in respect of his shares with the amount of a judgment debt against the company (*q*); in consideration of a director giving up certain rights against the company, to pay him a certain sum of money and to credit him with the same in respect of his shares (*r*); to accept paid-up shares in payment for sums due to a director for remuneration (*s*); to set off against a call upon shares held by a director a debt then payable to him by the company, although it was then

(*k*) *Kharaskhoma Syndicate*, [1897] 2 Ch. 451; *S. Frost & Co.*, [1899] 2 Ch. 207; *Markham and Darter's Case*, [1899] 2 Ch. 480.

(*l*) C. A. 1908, s. 88. See *ante*, p. 149.

(*m*) *Rowe's Trustee's Claim*, [1908] 1 Ch. 1, 9.

(*n*) *Fothergill's Case* (1873), 8 Ch. 270, per Mellish, L.J., p. 282; *Spargo's Case*, *ibid.* p. 414.

(*o*) *Johannesburg Hotel Co.* (1890), [1891] 1 Ch. 119; *North Sydney Investment Co.* v. *Higgins*, [1899] A. C. 263.

(*p*) *Spargo's Case* (1873), 8 Ch. 407; *Coates' Case* (1873), 17 Eq. 169; *Barrow-in-Furness Land Co.*, (1880), 14 C. D. 400; *North Sydney Investment Co.*, [1899] A. C. 263.

(*q*) *Ferrao's Case* (1874), 9 Ch. 355.

(*r*) *Adamson's Case* (1874), 18 Eq. 670; *Ex parte Bentley* (1879), 12 C. D. 850.

(*s*) *Ex parte Currie* (1862), 32 L. J. Ch. 57; *Arnot's Case* (1887), 36 C. D. at p. 706.

insolvent, it not being proved that the director was aware of the insolvency (*t*); to set off against liability on the shares of a member a present liability of the company to pay cash to him (*u*); to set off an amount due on calls against a debt due from the company (*x*).

(2) An agreement to satisfy a part of the purchase-money, either in cash or in shares at the option of one of the parties, is not equivalent to a payment in cash (*y*).

(3) An agreement between a company and a shareholder to credit as paid up on his shares the amount of a liability owing to him, but not yet payable in cash, or payable otherwise than in cash, in discharge of such liability, is not equivalent to a payment in cash.

The following are examples of the agreements mentioned in Rule (3):—

To set off moneys secured by a debenture not then payable against moneys due on shares (*z*); to accept payment in fully paid shares for property sold or services rendered to the company (*a*); to apply a debt owing by the company but payable by instalments, as the instalments become payable, in the payment of calls not yet made upon the shares of the assignee of the debt (*b*); to set off future debts against future calls (*x*).

It may, however, be safer to file all contracts coming within classes (1) and (2) as well as (3) in order to comply with sect. 88 of the Companies (Consolidation) Act, 1908.

Sect. 88 of the Act of 1908 requires, where shares are allotted as fully or partly paid up otherwise than in cash, the filing of (1) a contract in writing constituting the title of the allottee to the allotment and (2) any contract of sale or for services or other consideration in respect of which the allotment was made.

Sect. 25 of the Companies Act, 1867, required the filing of a contract duly made in writing to issue shares, whereby it was expressly agreed that the whole or some part of the nominal amount of the shares should be paid for otherwise than in cash.

In order to satisfy sect. 25 there had to be a contract, that is, an agreement enforceable by law (*c*). A mere agreement without a valuable consideration was not sufficient. It had to be a contract which showed

(*t*) *Habershon's Case* (1868), 5 Eq. 286.
(*u*) *Re Jones, Lloyd & Co.* (1889), 41 C. D. 159.
(*x*) *Ex parte Bentinck* (No. 1) (1888), 1 Meg. 12.
(*y*) *Barrow's Case* (1880), 14 C. D. 432.
(*z*) *Habershon's Case, supra.*
(*a*) *White's Case* (1879), 12 C. D. 511; *Andress' Case* (1878), 8 C. D. 126; *Pagin and Gill's Case* (1877), 6 C. D. 681; *Gore and Durant's Case* (1866), 2 Eq. 349.
(*b*) *Kent's Case* (1888), 39 C. D. 259.
(*c*) *Smith* v. *Brown*, [1896] A. C. 614, 623.

what shares were to be issued as fully paid up and for what consideration (*e*). It was not sufficient for the filed contract to recite that by a previous agreement (not filed) it had been agreed to allot the shares for the considerations therein mentioned, and merely state in the operative part to whom the shares were to be allotted (*f*), but it was sufficient if the filed agreement, either by recital or otherwise, stated the nature of the consideration (*g*). The filing of a contract giving the company an option to satisfy the purchase-money in fully paid shares or cash did not satisfy the section (*h*), but it was sufficient if the filed contract bound the company to issue the shares, although the number to be issued was left to the option of the other party to the contract (*i*). In *Anderson's Case* (*k*), Thesiger, L.J., said, "under the word 'contract' is intended a contract binding in law, which, of course, imports a consideration, although we may not be able to go into the question of what was the value of the consideration." Even if the word agreement were used, still there would have to be a consideration, otherwise it would fall within the rule under which the issue of shares at a discount is held to be *ultra vires* (*l*). A valuable consideration may consist either in some interest, profit, or benefit accruing to the company, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other party to the contract (*m*). While the contract remains unimpeached the value of the consideration given for the shares will not be inquired into (*n*). The filing of a contract where the shares were allotted to a person nominated by the person entitled to the shares protected such shares, even although it did not provide for allotment to his nominees (*o*); *à fortiori* was this the case where the contract contained such a provision (*p*). Contracts made in the course of the amalgamation or reconstruction of companies, where part of the consideration for the sale is the allotment of shares of the purchasing company credited as paid up wholly or partly to the shareholders or debenture holders of the selling company, are usually entered into between the purchasing company and the selling

(*e*) *Crickmer's Case* (1874), 10 Ch. 614, per James, L.J., at p. 617.

(*f*) *Kharaskhoma Syndicate*, [1897] 2 Ch. 451; *Robert Watson & Co.*, [1899] 2 Ch. 509. Under s. 88 of the Act of 1908 both these contracts would have to be filed.

(*g*) *S. Frost & Co.*, [1899] 2 Ch. 207; dissenting from *Re Maynards*, [1898] 1 Ch. 515; *Markham & Darter's Case*, [1899] 1 Ch. 348.

(*h*) *Coolgardie Consolidated Mines* (1898), 14 T. L. R. 277; *Jackson & Co.*, [1899] 1 Ch. 348.

(*i*) *Elsner and McArthur's Case*, [1895] 2 Ch. 759; *Transvaal Exploring Co.* v. *Albion (Transvaal) Gold Mines*, [1899] 2 Ch. 370.

(*k*) (1877), 7 C. D. 75.

(*l*) *Ante*, p. 41; *Eddystone Marine Insurance Co.*, [1893] 3 Ch. 9; *Ames' Case*, W. N., [1896] 79.

(*m*) *Currie* v. *Misa* (1875), L. R. 10 Ex. 162. Approved *Fleming* v. *Bank of New Zealand*, [1900] A. C. p. 586.

(*n*) *Chapman's Case*, [1895] 1 Ch. 771; *Re Wragg*, [1897] 1 Ch. 796.

(*o*) *Kirby's Case* (1882), 46 L. T. 682.

(*p*) *Carling's Case* (1875), 1 C. D. 124; *Elsner and McArthur's Case*, [1895] 2 Ch. 759.

company and its liquidator. The filing of such a contract satisfied sect. 25 (*q*). As the section required the contract to be in writing, a mere memorandum or note thereof in writing, signed by one of the parties, was not, as under the 4th section of the Statute of Frauds, sufficient (*r*). Thus a contract signed by the company alone and verbally accepted by the other party did not satisfy the section (*r*). Although desirable, it was not necessary for a contract registered under sect. 25 to specify the denoting numbers of the shares which were to be issued as fully paid up; it was sufficient to release the holder of such shares from liability if they could be otherwise connected with the registered contract (*s*). As articles of association do not constitute a contract between the company and its members, except in their capacity of members (*t*), sect. 25 was not satisfied by the registration of articles of association providing that fully paid-up shares should be allotted to shareholders or others in payment for property sold or services rendered to the company (*u*).

While sect. 25 was in force, shares allotted to a subscriber of a memorandum of association in respect of the number of shares for which he had signed such memorandum had to be paid for in cash (*v*).

A *bonâ fide* transferee or allottee for value of shares, the certificate of which stated that they were fully paid up, who had no notice at the time of the transfer or allotment that the shares had not been fully paid, and who relied on the certificate, was not liable as a contributory upon such shares (*x*). This was so although the statement as to the shares being paid was only contained in the secretary's letter accompanying the certificate (*y*), or was made by a certification of a deed of transfer of shares therein described as fully paid (*z*). The burden of proving notice lay upon the liquidator (*a*); and a director who purchased shares from a transferee without notice was held not to be liable, although the director had notice (*b*). Except where the shares had been formerly held by a transferee for value without notice, any transferee who took them as fully paid up, with knowledge that they had not been paid for in cash, was liable as a contributory if no contract had been registered (*c*).

(*q*) *Elsner and McArthur's Case*, *supra*.

(*r*) *New Eberhardt Co., Ex parte Menzies* (1890), 43 C. D. 127, 129.

(*s*) *Ex parte Forde* (1885), 30 C. D. 153; *Kirby's Case* (1882), 46 L. T. 682; *Common Petroleum Engine Co.*, [1895] 2 Ch. 759.

(*t*) *Post*, p. 219.

(*u*) *Pritchard's Case* (1873), 8 Ch. 956; *Crickmer's Case* (1875), 10 Ch. 614.

(*v*) *Dalton Time Lock Co.* v. *Dalton*, (1897), 66 L. T. 704.

(*x*) Cf. *Burkinshaw* v. *Nicolls* (1878), 3 A. C. 1005; and *A. W. Hall & Co.* (1887), 37 C. D. 712 (transferees); *Parbury's Case*, [1896] 1 Ch. 100; and *Bloomenthal's Case*, [1897] A. C. 156 (allottees).

(*y*) *Macdonald, Sons & Co.*, [1894] 1 Ch. 89.

(*z*) *McKay's Case*, [1896] 2 Ch. 757.

(*a*) *Jamieson's Case* (1887), 4 T. L. R. 303; *Waterhouse* v. *Jamieson* (1870), L. R. 2 Sc. A. 29.

(*b*) *Barrow's Case* (1880), 14 C. D. 432; 49 L. J. Ch. 498.

(*c*) *Crickmer's Case* (1875), 10 Ch. 614; *Celluloid Co.* (1888), 39 C. D. 190; *Halifax Sugar Co.*, W. N. (1891), 29.

As many thousands of shares had been issued credited as fully or partly paid up, in the belief that contracts of the kind which was held to be insufficient in the *Kharaskhoma Syndicate Case* (*d*) were sufficient to protect the shares from liability, the Companies Act, 1898, was passed, enabling the company or any person interested in any of its shares which had been issued for a consideration other than cash and credited as fully or partly paid up, to obtain relief where the provisions of sect. 25 of the Companies Act, 1867, had not been complied with.

No relief can be obtained under this Act in cases where a vendor to the company by subscribing the memorandum for shares which subsequently were to be allotted to him as fully paid in part payment of the purchase-money became liable to pay in cash for the shares so subscribed for (*e*). The applicant must show that he has acted with due caution and conscientiousness, and has done nothing to disentitle himself to relief at the cost of innocent persons (*f*). The terms on which relief is granted are in the discretion of the court, and a shareholder may be ordered to pay the company's solicitor and client costs of the application (*g*).

Notwithstanding the repeal of sect. 25 of the Act of 1867, and the fact that no proceedings under it can now be taken (*h*), applications under the Act of 1898 will still be granted in cases of solvent companies, because the company or a liquidator may refuse for the purpose of paying dividends or distributing surplus assets to treat shares as fully paid where they were issued before 1901 for a consideration other than cash without complying with the provisions of the section (*i*). Under the Companies Act, 1908, the omission to duly file the contracts under which shares are allotted as fully or partly paid for a consideration other than cash entails no penalty upon the allottee.

In order that the public and shareholders may know what shares have been so issued, and for what consideration, the Act requires the filing of the contracts or particulars and returns specified in sect. 88, and that the statutory report (*k*), prospectus (*l*), and statements in lieu of prospectus (*m*), should state the number of shares allotted as fully or partly paid up, otherwise than in cash, the amount so paid up and the consideration for the allotment.

The Stamp Act, 1898, s. 17, makes any person whose office it is to register any contract liable to a penalty of 10*l.* if he registers a contract

(*d*) (1897) 2 Ch. 451.

(*e*) *F. W. Jarvis' Case*, [1899] 1 Ch. 193; *Archibald v. Dawney, Ltd.* (1900), 83 L. T. 47; *Ebenezer* v. *Timmins & Sons*, [1902], 1 Ch. 238. See *contra* *Whitehead & Bros., Ltd.* [1900], 1 Ch. 804.

(*f*) *Roxburghe Press*, [1899] 1 Ch. 210.

(*g*) *Stephenson's Case*, [1900] 2 Ch. 412.

(*h*) C. 1900, s. 33.

(*i*) *Brutton & Burney, Ltd.*, [1901] 1 Ch. 637.

(*k*) C. A. 1908, s. 65 (3a).

(*l*) *Ibid.* s. 81 (1e).

(*m*) *Ibid.* s. 82.

not duly stamped; and therefore the Registrar of Joint Stock Companies is justified in refusing to register a contract, if it is, in his opinion, not duly stamped, and a mandamus will not be granted to compel him to do so(*n*). The person presenting it for registration, if there is any question as to the sufficiency of the stamp, should have it adjudicated upon under sect. 11 of that Act.

(*n*) *R.* v. *Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131.

CHAPTER XV.

CALLS AND LIENS ON SHARES.

Calls on Shares.

This chapter deals only with calls made before the commencement of the winding-up of the company; Chapter XXXIV. deals with calls made by liquidators. The power to make calls upon shares while the company is a going concern may be vested either in a general meeting of the company or in the directors. In the former case a single shareholder cannot constitute a meeting (*a*). Unless the power to make calls is expressly reserved to the company in general meeting, such power may be exercised by the directors (*b*). The directors of a company governed by the Companies Acts may on the issue of shares arrange for a difference between the holders of such shares in the amount and time of payment of calls (*c*); but this is rarely done, as it prevents a quotation for such shares being obtained on the Stock Exchange. The regulations of the company determine upon whom the calls are to be made; as a rule they are the shareholders who are on the register at the time the call is made. To prevent the question arising whether the transferor or transferee is liable to pay a call made before but payable after the registration of the transfer, directors are often empowered to refuse to register a transfer of shares, a call upon which has not been paid (*d*).

The estate of a deceased shareholder is liable for the payment of calls upon his shares so long as they remain standing in his name, whether such calls be made before or after his death, and his legal personal representatives are only liable in their representative character (*e*). If there is no legal personal representative, the Court

(*a*) *Sharp* v. *Dawes* (1876), 2 Q. B. D. 26.

(*b*) *Ambergate Rail. Co.* v. *Mitchell* (1849), 6 Ry. C. 235.

(*c*) C. A. 1867, s. 24 (1); *Alexander* v. *Automatic Telephone Co.*, [1899] 2 Ch. 302.

(*d*) Cf. *North American Association* v. *Bentley* (1856), 19 L. J. Q. B. 427.

(*e*) *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263; *Baird's Case* (1870), 5 Ch. 725; *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.

will grant administration to the nominee of the company as a creditor of the estate of the deceased (*f*). If legal personal representatives request that the shares should be transferred into their own names, they become personally liable, even although on the register they may be designated executors (*g*); but the request must be unequivocal (*g*). Unpaid calls made by directors may be enforced by action brought by the liquidator in the name of the company, although he has obtained a balance order for payment thereof (*h*). Calls unpaid at the date of the bankruptcy of a shareholder, and the value of his liability in respect of any future calls, are provable in the bankruptcy (*i*). In the case of shares registered in the joint names of several persons, the survivors or survivor will, unless the regulations of the company otherwise provide, be alone liable for calls. A provision in articles making joint holders jointly and severally liable does not apply to calls made in the winding-up (*k*). When a call is a specialty debt it cannot be barred by any Statute of Limitations until twenty years after it becomes due (*l*).

The following are the principal rules of law applicable to calls on shares made by directors:—

1. A power to make calls can only be exercised by a quorum of directors present at a meeting duly convened, unless it is otherwise provided by the regulations of the company (*m*).

A call made at a board meeting not duly convened is bad (*n*); but where a board meeting duly convened is adjourned, and a call is made at the adjourned meeting, the call is not bad because notice of the adjourned meeting was not given to each director (*o*); and an invalid call may be confirmed by the resolution of a duly convened board meeting at which a quorum is present (*p*). But a call made by a quorum of directors may be bad if the total number of directors is less than the minimum number imperatively prescribed by the regulations of the company (*q*), although

(*f*) *Tomlinson* v. *Gilby* (1885), 54 L. J. Prob. 80.

(*g*) *Buchan's Case* (1879), 4 A. C. 549.

(*h*) *Westmoreland Slate Co.* v. *Feilden*, [1891] 3 Ch. 15.

(*i*) *Hill's Case* (1875), 20 Eq. 597; *Re McMahon*, [1900] 1 Ch. 73.

(*k*) *Kharaskhoma Syndicate* (1897), 66 L. J. Ch. 675, 681.

(*l*) *Cork & Bandon Rail.* v. *Goode* (1853), 13 C. B. 827.

(*m*) As to what is a quorum, see *ante*, pp. 96–99.

(*n*) *Moore* v. *Hammond* (1827), 6 B. & C. 456.

(*o*) *Wills* v. *Murray* (1850), 4 Ex. 843.

(*p*) *Austin's Case* (1871), 24 L. T. 932.

(*q*) *Bottomley's Case* (1880), 16 C. D. 681. See *ante*, p. 100. *British Empire Match Co., Ex parte Ross* (1888), 59 L. T. 291; *Faure Electric, &c., Co.* v. *Phillipart* (1888), 58 L. T. 525.

a director, being one of the quorum, may be estopped from denying the validity of the call (*r*). Where the direction as to the minimum number is not imperative the call will be good (*s*).

The directors must be properly appointed (*t*), unless by statute or by the regulations of the company it is provided that all appointments of directors shall be deemed to be valid, and all acts of such directors shall be valid notwithstanding any defect is subsequently discovered in their appointments or qualifications, and the defect is not discovered until after the call is made (*u*). As to what constitutes a proper appointment, see *ante*, pp. 84 to 89. It is submitted that where the power of making calls is vested in the directors they cannot delegate that power (*x*). In *Southampton Dock Co.* v. *Richards* (*y*), it was held, upon the construction of the company's special Act, that "the court of directors" could exercise the power given to directors to make calls. The regulations of the company may empower directors to delegate any of their powers (*z*); and they can, if so authorized, delegate their power to make calls.

2. Every condition precedent to the making of calls must be performed.

If by the regulations of the company a prescribed period must elapse between the making of calls, a call made before the expiration of such time is invalid, although the interval between the day fixed for payment of such call and the day fixed for payment of the preceding call is greater than the prescribed period (*a*). Such an article does not apply to calls made by a liquidator (*b*). Where no more than a certain sum can be called up on each share in a given period, a call within that time in excess of the stated sum is void (*c*). Unless by statute or the regulations of the company the subscription of the whole, or a prescribed part of the capital, is a condition precedent to the exercise of the powers of the directors generally or their power to make calls, a call may be made, although only a part of such capital is subscribed (*d*).

(*r*) *Faure Electric, &c., Co.* v. *Phillipart, supra.*

(*s*) *Thames Haven Co.* v. *Rose* (1842), 4 Man. & G. 552.

(*t*) *Garden Gulley Co.* v. *McLister* (1875), 1 A. C. 39; *Tyne, &c., Association* v. *Brown*, [1896] 1 Com. Cas. 345.

(*u*) *Briton Life, &c., Association* v. *Jones* (1889), 61 L. T. 384; *Dawson* v. *African, &c., Trading Co.*, [1898] 1 Ch. 6.

(*x*) Cf. *Howard's Case* (1866), 1 Ch. 561. The power considered in this case was that of allotting shares; but the same principle would apply to calls.

(*y*) (1840), 1 Man. & Gr. 448.

(*z*) *Ante*, p. 104.

(*a*) *Baillie* v. *Edinburgh Oil Co.* (1835), 3 Cl. & Fin. 639; *Stratford, &c., Co.* v. *Stratton* (1831), 2 B. & Ad. 518.

(*b*) *Cordova Union Gold Co.*, [1891] 2 Ch. 580.

(*c*) *Welland Rail. Co.* v. *Berrie* (1861), 6 H. & N. 416.

(*d*) *Ante*, p. 104; *Ornamental Pyrographic Co.* v. *Brown* (1863), 2 H. & C. 63, overruling dictum in *Howbeach Co.* v. *Teague* (1860), 5 H. & N. 151; *Hawkin's Case* (1856), 2 K. & J. 253. But cf. *Elder* v. *New Zealand Co.* (1874), 30 L. T. 285.

3. The formalities prescribed by the regulations of the company with reference to making and enforcing calls should be strictly observed.

Where any formality prescribed is merely directory, and not imperative, the call will be good, although such formality has not been observed; but as it is difficult to determine what formalities are imperative and what are directory, it is the safer course for directors to act upon the above rule.

Where the articles of association of a company require that notice of a call shall be repeated within a certain time, a notice that heavy liabilities are coming due, and money is required to meet them, is not sufficient to constitute a repetition of the first notice (*e*). But where directors are empowered to make calls with the consent of a general meeting, and a call is made, a shareholder present at the meeting cannot some time afterwards object to the validity of the call because of some trifling irregularity in convening the meeting (*f*).

A resolution for a call may be good, although at the same board meeting resolutions for calls of smaller sums have been defeated (*f*); or although it does not specify the place where, or the person to whom, the payment is to be made, provided that the notice given of the call contains such particulars, and there has been no change in the directorate between the time of passing the resolution and giving notice of the call (*g*). The notice of call should be given or served in the manner prescribed by the regulations of the company. Notice of a call addressed to a deceased member at his registered address, his death not being known to the company, is good (*h*). A resolution for a call must state not only the amount of the call but also the time at which it is to be paid, otherwise a call made in pursuance of such resolution is invalid (*i*).

Under the Companies Clauses Act, 1845, a call may be made payable by instalments (*k*). The regulations of a company may authorize a resolution of directors that certain calls shall be made on a future day (*l*). Where the regulations of the company provide that no call shall exceed 10 per cent., and one month at least shall intervene between the calls, directors cannot on the same day make two several calls of 10 per cent.,

(*e*) *Chubwa Tea Co.* v. *Barry* (1867), 15 L. T. 449.

(*f*) *British Sugar Co.* (1857), 3 K. & J. 408, 417.

(*g*) *Sheffield and Manchester Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574. See also *Great North of England Rail. Co.* v. *Biddulph* (1840), 7 M. & W. 243.

(*h*) *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.

(*i*) *Re Cawley & Co.* (1889), 42 C. D. 209.

(*k*) *N. W. Rail. Co.* v. *McMichael* (1851), 6 Ex. 273; *Birkenhead and Cheshire Rail. Co.* v. *Webster* (1851), 6 Ex. 277; *Ambergate Rail. Co.* v. *Norcliffe* (1851), 6 Ex. 629.

(*l*) *Sheffield and Manchester Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574.

one of which is to be paid at an interval of more than a month after the other (*m*). A demand for payment of an instalment due upon a share in accordance with the terms of allotment is not a call, and need not comply with the formalities required with respect to giving notice of a call (*n*). A call lawfully made cannot be set aside by the Court upon the ground that the proceeds of the call have been misapplied by the directors (*o*).

4. In exercising or abstaining from exercising a power of making calls, or accepting payment in advance of calls, directors must do so for the benefit of the company.

Directors ought not to postpone making a call already agreed upon in order to permit one of their number to transfer his shares with the view of escaping liability thereon (*p*); but a director may legally, before a call is made, transfer his shares out and out to escape liability (*q*). Directors may pay the amount uncalled upon their shares, and apply such amount in payment of a debt of the company in the ordinary course of business, even although it is done to relieve them of their liability as the guarantors of such debt (*r*); but they cannot pay in advance of calls upon their own shares for the purpose of applying the amount so paid in payment of their remuneration, although empowered to receive payment in advance of calls (*s*). Directors, with power to accept payment in advance of calls, authorized their solicitor, who was a shareholder, to pay out of his own moneys the claims of three pressing creditors, which he did, taking from the directors a receipt for the amount in pre-payment of calls, and it was held, that such payment was valid and *pro tanto* discharged the liability of the solicitor on his shares, and was not a fraudulent preference, although at the time of the payment the company was admittedly insolvent, and shortly after a winding-up petition was presented (*t*). But when directors within three months of the liquidation of the company, by exchanging cheques with the company, paid calls owing by them out of directors' fees owing to them, such payment was held to be a fraudulent preference (*u*). Directors cannot make a call upon some shares and not upon others of the same class, even although the latter are held by trustees for the company (*x*).

(*m*) *Baillie* v. *Edinburgh Oil Co.* (1835), 3 Cl. & Fin. 639.

(*n*) *Croskey* v. *Bank of Wales* (1863), 4 Giff. 314.

(*o*) *Orr* v. *Glasgow, Airdrie, &c., Rail. Co.* (1860), 8 W. R. 643.

(*p*) *Gilbert's Case* (1870), 5 Ch. 559.

(*q*) *Cawley & Co.* (1889), 42 C. D. 209.

(*r*) *Poole's Case* (1878), 9 C. D. 322.

(*s*) *Sykes' Case* (1872), 13 Eq. 255.

(*t*) *In re Exchange Co., Bamwell's Case* (1881), 50 L. J. Ch. 827.

(*u*) *Washington Diamond Co.*, [1893] 3 Ch. 95.

(*x*) *Preston* v. *Grand Collier Co.* (1840), 11 Sim. 327.

5. The power of making calls is discretionary, and the discretion of the directors in making or abstaining from making calls will not be reviewed by the Court in the absence of bad faith (*y*).

There is, however, another ground upon which the Court would refuse to interfere, viz., that it is a matter of internal management, and comes within the rule laid down in *Foss* v. *Harbottle* (*z*). An agreement by directors to charge the proceeds of a call already determined on and made a few days afterwards, in consideration of further time being given for payment of a debt then due, is not an interference with the discretion which directors are bound to exercise in making calls (*a*).

It was once thought that the creation of a charge by directors upon the uncalled capital of the company, even although authorized by the regulations of the company, was a breach of trust, as making it impossible for them to exercise their discretion in making calls (*b*); but it has since been decided that directors when empowered to mortgage uncalled capital do not commit a breach of trust by exercising that power (*c*).

6. Directors of a company governed by the Companies Acts can accept payment of a call in money or money's worth, except upon shares forming part of the minimum subscription (*d*).

This rule is merely an application of the principle that shares may be paid for in money or money's worth (*d*).

In *Pellatt's Case* (*e*) it seemed to be the opinion of the Court (Turner and Cairns, L.JJ.) that contracts to pay in goods for calls on shares are *ultra vires* of the company, as their effect would be to make the liability to pay calls a simple contract debt, while by the Companies Act it is made a specialty debt. In *Clark's Case* (*f*) this question was mentioned but not decided. In *Black & Co.'s Case* (*g*), Mellish, J., was disposed to think that the contract to set off debts in respect of goods supplied against calls was not *ultra vires*, but that, after all creditors had been paid in full, it

(*y*) *Odessa Tramways Co.* v. *Mendel* (1877), 8 C. D. 235.

(*z*) See *ante*, p. 110. *Bailey* v. *Birkenhead Rail. Co.* (1849), 12 B. 433.

(*a*) *Sankey Coal Co.* (1870), 9 Eq. 721.

(*b*) See remarks of L.JJ. Knight-Bruce and Turner in *Stanley's Case* (1864), 10 L. T. 674.

(*c*) *Phœnix Bessemer Co.* (1875), 44 L. J. Ch. 683; *Howard* v. *Patent Ivory Manufacturing Co.* (1888), 38 C. D. 156; *Pyle Works Co.* (1890), 44 C. D. 534.

(*d*) See *ante*, Chap. XIV.

(*e*) (1867), 2 Ch. 532.

(*f*) (1869), 7 Eq. 550.

(*g*) (1872), 8 Ch. 254.

might be binding as between the particular shareholder and other shareholders. It is submitted that an agreement to take payment in goods of calls on shares in limited companies governed by the Companies Acts is not *ultra vires*, but that the shareholder in the winding-up would be liable to pay in cash the amount then owing upon his shares (*h*). If, however, the creditors are paid in full, he might have some claim for breach of contract against the company. A director who pays, after the commencement of the winding-up, the amount of a promissory note given by him before the winding-up to secure a debt of the company, cannot set off such payment against a call made before the winding-up (*i*). A debt due and owing by the company to a shareholder can be set off against a sum due upon calls while the company is a going concern, but not the amount owing upon a debenture which is not redeemable until a future day (*k*).

7. The interest payable upon calls paid in advance or upon calls in arrear will be such as is prescribed by the regulations of the company.

Interest payable upon sums paid in advance of calls in pursuance of a power in the articles, is payable out of the general assets of the company, and not merely out of profits (*l*). Interest on calls in arrear can be recovered after the shares have been forfeited for non-payment of such calls (*m*). Where the articles do not provide for the payment of interest on calls in arrear, it is submitted that after notice to pay on a fixed day has been given, interest at 5 per cent. per annum will be payable under 3 & 4 Will. 4, c. 42, s. 28, from the date fixed until payment (*n*). Provisions in articles as to interest upon calls do not apply to calls made by the liquidators (*o*).

Liens on Shares.

Unless conferred by agreement or by statute or by the regulations of the company, a company has no lien on a member's shares for debts owing by him to the company (*p*).

(*h*) See C. A. 1908, ss. 123, 163, and 165.

(*i*) *Brasnett's Case* (1884), 32 W. R. 1010.

(*k*) *Habershon's Case* (1868), 5 Eq. 286. See also *Holden's Case* (1869), 8 Eq. 444.

(*l*) *Dale* v. *Martin* (1883), 11 L. R. Ir. (Ch.) 371; approved in *Lock* v. *Queensland Land Co.*, [1896] A. C. 461.

(*m*) *Faure Electric, &c., Co.* v. *Phillipart* (1888), 58 L. T. 525.

(*n*) Cf. *Ex parte Lintott* (1867), 4 Eq. 184; *Barrow's Case* (1868), 3 Ch. 784; *Stocken's Case* (1868), 3 Ch. 412.

(*o*) *Welsh Flannel Co.* (1875), 20 Eq. 360.

(*p*) *Kingstown Yacht Club* (1888), 21 L. R. Ir. 199.

A lien on shares is an equitable charge (*q*), and the debtor can, under sect. 15 of the Conveyancing Act, 1881, require the company, on the debt being paid, to assign such lien to his nominee (*r*). A lien on shares extends to moneys receivable in respect of such shares in the liquidation of the company (*s*). And a lien on the proceeds of the sale of shares is a lien on the shares (*t*). Where a company has a lien for moneys due to the company, it has a lien for a debt due to the company, although the shareholder has given unmatured bills therefor (*u*). If articles of association provide that where shares are held by more persons than one, the company shall have a paramount lien thereon in respect of all moneys owing to the company by any of the holders thereof, alone or jointly with any other persons, the company is entitled to a lien on shares held by trustees in respect of debts due to the company by a firm, of which one of such trustees is a member, paramount to the claims of the beneficiaries (*x*), unless before the debts were incurred the company had notice of the trust (*y*). Where the company has a lien on the shares of a member for any moneys due from him to the company, it has a lien for moneys improperly paid to him as remuneration (*z*). Where, by a company's articles of association, the company has a lien on the shares of a member for all moneys owing by him to the company, a loan to him by the company is authorized by a power given to the company to lend upon security (*a*). But the company is not entitled to a lien for debts due from beneficiaries who are not the registered holders of the shares (*b*), and the company cannot alter its register by substituting their names for those of the trustees as the holders of such shares (*c*). Even where the company has by its articles a paramount lien on every share for all debts due from the shareholders to the company, the company cannot claim priority over a charge given to a third person in respect of moneys which became due from the shareholder to the company after the company had received notice of such charge (*d*). A power to forfeit shares and to refuse to transfer shares unless debts due by the shareholder to the company are paid on demand, does not constitute a charge (*e*). The company's lien is lost if it registers a transfer of the shares or debentures

(*q*) *General Exchange Bank* (1871), 6 Ch. 818.

(*r*) *Everitt* v. *Automatic Weighing Machine Co.*, [1892] 3 Ch. 506.

(*s*) *General Exchange Bank* (1871), 6 Ch. 818.

(*t*) *Deering* v. *Hibernian Banking Co.* (1868), 16 W. R. 578.

(*u*) *London, Birmingham, &c., Banking Co.* (1865), 34 B. 332.

(*x*) *New London Bank v. Brocklebank* (1882), 21 C. D. 302.

(*y*) *Rearden* v. *Provincial Bank*, [1896] Ir. Rep. 1 Ch. 532.

(*z*) *Bodega Co.*, [1904] 1 Ch. 276.

(*a*) *National Bank of Wales*, [1899] 2 Ch. 649.

(*b*) *Re Perkins* (1890), 24 Q. B. D. 613.

(*c*) *Ystalyfera Gas Co.*, W. N. (1887), 30.

(*d*) *Bradford Banking Co.* v. *Briggs* (1886), 12 A. C. 29. *Miles* v. *New Zealand Alford Estate Co.* (1886), 32 C. D. 266, on this point is overruled.

(*e*) *Dunlop* v. *Dunlop* (1882), 21 C. D. 583.

which are subject to such lien (*f*); but a dividend declared after the execution of a transfer, but before registration, can be retained by the company in exercise of its lien (*g*). Where a person is entitled by purchase to certain shares forming part of a larger number on which the company has a lien, the Court may direct registration of the transfer of the shares so purchased if the remaining shares are sufficient to satisfy the lien (*h*). Usually the regulations of a company empower it to enforce a lien on shares by sale or forfeiture. A lien on shares may be discharged by a new arrangement between the company and the shareholder, the terms of which are incompatible with its retention, or which show an intention to waive it (*i*). The Stock Exchange will not grant a quotation of the shares of a company which by its articles has a lien on fully paid shares. A company may alter its articles so as to acquire a lien on shares (*k*), and it is submitted that this may be done although the registered holder has mortgaged his shares and executed an instrument of transfer, provided the company has no notice of such transfer.

(*f*) *Higgs* v. *Northern Assam Tea Co.* (1869), 4 Ex. 387; *Northern Assam Tea Co.* (1870), 10 Eq. 458.

(*g*) *Re McMurdo* (1892), 8 T. L. R. 507.

(*h*) *Gray* v. *Stone* (1893), 69 L. T. 282.

(*i*) *Bank of Africa* v. *Salisbury Gold Co.*, [1892] A. C. 281; *Hunter* v. *Stewart* (1861), 4 De G. F. & J. 168.

(*k*) *Allen* v. *Gold Reefs of W. Africa, Ltd.*, [1900] 1 Ch. 656; *Re Rowe*, [1904] 2 K. B. 489.

CHAPTER XVI.

ALIENATION AND TRANSFER AND TRANSMISSION OF SHARES.

ALL property is, by English law, divided into two classes, real and personal, and, except in one or two cases (*e.g.*, the New River Company), the shares and stock of companies, whether incorporated by special Act of Parliament or charter, or under the Companies Acts or otherwise, are personal property. A provision to that effect is generally inserted in charters, and was also inserted in special Acts of Parliament incorporating companies prior to the passing of the Companies Clauses Act, 1845. By sect. 7 of that Act, shares in companies governed thereby are declared to be personal estate. The Joint Stock Companies Act, 1856, sect. 15, the Companies Act, 1862, sect. 22, and the Companies Act, 1908, sect. 22, also enact that shares or other interests of any members in companies governed by such Acts shall be personal estate, and shall not be of the nature of real estate.

The title to shares may pass from one person to another either by transfer or transmission. Transmission includes devolution by death, bankruptcy, and in any other way than by transfer (*a*). A shareholder may transfer his shares to another person either by way of sale, exchange or gift, or may declare himself to be a trustee of his shares for another person.

When shares are personal estate, a contract for the sale of shares is not within sect. 4 of the Sale of Goods Act, 1893, and may therefore, except in the case of bank shares, be made verbally (*b*). Under the Sale and Purchase of Bank Shares Act (*c*), every contract for the sale of shares or stock of any joint stock banking company is void unless it designates such shares or stock by their distinguishing numbers, at the making of such contract, in the register of such company, or if there are no such distinguishing numbers, then unless such contract sets forth the name of

(*a*) Per Lindley, L.J., *Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. at p. 88.

(*b*) *Humble* v. *Mitchell* (1839), 11 A. & E. 205; *Watson* v. *Spratley* (1854), 10 Ex. 222; *Bowlby* v. *Bell* (1846), 3 C. B. 284; *Bradley* v. *Holdsworth* (1838), 3 M. & W. 422.

(*c*) 30 Vict. c. 29, generally known as Leeman's Act. This Act does not apply to the Bank of England or to the Bank of Ireland.

the registered proprietor of such shares or stock at the time of making such contract. Every person who wilfully inserts in any such contract any false entry of such distinguishing numbers or any name other than that of the person in whose name such shares or stock shall stand, is guilty of a misdemeanour and punishable accordingly; and if in Scotland, is guilty of an offence punishable by fine or imprisonment. It is the custom of stock exchanges to disregard the provisions of this Act and to make the broker who enters into the contract, and who must be a member of the exchange, personally liable upon the contract as principal, although it does not comply with the provisions of the Act, and if he refuses to carry out the contract he may be declared a defaulter and expelled from the exchange. It has been held that the custom of disregarding the statute was unreasonable and illegal, and that the principal who, through his broker, had made a contract for sale of shares which was unenforceable by reason of its being void under the statute, was entitled to recover from the broker the damages which he sustained thereby (*d*). Where, however, the broker carries out the contract and the principal is cognizant of the custom, the broker is entitled to be indemnified by him (*e*); but not when the principal is ignorant of the custom (*f*). Moreover, if a transfer made in pursuance of such a contract is accepted by the broker under an authority given to him by his principal, the transferor of the shares is entitled to be indemnified by such principal against all loss and liability in respect of the shares (*g*).

The right of a shareholder to sell and transfer his shares is frequently restricted by articles of association (*h*), as where there is a lien on the shares, or where shares have been issued to servants or officers of the company or vendors to the company; and in the case of private companies, a right of pre-emption is generally given to the other members of the company. Sometimes articles provide that a member may be compelled to sell his shares in case of his bankruptcy or of his ceasing to be a servant of the company or of his continuance as a member being in the opinion of the board prejudicial to the company. If a director transfers his qualification shares he vacates his office (*i*). A provision in articles that fully paid up shares issued to an officer of the company shall be retained by him and not dealt with for a term of years is for the protection of the company, and does not invalidate a transfer made with the consent of the company (*k*).

(*d*) *Neilson* v. *James* (1882), 9 Q. B. D. 546.

(*e*) *Seymour* v. *Bridge* (1885), 14 Q. B. D. 460.

(*f*) *Perry* v. *Barnet* (1885), 15 Q. B. D. 388.

(*g*) *Loring* v. *Davis* (1886), 32 C. D. 625.

(*h*) Such a restriction is not obnoxious to the rule against perpetuities or to the bankruptcy law: *Borland's Trustees* v. *Steel Bros.*, [1901] 1 Ch. 279.

(*i*) C. A. 1908, s. 73 (2).

(*k*) *London and Westminster Supply Association* v. *Griffiths* (1883), 1 C. & E. 15.

The Court can decree specific performance of a contract to sell shares (*l*), even although the company, pending the litigation, has gone into liquidation (*m*); and also a contract to take a transfer of shares whereon nothing has been paid (*n*).

It is a common practice to lend money upon the security of shares. The security may be given by way of legal mortgage of the shares, in which case a transfer is executed and registered, or by an equitable mortgage of shares, *e.g.* by a deposit of share certificates with or without a blank transfer executed by the borrower. The deposit of a certificate even with such transfer is not a complete protection for the equitable mortgagee. Companies generally refuse to register a transfer of shares unless accompanied by the share certificate, but it is entirely within the discretion of directors whether they should register a transfer without production of the certificate (*o*), and even when that requirement is insisted upon it is possible to obtain a new certificate in the place of a lost or worn out certificate. A fraudulent mortgagor may therefore, after depositing his certificate with the mortgagee, obtain a fresh certificate, and either by a sale or legal mortgage, duly completed by registration of the transfer, defeat the rights of the equitable mortgagee. If the registered holder of shares is only entitled to them as trustee, an equitable mortgage by him without the authority of his beneficiary would be invalid as against the beneficiary (*o*). Again, where by the regulations of a company, shares are subject to a lien for any moneys owing by a shareholder to the company, the mortgagor may incur liabilities to the company after the date of the equitable mortgage which will have priority over the equitable mortgage, unless, before they were incurred, the company had notice of such mortgage (*p*). Then, too, although at the date of the equitable mortgage articles of association do not make shares subject to a lien, the articles may be altered so as to make them so subject (*q*). Partly paid shares might also be forfeited for non-payment of calls without the knowledge of the equitable mortgagee. Where by the regulations of the company shares are only transferable by deed, a blank transfer, although executed by the mortgagee, gives no security to the equitable mortgagee, because the filling in of the transferee's name would be a material alteration which would render the instrument void (*r*). Where, however, the regulations of the company do not require

(*l*) *Duncuft* v. *Albrecht* (1841), 12 Sim. 189; *Poole* v. *Middleton* (1861), 4 L. T. 631. See *Re Schwabacher* (1908), 98 L. T. 127, where specific performance was not decreed there being an agreement to carry over the shares and pay differences.

(*m*) *Paine* v. *Hutchinson* (1868), 3 Ch. 388.

(*n*) *Cheale* v. *Kenward* (1858), 3 De G. & J. 27.

(*o*) *Shropshire Union Rails. Co.* v. *The Queen* (1875), 7 L. R. H. L. 496.

(*p*) *Bradford Banking Co.* v. *Briggs* (1886), 12 A. C. 29; *Rainford* v. *James Keith, Ltd.*, [1905] 2 Ch. 147.

(*q*) *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656.

(*r*) *Société Générale de Paris* v. *Walker* (1885), 11 A. C. 20; *France* v. *Clark* (1884), 26 C. D. 257; *Powell* v. *London*

transfers to be made by deed, an equitable mortgagee has an implied authority to complete the blank transfer for the purpose of protecting his security, and when completed to procure the same to be registered (*s*); but he cannot delegate such authority to another person to be used for a different purpose (*t*). Where an instrument of transfer of shares has been executed or signed by a mortgagor or vendor there arises an implied duty (based upon the principle that a grantor shall not derogate from his grant) that the transferor shall do nothing to prevent or delay the completion by registration of the transfer. The transferee is entitled to recover damages for the breach of this duty, and the measure of damages is the difference between the value of the shares at the time when, but for the action of the transferor, the registration would have taken place, and the reduced value at the time of actual registration (*u*). The delivery to a broker by executors, of a blank transfer signed by them with the certificates in order that the shares may be registered in their own names, does not estop them from setting up their title against persons who advance money to the broker on a deposit of the certificates, although the advance is made in good faith and without notice of the fraud (*x*). The security given by an equitable mortgage of shares is not prejudiced by the bankruptcy of the mortgagor, although the shares remain registered in his name and no notice of the mortgage has been given to the company, as such shares are *chosen in action* and are excepted from the doctrine of reputed ownership by sect. 44 (3) of the Bankruptcy Act, 1883 (*y*). Although an equitable mortgagee of shares by giving notice to the company can prevent the company subsequently acquiring a lien on its shares having priority over his mortgage (*z*), yet the principle of *Dearle* v. *Hall* (*a*) as to the effect of notice in determining the priority of equitable rights is inapplicable to shares in companies which are only transferable by entry in the company's register of members (*b*); but by giving notice to the company he will prevent a subsequent equitable claimant obtaining priority by lodging a duly executed and stamped transfer with the company, and otherwise complying with all the regulations of the company necessary to obtain registration (*c*). Where there are several claimants to shares registered in the name of a third person, the equitable title

and Provincial Bank, [1893] 2 Ch. 555.

(*s*) *Ex parte Sargent* (1873), 17 Eq. 273; *Davies' Case* (1876), 33 L. T. 834.

(*t*) *France* v. *Clark* (1884), 26 C. D. 257.

(*u*) *Hooper* v. *Herts*, [1906] 1 Ch. 549.

(*x*) *Colonial Bank* v. *Cady and Williams*, [1890] 15 A. C. 267; *Colonial Bank* v. *Hepworth* (1887), 36 C. D. 36; *Fox* v. *Martin* (1895), 64 L. J. Ch. 473; *Hutchinson* v. *Colorado United Mining Co.* (1886), 3 T. L. R. 265.

(*y*) *Colonial Bank* v. *Whinney* (1886), 11 A. C. 426.

(*z*) *Bradford Banking Co.* v. *Briggs* (1886), 12 A. C. 29.

(*a*) (1828), 3 Russ. 1.

(*b*) *Société Générale de Paris* v. *Walker* (1886), 11 A. C. 20.

(*c*) *Roots* v. *Williamson* (1888), 38 C. D. 485.

which is prior in time prevails, unless a claimant under a subsequent equitable title proves that as between him and the company he had acquired an absolute and unconditional right to be registered as the owner of the shares before the company received notice of the other claim (*d*). When a company has notice of conflicting equitable claims to shares it should not register any transfer of such shares until it has been determined by the Court or by agreement between such claimants who is the true owner of the shares.

An equitable claimant to shares or stock of a company could formerly, by obtaining a *distringas*, prevent the same being transferred or dividends being paid thereon without his knowledge. The same end can now be attained by filing an affidavit made by the claimant or his solicitor with a notice addressed to the company specifying certain stock or shares in the company. The affidavit states that the claimant claims to be interested in such shares or stock, and the notice states that it is intended to stop the transfer of the stock or shares and the payment of dividends thereon, or the transfer only. After service on the company of an office copy of the affidavit and a sealed duplicate of the notice the company ought not to register a transfer of the stock or shares or pay a dividend thereon, if the notice so requires, without giving previous notice to the claimant. If, however, the registered holder of the stock or shares requires the company to register the transfer or pay the dividend, then, unless the claimant as plaintiff in an action to which the company and such holder are made defendants obtains an order restraining such transfer or payment, the company cannot, for more than eight days after such request, refuse to register such transfer or make such payment (*e*).

An equitable mortgagee of shares, when the mortgage money is due, can enforce his security by obtaining an order for foreclosure or sale, and may obtain a foreclosure order although the personal action on the debt is barred by the Statute of Limitations (*f*). An equitable mortgage of share created by a deposit of share certificates is enforceable by an order for transfer of shares and foreclosure (*g*). On the other hand, the equitable mortgagor is entitled to redeem the mortgage. As to what is or is not a clog on redemption in a mortgage of shares, see *Carrett* v. *Bradley* (*gg*). The legal mortgagee of shares, when the mortgage is under seal, has a statutory power of sale (*h*), and if made under hand it generally expressly

(*d*) *Peat* v. *Clayton*, [1906] 1 Ch. 659, 664; *Société Générale de Paris* v. *Walker* (1885) 11 A. C. 20; *Moore* v. *North Western Bank*, [1891] 2 Ch. 599; where, however, it was held that there was no such right as the directors had power to reject any transfer: *Ireland* v. *Mant*, [1902] 1 Ch. 659.

(*e*) R. S. C. Ord. XLVI. rr. 3-14; *Re Blaksley's Trusts* (1883), 23 C. D. 549; *Re Prynne* (1885), 53 L. T. 465; *Société Générale de Paris* v. *Tramways Union* (1884), 14 Q. B. D. at p. 453, per Lindley, L.J.

(*f*) *London and Midland Bank* v. *Mitchell*, [1899] 2 Ch. 161.

(*g*) *Harrold* v. *Plenty*, [1901] 2 Ch. 314.

(*gg*) [1901] 2 K. B. 550.

(*h*) Conveyancing Act, 1881, s. 19 (1).

confers a power of sale in case of default, but in the absence of any express power there is an implied power of sale if default has been made in payment of the mortgage debt on the due date or if no date is fixed after a reasonable time for payment has elapsed (*i*).

Until the instrument of transfer is registered the transfer is not complete, and the transferor is the legal owner of the shares comprised in such transfer. In the case of an ordinary contract for sale of shares (*j*), or of a contract made subject to the rules of the London Stock Exchange, the only duty of the seller is to execute a valid transfer, and to do all that is necessary on his part to enable the purchaser to be registered. It is the duty of the purchaser to obtain the registration of the transfer; for unless registration is refused by reason of the transferor having no right to execute the transfer, the transferee must pay the consideration for the transfer, although registration is refused (*k*). It is also to the interest of the transferor to obtain registration of a transfer of shares which are not fully paid, as he is liable to pay all calls made while his name remains on the register (*l*); and the Companies Act, 1908, s. 28, makes registration of a transfer compulsory upon a company on the application of a transferor, in the same manner and subject to the same conditions as if the application had been made by the transferee; but this section does not affect the duty of a transferee to obtain registration (*m*). If neither the transferee nor the transferor obtains registration before the commencement of the winding-up the name of the transferor will be placed on the list of contributories (*n*).

Within two months after the registration of the transfer of any shares in a company the company must complete and have ready for delivery the certificates of the shares, unless the conditions of issue otherwise provide (*o*).

The following are the principal rules with regard to the transfer and transmission of shares not represented by share warrants, and such rules are also applicable to the transfer and transmission of stock:—

1. The transfer of shares in a company governed by the Companies Clauses Act, 1845, must comply with the regulations contained in that Act, except so far

(*i*) *Devergas* v. *Sandemar & Co.*, [1901] 1 Ch. 70.

(*j*) *Skinner* v. *City of London Marine Insurance Corp.* (1885), 14 Q. B. D. 882.

(*k*) *Stray* v. *Russell* (1859), 1 E. & E. 880; *London Founders' Association* v. *Clarke* (1888), 20 Q. B. D. 576.

(*l*) *Sayles* v. *Blane* (1849), 14 Q. B. 205.

(*m*) *Skinner* v. *City of London Assurance Corporation* (1885), 14 Q. B. D. 882.

(*n*) *Ex parte Head* (1866), 15 L. T. 262.

(*o*) C. A. 1908, s. 92. As to penalty in default, see *post*, p. 404.

as they may be varied or excepted by the special Act of the company, and with the provisions of the special Act.

By the general Act the transfer must be by deed duly executed, in which the consideration is truly stated, and the deed must be delivered to the secretary of the company for registration (for which a fee is payable), and is to be kept by him (*p*).

2. Shares in a chartered company are transferable, in accordance with the terms of the charter or the bye-laws made thereunder.
3. Shares in a company governed by the Companies Acts are transferable in manner provided by the articles of the company (*q*).

Therefore, directors of such a company must have regard to the deed of settlement or articles of association before registering transfers. Articles of association usually provide that the transfer must be by an instrument in writing, or by deed, signed or executed by both transferor and transferee; and sometimes set out the form of transfer, or provide that it is to be in the form from time to time approved by the board.

To protect the company against forgery, it is generally provided that a transfer, in order to be registered, must be left at the office of the company for registration, accompanied by the certificate of the shares to be transferred, and such evidence of the title of the transferor as the company may require, and that the transfers are to be retained by the company. The articles usually provide for the payment of a small fee upon registration (without which no fee is chargeable), and as to who may transfer in case of the death, bankruptcy, lunacy, &c., of a member.

4. Before registering an instrument purporting to be a transfer of shares it should be ascertained that it is a valid transfer.

A transfer is void if it is not made by the person who is entitled to transfer the shares comprised therein, or his duly authorized agent; or if it does not comply with such of the company's regulations as are essential to its validity. A transfer is voidable if the execution by the transferor has been procured by fraud or misrepresentation; but as it is

(*p*) Companies Clauses Act, 1845, ss. 14–17.

(*q*) C. A. 1908, s. 22.

good until cancelled either by agreement between the parties or by the direction of the Court, directors cannot refuse to register it.

Irregularities in instruments of transfer do not necessarily make the transfer invalid. A transfer of shares is valid although the denoting numbers are wrongly stated provided that the transferor at the time of the registration of the transfer had at least that number of shares in the company (*r*). So, too, where there had been an invalid sub-division of shares and the transfer purported to transfer certain shares arising from the sub-division, it was held to be a valid transfer of the shares so sub-divided (*s*).

5. The proper transferor of shares is the registered holder of them, or such other person or persons as are by the regulations of the company or by statute empowered to transfer such shares.

In the case of companies governed by the Companies Acts in England and Ireland, no notice of any trust shall be entered on the share register or be receivable by the registrar (*t*). The Companies Clauses Act, 1845, s. 20, is to the same effect. In companies governed by the last-mentioned Act the executors or administrators of a deceased shareholder must be registered as shareholders in respect of his shares before they can transfer them (*u*), and one of them cannot make a valid transfer (*x*). Section 29 of the Companies Act, 1908, authorizes the transfer of shares by the executors or administrators of a deceased shareholder without requiring them to be registered as members.

The registered holder of stock or shares may be incapable of transferring them by reason of infancy, lunacy, or some other disability. Shares or stock of which a lunatic is the registered holder, or one of the registered joint holders, can only be transferred in pursuance of an order made in lunacy, and by the person or persons named in the order (*y*). Shares or stock, of which an infant is the registered holder, or one of the registered joint holders, can only be transferred in pursuance of an order made in the Chancery Division, and by the person or persons named in the order.

A vesting declaration under sect. 12 of the Trustee Act, 1893, does not extend to stock or shares only transferable in books kept by a company.

(*r*) *Ind's Case* (1872), 7 Ch. 485.

(*s*) *Feiling and Rimington's Case* (1867), 2 Ch. 714.

(*t*) C. A. 1908, s. 27; *Société Générale* v. *Walker* (1885), 11 A. C. 20.

(*u*) Sects. 14 and 18; *Barton* v. *North Staffordshire Rail. Co.* (1888), 38 C. D. 458; *Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77.

(*x*) *Barton* v. *North Staffordshire Rail. Co.* (1888), 38 C. D. 458.

(*y*) See Lunacy Act, 1890, ss. 133, 136-139.

Where a person seeks to transfer his shares by means of a power of attorney, the power should be authenticated and be left with the transfer, and if executed in a foreign country, it should be duly legalized before a notary. Such a power is construed according to English law (*z*). Shares or stock, of which a married woman is the registered holder, or one of the registered joint holders, can be transferred without the concurrence of her husband (*a*).

Under the Bankruptcy Act, 1883, s. 50, the trustee in bankruptcy of a bankrupt may transfer any shares or stock belonging to the bankrupt.

The following precautions against forgery should be taken before registering transfers :—

Proper evidence of the title of the transferor should be required. The Companies Clauses Act, 1845, the Companies Clauses (Scotland) Act, 1845, and the Companies Act, 1908, s. 23, respectively make share certificates under the seal of the company *primâ facie* evidence of the title of the shareholder to the shares therein specified. And in *Société Générale de Paris* v. *Walker* (*b*), Lord Selborne said they are the proper (and indeed the only) documentary evidence of title in the possession of a shareholder. Frequently the articles of association of companies governed by the Companies Acts provide that a transfer of shares shall be left for registration accompanied by the certificate of such shares, and provision is made for granting a new certificate on proof of the loss or destruction of the old certificate, or upon a satisfactory indemnity being given, but whether a transfer can or cannot be registered without production of the certificate is a matter entirely within the discretion of the directors (*c*). Where the regulations of a company provide that transfers shall be registered upon presentation of the deed of transfer, accompanied with such evidence as the company may require of the title of the transferor, its directors can refuse to register a transfer if the share certificate is not produced with the transfer (*d*). It was the absence of the share certificate that made the Tramways Union refuse to register the transfer of the shares which were the subject of the action in *Société Générale de Paris* v. *Walker* (*e*). If the transfer is accompanied by the certificate, directors are not bound to register it at once, but are entitled to a reasonable time, so as to enable them to notify to the registered holder of the shares that the transfer has been lodged for registration, and to receive a reply from him (*e*). It was by adopting this precaution that the plaintiff in *Tayler* v. *Great Indian Peninsula Co.* (*f*), was able to prevent the registration of a forged transfer. But

(*z*) *Chatenay* v. *Brazilian Submarine Telegraph Co.* (1890), 6 T. L. R. 408.

(*a*) Married Women's Property Act, 1882, s. 9.

(*b*) (1885), 11 A. C. at p. 29.

(*c*) *Shropshire Union Rails., &c., Co.* v. *The Queen* (1875), L. R. 7 H. L. 496.

(*d*) *East Wheal Mining Co.* (1863), 33 B. 119.

(*e*) (1885), 11 A. C. at p. 29.

(*f*) (1859), 28 L. J. Ch. 285.

even when these precautions are taken a company may be deceived (*g*). Although the registered holder does not reply to a letter advising him that a transfer of his shares has been left for registration, and a forged transfer is therefore registered, he is not estopped from having the share register rectified by the substitution of his name for that of the transferee (*h*).

The Forged Transfers Acts, 1891 and 1892, provide that any company incorporated by or in pursuance of any Act of Parliament or by royal charter may impose such reasonable restrictions on the transfer of its shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as it may consider requisite for guarding against losses arising from forgery. Any such company may, out of its funds, compensate for losses caused by forged transfers or transfers under forged powers of attorney, and may, if it thinks fit, charge a fee at a rate not exceeding one shilling on every 100*l.* transferred to provide for such compensation, and may borrow on the security of its property to meet claims therefor. Where the company pays compensation it is subrogated to the rights of the person compensated against the person liable for the loss.

If a share certificate is issued by a company under its corporate seal stating that the person named in it is the owner of a specified number of shares in the company, and such person relies on such statement, and is thereby damnified, the company is estopped from afterwards denying his title to the shares, and if the company is unable to give him the shares it is liable in damages. *Semble* that the action can be maintained either by the person named in the certificate or a purchaser from him (*i*). A person is damnified if he is put to rest by the certificate so as to lose his remedy against the broker or transferor unless the company proves that such remedy was valueless at the time the certificate was issued (*k*). The measure of damages is the value of the shares at the time of the refusal to register (*l*). The payment by a company to a person of dividends upon its shares does not estop the company from denying his title to the shares (*m*).

Where a forged transfer of stock is registered by the company, the transferee cannot compel the company to acknowledge him as the holder of the stock (*n*), for registration in the name of the transferee only gives

(*g*) *Ex parte Swan* (1859), 7 C. B. N. S. 400; *Swan* v. *North British Australasian Co.* (1862), 7 H. & N. 603; 2 H. & C. 175; and *Johnston* v. *Renton* (1870), 9 Eq. 181, where the forger of the transfer intercepted the letter of advice to the registered shareholder.

(*h*) *Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77.

(*i*) *Balkis Consolidated Co.* v. *Tomkinson*, [1893] A. C. 396.

(*k*) *Dixon* v. *Kennaway & Co.*, [1900] 1 Ch. 833; cf. *Waterhouse* v. *L. & S. W. Rail. Co.* (1880), 41 L. T. 553.

(*l*) *Ottos Mines*, [1893] 1 Ch. 618.

(*m*) *Foster* v. *Tyne Pontoon Co.*, [1893] 63 L. J. Q. B. 50.

(*n*) *Simm* v. *Anglo-American Telegraph Co.* (1879), 5 Q. B. D. 188.

complete effect to a prior valid transfer (*o*); but if the company issues a share certificate to the transferee, and he transfers the shares for value to a person without notice of the forgery, the company is estopped from denying his title and is liable in damages for refusing to register such transfer (*p*), or if, having registered the transfer, the true owner of the shares subsequently procures the rectification of the register by striking out the name of the third person and restoring that of the true owner (*q*). This rule does not hold good if the certificate is forged by the secretary of the company, unless he has authority to warrant its genuineness (*r*). "Certification" of a transfer by a secretary, *i.e.* placing upon it the words "certificate lodged," only amounts to a representation that a document or documents have been lodged with the company, apparently in order, and showing *primâ facie* that the transferor is entitled to the shares, but is not a warranty of the transferor's title or the validity of such document or documents; and, even although no certificate has been lodged, the company is not liable for the representation if made carelessly but without fraud (*s*), or even fraudulently if the fraud is not committed for the benefit of the company (*t*). Certification estops the company from denying that the shares are fully paid when the transfer refers to paid up shares (*u*). "Certification" does not impose upon the company any duty except to the proposed transferee to retain possession of the certificate pending the registration of the transfer (*x*).

Where a person named as attorney of a registered stockholder in a forged power of attorney executes a transfer of his stock and the transfer is registered at such person's request, he is liable to the company for any damage the company may sustain by such registration as for a breach of warranty of authority (*y*); and where the forged transfer is registered on the request of the proposed transferee, he is liable as for breach of an implied contract to indemnify the corporation against any loss it sustains from the transaction (*z*).

Cotton and Lindley, L.JJ., in *Société Générale de Paris* v. *Tramways Union Co.* (*a*), said that, although under the Companies Act, 1862, s. 30 (re-enacted by sect. 22 of the Companies Act, 1908), no notice of a trust is to be taken by a company, yet, if the directors have

(*o*) Per Selborne, L.J., *France* v. *Clark* (1884), 26 C. D. at p. 263.

(*p*) *Shaw* v. *Port Philip Gold Mining Co.* (1884), 13 Q. B. D. 103.

(*q*) *Bahia and San Francisco Rail.* (1868), L. R. 3 Q. B. 585; *Hart* v. *Frontino Gold Mining Co.* (1870), L. R. 5 Ex. 111; *Ottos Mines*, [1893] 1 Ch. 618; *Balkis Consolidated Co.* v. *Tomkinson*, [1893] A. C. 396.

(*r*) *Ruben* v. *Great Fingal Consolidated*, [1906] A. C. 439.

(*s*) *Bishop* v. *Balkis Co.* (1890), 25 Q. B. D. 512.

(*t*) *George Whitechurch, Ltd.* v. *Cavanagh*, [1902] A. C. 117.

(*u*) *McKay's Case*, [1896] 2 Ch. 757.

(*x*) *Longman* v. *Bath Electric Tramways*, [1905] 1 Ch. 646.

(*y*) Cf. *Oliver* v. *Bank of England*, [1902] 1 Ch. 610.

(*z*) Cf. *Sheffield Corporation* v. *Barclay*, [1905] A. C. 392, dissenting from judgment of Lindley, J., in *Simm* v. *Anglo-Telegraph Co.* (1879), 5 Q. B. D. 188.

(*a*) (1881), 14 Q. B. D. 424.

knowledge of circumstances rendering it wrong to accept a transfer, they may be personally liable; but the House of Lords, in affirming the judgment of the Court of Appeal, gave no opinion on this point (*b*). It is therefore advisable, where a board of directors has actual knowledge of an equitable claim by a person to shares as to which a transfer to another person has been lodged for registration, to delay registration for the purpose of giving notice of the proposed transfer to such person, if his claim is, to their knowledge, inconsistent with the proposed transfer (*c*).

In the case of companies (*d*) which are affected by notice of trusts of shares, or of rights to them, in persons other than the registered holder, a transfer by the registered holder should not be registered if notice has been given to the company of trusts or rights which are inconsistent with his power to transfer without the company communicating with the person who has given such notice. Where shares in such a company are transferred to trustees to its knowledge, a note is sometimes placed against their names on the register that they are "trust disponees," and sometimes the share certificate states that the shares are held in trust (*e*).

6. A transfer of shares ought to be accepted by the transferee, and the transferee should be capable of giving his consent to such transfer.

Unless the regulations of the company provide that a transfer not executed or otherwise assented to by the transferee shall be void, such a transfer passes the property in the shares transferred, subject to the right of the transferee, upon discovery of the transfer, to repudiate the shares (*f*). In *Re Taurine Co.* (*g*), where the articles provided that transfers were to be executed by the transferor and transferee, it was held that non-execution by the transferee did not make the transfer void. But it is the duty of directors not to permit the registration of a transfer of shares on which any liability is subsisting, except with the consent of the transferee, and directors should satisfy themselves that such consent has been given. Therefore, directors may properly refuse to register a *bonâ fide* transfer to an infant because he is unable to accept it (*h*), but not a *bonâ fide* transfer to a pauper (*i*), or to a married woman.

(*b*) (1885), 11 A. C. 20.

(*c*) Cf. *Bradford Banking Co.* v. *Briggs* (1886), 12 A. C. 29; *Simpson* v. *Molson's Bank* (1895), A. C. 270, 279.

(*d*) Companies registered in Scotland are affected by notice of trusts, and the C. A. 1908, s. 22, does not apply to them.

(*e*) Cf. *Bank of Montreal* v. *Sweeny* (1887), 12 A. C. 617.

(*f*) *Ex parte Heritage* (1869), 9 Eq. 5. Cf. *Standing* v. *Bowring* (1885), 31 C. D. 282.

(*g*) (1883), 25 C. D. 118.

(*h*) *R.* v. *Midland Counties Rail.* (1862), 15 Ir. Com. L. 514. Cf. *Lumsden's Case* (1869), 4 Ch. 31.

(*i*) *R.* v. *Midland Counties Rail, supra*, 525.

If it is the practice of the company, directors are justified in not registering a transfer where the deed of transfer has not been executed by the transferee, even where such execution is not required by the company's regulations (*k*). Where by the regulations of the company the number of shares to be held by any one shareholder is limited, a transfer to a person already holding the prescribed number by a person with notice of that fact, is invalid; and where a director is the transferor such notice will be implied (*l*).

7. The instrument of transfer should be such as is required by the regulations of the company or by statute, and should be executed in the manner thereby prescribed.

Sometimes the regulations of a company, like Table A, set out the form of transfer to be used, and require transfers to be executed by both the transferor and transferee. Some articles only provide that the form of transfer shall be that for the time being approved by the board; while others direct transfers to be in the form required by the regulations of the Stock Exchange, or in the usual common form. In the latter case, a transfer cannot be refused registration because it omits matters which are found in the usual common form but are immaterial (*m*).

Where the regulations of a company require a transfer by deed, a transfer by any other instrument is invalid. Upon this point it is important to bear in mind that an instrument which has a blank in it of such a nature as to make it inoperative at the time of its being sealed and delivered, cannot become a valid deed by reason only of such blank being subsequently filled in, because any material alteration in a deed avoids it, and registration of the transfer does not validate it (*n*). This principle has been applied where a blank space was left for the purchaser's name (*o*), the consideration and name of transferee (*p*), and the names of the transferees and attesting witnesses (*q*).

Where companies are subject to the regulations as to transfer contained in the Companies Clauses Act, 1845, any transfer not complying with such regulations should be refused registration. This rule has been applied where a duly executed transfer was not delivered to the

(*k*) *Marino's Case* (1867), 2 Ch. 596.

(*l*) *Ex parte Brown* (1854), 19 B. 97.

(*m*) *Letheby & Christopher Ltd.*, [1904] 1 Ch. 815.

(*n*) *Hare* v. *L. & N. Rail. Co.* (1860), 1 Johns. 722.

(*o*) *Hibblewhite* v. *McMorine* (1840), 6 M. & W. 200.

(*p*) *Tayler* v. *Great Indian Peninsula Rail Co.* (1859), 4 De G. & J. 559; *Société Générale de Paris* v. *Walker* (1885), 11 A. C. 20; *France* v. *Clark* (1884), 26 C. D. 257; *Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555.

(*q*) *Swan* v. *North British Australasian Co.* (1863), 2 H. & C. 175.

secretary of the company to be kept (*r*), and where the deed was not sufficiently stamped or dated (*s*).

Where the transfer may be made by an instrument in writing, a transfer in blank to secure a debt may be filled up by the lender after it has been signed by the transferor, provided that it is done for the purpose of completing the lender's security (*t*), but that does not enable the lender to delegate to another person authority to fill it up for a different purpose (*u*). Where the company refuses to register a transfer so completed the Court has jurisdiction under sect. 32 of the Companies Act, 1908, to direct an account of what is due on the mortgage, and in default of the borrower taking the account within a limited time to direct the register to be rectified by substituting the name of the transferee for that of the transferor (*x*). A transfer in writing is valid, although the practice of the company is to require a deed of transfer (*t*). The addition of a seal to a transfer does not render it less effectual than it would have been without a seal (*y*). *Semble*, where the regulations of the company are silent in respect to the mode of transferring shares, the company cannot be compelled to register a transfer of shares made by delivery of share certificates. This would appear to be the law, having regard to the express powers given by the Companies Act, 1908, s. 37, to issue share warrants transferable by delivery (*z*).

8. Any condition precedent to the transfer of shares should be performed.

When the consent of directors to a transfer of shares is required, no valid transfer can be made without such consent being previously given (*a*); but such consent will be inferred from entries made in the books of the company (*b*). So a company constituted under a deed of settlement cannot be compelled to register a transfer where the deed of settlement makes the execution thereof a condition precedent to registration, unless the transferee execute such deed (*c*). If there has been a constant disregard of the regulations as to transfer the Court will infer

(*r*) Sect. 15; *Copeland* v. *North Eastern Rail. Co.* (1856), 6 E. & B. 277.

(*s*) *Nanney* v. *Morgan* (1887), 37 C. D. 346.

(*t*) *Ex parte Sargent* (1873), 17 Eq. 273.

(*u*) *France* v. *Clark* (1884), 26 C. D. 257.

(*x*) *Davis' Case* (1876), 33 L. T. 834.

(*y*) *Ortigosa* v. *Brown* (1878), 38 L. T. 145.

(*z*) Cf. *General Company for the Promotion of Land Credit* (1870), 5 Ch. 363, affirmed under the name of *Reuss* v. *Boss* (1871), L. R. 5 H. L. 176; *McEuen* v. *London Wharves Co.* (1871), 6 Ch. 655.

(*a*) *Nicol's Case* (1859), 3 De G. & J. 387, 433.

(*b*) *Ex parte Bentinck* (1888), 1 Meg. 23; *Walton's Case* (1857), 26 L. J. Ch. 545.

(*c*) *Roots* v. *Williamson* (1888), 38 C. D. 485.

the consent of all the members to dispensing with such regulations (*d*). A transferee cannot dispute his liability on shares registered in his name on the ground that some formality required for transfer has not been complied with (*e*).

9. A discretionary power to register or refuse to register transfers must be exercised reasonably and *bonâ fide*, and when so exercised the Court will not interfere with the exercise by the directors of their discretion.

The form of a discretionary power may be either affirmative, where shares can only be registered with the approval or consent of the directors; or negative, where they may at their discretion refuse to register transfers. A discretionary power of refusing to register transfers must not be arbitrarily exercised (*f*).

Where transfers of shares can only be registered with the approval of directors, they must exercise their powers reasonably (*g*); and the question was raised, but not decided, whether a bank may reasonably refuse to register the nominee of a rival bank with which the shares have been deposited by way of security (*g*). Where the regulations of a company provide that no shareholder shall be at liberty to transfer his shares except in such manner as the directors shall approve, the directors cannot reject a mode of transfer in one case which they have approved in other cases (*h*). Nor can they refuse a transfer because it is made to increase the voting power of the transferor (*i*). If a power to decline to register transfers is exercised *bonâ fide* by directors, their discretion will not be interfered with by the Court (*k*).

When the regulations of a company provide that no person shall be entitled to become the transferee of any share unless approved of by the board, the directors are not bound to disclose their reasons for rejecting a transferee, if the fitness of the transferee has been fairly considered at a board meeting; and until the contrary be proved, the Court presumes that directors have acted reasonably and *bonâ fide* (*l*). If, however, they

(*d*) *Walter's Case* (1850), 3 De G. & S. 149.

(*e*) *Burnes* v. *Pennell* (1849), 2 H. L. C. 497; *Barrow Mutual Ship Insurance Co.* (1885), 54 L. J. Q. B. 377.

(*f*) *Slee* v. *International Bank* (1868), 17 L. T. 425.

(*g*) *Robinson* v. *Chartered Bank* (1865), L. R. 1 Eq. 32.

(*h*) *Poole* v. *Middleton* (1861), 29 B. 646, 651.

(*i*) *Moffatt* v. *Farquhar* (1878), 7 C. D. 591.

(*k*) *Shepherd's Case* (1866), 2 Eq. 564; 2 Ch. 16.

(*l*) *Ex parte Penney* (1872), 8 Ch. 446; *Yuruari Co.* (1889), 6 T. L. R. 119; *South Yorkshire Wagon Co.* (1892), 8 T. L. R. 413; *Coalport China Co.*, [1895] 2 Ch. 404; *Hannan's King Mining Co.* (1898), 14 T. L. R. 314.

do disclose their reasons and they have acted arbitrarily, *e.g.* when the only ground for refusal was that the transferee was the nominee of a person of whom they disapproved, the Court will direct rectification of the register by inserting therein the name of the transferee (*m*). Where directors, acting in good faith, approve of a transferee being registered, they cannot be made responsible for any loss caused to the company by the transferee being unable to pay the amount unpaid upon his shares (*n*).

10. Directors in exercising a discretionary power as to registration of transfers must act for the benefit of the company.

Where the approbation of directors is requisite for the valid transfer of shares, transfers made with their approval, for the purpose of compromising threatened proceedings against the directors, are not *bonâ fide* and are invalid (*o*). *Semble*, where the regulations of a company provide that no person shall become a shareholder without the consent of its directors, they are justified in refusing to consent to a transfer where the price for the proposed transfer is merely nominal, and the company is in an insolvent position (*p*). Under a power to refuse transfers unless the transferee is approved by the board, directors may approve of an out and out transfer for a nominal consideration to the clerk of the transferor, upon his agreeing to guarantee the payment of a call which is just about to be made (*q*). *Semble*, where directors have the power of refusing to register a transfer of shares if the transferee is not approved of by them, it is their duty to refuse to register a transfer which gives a false description of the transferee, and falsely states the consideration (*r*).

11. A power to refuse to register transfers in certain specified cases must be strictly followed.

Under the Companies Clauses Act, 1845, s. 16, no shares can be transferred by a member whilst a call is due on any of his shares. Directors of a company governed by the Companies Acts cannot, in the absence of express power in the articles of association of the company, refuse to register transfers of shares on which calls are in arrear. Where, however, directors are empowered to decline to register any transfer of shares made by a member who is indebted to the company, the directors

(*m*) *Bell Bros.*, [1891] 65 L. T. 245.

(*n*) *Faure Electric Co.* (1888), 40 C. D. 141.

(*o*) *Bennett's Case* (1854), 5 De G. M. & G. 284; *Eyre's Case* (1862), 31 B. 177.

(*p*) *Taft* v. *Harrison* (1853), 10 Ha. 489.

(*q*) *Harrison's Case* (1871), 6 Ch. 286, 292.

(*r*) *Payne's Case* (1869), 9 Eq. 223; *William's Case*, *ibid.* 225.

may refuse to register any transfer made by a shareholder who is indebted to them on any account whatever (*s*), and a shareholder may be indebted either solely or jointly with others (*t*). The word "indebted" is somewhat ambiguous, as, though its primary meaning may correspond to "owing," it may be made by the context to correspond to "owing and due" (*u*). In most articles of association this difficulty is obviated by making the word "indebted" expressly include sums owing but not yet due. If the shareholder is not indebted at the time the transfer is left for registration, registration cannot be refused because subsequently he becomes indebted (*x*). Where directors have power to decline to register transfers of shares by a member indebted to the company, and they register such transfers, the transfers are valid, although the directors may be liable to make good any loss thereby caused to the company. See *Ex parte Littledale* (*y*), where the transferor was the chairman of the company. *Quære* whether this case does not overrule the decision of Vice-Chancellor Stuart in *Anderson's Case* (*z*), that where the transfer was passed by mistake and registered, and then after thirty-four days cancelled, the transfer was void. A power to decline to register any transfer of shares whilst the shareholder making the same is, either alone or jointly with any other person, indebted to the company, is exerciseable, although the company holds unmatured bills of the shareholder in respect of the debt (*a*). Where the articles empower the directors to refuse to register transfers, where the transferor is indebted to the company, or the transferee is an irresponsible person, and provide that any transfer of shares not being approved of by the directors shall be void, a refusal to register a transfer because of the indebtedness to the company of the transferor is not such a disapproval as to make the transfer void (*b*). A power to decline to register any transfer of shares made by a member who is indebted to the company, does not authorize a refusal to register the trustee in bankruptcy of such a member, as transfer is not transmission (*c*). If a company refuses to register a transfer on the ground of the member's indebtedness when in fact no indebtedness exists, only nominal damages are recoverable as a rule by the transferor (*d*).

(*s*) *Ex parte Stringer* (1882), 9 Q. B. D. 436; *Bodega Co.*, [1904] 1 Ch. 276.

(*t*) *Bentham Mills Co.* (1879), 11 C. D. 902.

(*u*) *Stockton Iron Co.* (1875), 2 C. D. 101.

(*x*) *Ex parte Rudolph* (1863), 11 W. R. 806; *Cawley & Co.* (1889), 42 C. D. 209.

(*y*) (1874), 9 Ch. 257.

(*z*) (1869), 8 Eq. 509.

(*a*) *London, Birmingham, &c., Banking Co.* (1865), 34 B. 332; *Bank of Africa* v. *Salisbury Gold Co.*, [1892] A. C. 281.

(*b*) *Ex parte Harrison* (1885), 28 C. D. 363.

(*c*) *Bentham Mills Co.* (1879), 11 C. D. 900. Cf. *Ex parte Harrison* (1885), 28 C. D. 363, where the articles and the facts of the case were different.

(*d*) *Skinner* v. *City of London Insurance Co.* (1885), 14 Q. B. D. 882.

12. Where the power of directors to reject a proposed transfer is conditional, the performance of the condition is essential to the valid exercise of the power.

Thus where the power of directors to reject a proposed transferee is conditional upon their finding a substitute for him, they cannot refuse to register the transfer if they do not provide a substitute (*e*).

13. In the absence of any power to refuse to register transfers of shares, directors cannot, if the company is solvent, decline to register a *bonâ fide* transfer (*f*) duly stamped.

Thus directors cannot refuse to register transfers which have been made to increase the voting power of the transferors (*g*). Nor, unless empowered to do so, can they refuse because the transferor is indebted to the company (*h*). Nor can they refuse to register an out and out transfer of shares made to avoid a prospective call (*i*); or because the company was in difficulties (*k*); nor a transfer made on the eve, but before the commencement, of the winding-up of the company, it not being proved that the company was insolvent when the transfer should have been registered (*l*); but they may do so if the company is insolvent (*m*). Having regard to the Stamp Act, 1891, s. 17, which renders a person whose duty it is to register transfers liable to a penalty of 10*l.* if he registers a transfer not duly stamped, a company is justified in refusing to register such a transfer. This is so, although on the face of the transfer it appears to be duly stamped (*n*).

14. Where a transfer of shares has not been made in good faith, directors may and ought to refuse to register such transfer, even although the regulations

(*e*) Per Mellish, L.J., *Chappell's Case* (1871), 6 Ch. 902.

(*f*) *Weston's Case* (1868), 4 Ch. 20; *Gilbert's Case* (1870), 5 Ch. 559, 565.

(*g*) *Stranton Iron Co.* (1873), 16 Eq. 559; *Pender* v. *Lushington* (1877), 6 C. D. 70; *Moffatt* v. *Farquhar* (1877), 7 C. D. 591.

(*h*) *Pinkett* v. *Wright* (1842), 2 Ha. 120.

(*i*) *Re Cawley & Co.* (1889), 42 C. D. 209.

(*k*) *De Pass's Case* (1859), 4 De G. & J. 544; *Battie's Case* (1870), 39 L. J. Ch. 391. Cf. *Hyam's Case* (1859), 1 De G. F. & J. 75.

(*l*) *Nation's Case* (1886), 3 Eq. 77; *Taurine Co.* (1883), 25 C. D. 118.

(*m*) *City of Glasgow Bank, Mitchell's Case* (1879), 4 A. C. 548; *Mitchell* v. *City of Glasgow Bank*, *ibid.* 624.

(*n*) *Maynard* v. *Consolidated Kent Collieries Corp.*, [1903] 2 K. B. 121.

of the company do not give them power to refuse to register transfers.

Thus where at a board meeting the directors were considering the propriety of making a call, and a shareholder present induced them to postpone it, and then secretly transferred his shares to escape liability, it was held that as the articles prohibited transfers after a call had been made until payment of the call, the directors were justified in declining to register the transfer (*o*).

15. A director of a company may transfer his shares as freely as any other shareholder.

Where transfers of shares in a company require for their validity the approval of its directors, such approval may be given in respect of the transfer of shares in which the directors giving such approval are interested, if the transaction is *bonâ fide* (*p*). Where the company has no power to refuse to register transfers, an out and out transfer by a director of his shares to escape liability thereon is valid (*q*). But where directors, in order to permit one of their number to escape liability by transferring his shares, postponed the making of a call already sanctioned by the board, the transfer was held to be invalid (*r*). In this case the directors had no power to register transfers until calls owing upon the shares to be transferred were paid, except where transfers were lodged for registration before the call was made. It is submitted that directors can transfer their qualification shares unless they are under any statutory obligation to retain them until a certain time, *e.g.* the holding of the first ordinary meeting of the company (*s*), but if directors of companies governed by the Companies Acts transfer any of their qualification shares they vacate their office (*t*).

It has already been mentioned (*u*) that a transmission of shares includes every devolution of title to shares otherwise than by transfer. Wherever, as is nearly always the case (*u*), shares are personal estate, the following rule applies:—

16. Upon the death of a shareholder the title to his shares devolves upon his legal personal representatives.

(*o*) *Ex parte Parker* (1867), 2 Ch. 685.

(*p*) *Bush's Case* (1870), 6 Ch. 246; *Murray* v. *Bush* (1872), L. R. 6 H. L. 37; *Ex parte Jessopp* (1859), 27 L. J. Ch. 757.

(*q*) *Jessopp's Case* (1858), 2 De G. & J. 638; *Libri's Case* (1857), 30 L. T. O. S. 185; *Cawley & Co.* (1889), 42 C. D. 209.

(*r*) *Gilbert's Case* (1870), 5 Ch. 559.

(*s*) *South London Fish Market Co.* (1888), 39 C. D. 324.

(*t*) C. A. 1908, s. 73.

(*u*) *Ante*, p. 180.

The executors or administrators of a deceased shareholder in companies governed by the Companies Clauses Act, 1845, s. 18, cannot transfer his shares or receive dividends thereon, or vote in respect thereof, until they have by a statutory declaration proved their title and have been registered as shareholders, although in their representative capacity they are liable to pay calls (*x*).

The executors or administrators of a deceased shareholder in companies governed by the Companies Acts may, subject to any provisions in the articles of association, without being registered as shareholders transfer his shares (*y*) and receive dividends thereon, but, it is submitted, they cannot vote. They are entitled to be registered without the insertion on the register of any statement that they hold the shares in a representative capacity and to have their names registered in any order they please (*z*). Until with their consent they are registered as members they are only liable for calls in their representative capacity, but after registration they become personally liable (*a*). Upon a person being adjudicated a bankrupt his shares vest in his trustee in bankruptcy (*b*). Where the articles of association provide that any person who has become entitled to a share in consequence of the death of a member may instead of being registered himself elect to have his nominee registered as a transferee of such share, the company has no right to enter in the register against the name of his trustee in bankruptcy or in the certificate representing such share any statement that the company claims a lien on the share for the liability of the bankrupt to the company (*c*).

17. Unless the regulations of a company otherwise provide, the survivors or survivor of persons in whose names shares are registered are alone entitled to and liable upon such shares (*d*).

This rule does not apply where one of the joint holders is a corporation (*e*).

(*x*) *Barton* v. *L. & N. W. Rail. Co.* (1889), 24 Q. B. D. 77, per Lindley, L.J., at p. 88.

(*y*) C. A. 1908, s. 29.

(*z*) *T. H. Saunders & Co.*, [1908] 1 Ch. 415.

(*a*) *Ante*, p. 171.

(*b*) Bankruptcy Act, 1883, ss. 20 (1) and 54.

(*c*) *W. Key & Son, Ltd.*, [1902] 1 Ch. 467.

(*d*) Cf. *Hill's Case* (1875), 20 Eq. 597.

(*e*) *Law Guarantee Society* v. *Bank of England* (1890), 24 Q. B. D. 406. But see now as to Bank of England, 55 & 56 Vict. c. 39, s. 6.

CHAPTER XVII.

FORFEITURE AND SURRENDER OF SHARES.

It is usual, either by statute or the regulations of a company, to empower directors to forfeit the shares of members who have made default in paying calls or other moneys due upon their shares. In the case of a company governed by the Companies Acts, such a power seems to be obnoxious to the rule that, unless sanctioned by the Court, the capital of a company cannot be reduced, but, upon consideration, it will be found that this is not the case. The reasons for arriving at this conclusion were clearly stated by Jessel, M.R., in *Dronfield Silkstone Coal Co.* (*a*): "As to forfeiture, not only are there regulations given in the Articles in Table A, but it is expressly referred to in the Act (*b*). It is plain that forfeiture is not treated as a diminution of capital. The company does not pay anything on a forfeiture of shares, it simply takes them away from a shareholder who cannot pay his calls. The power of forfeiture is the means of enforcing payment if possible. As long as the shares are worth anything the holder does not let them be forfeited, and pays; it is only when they are worth nothing, and he cannot pay, that he allows them to be forfeited." These views of Sir George Jessel were approved by the House of Lords (*c*). It is not, however, every power of forfeiture that is good, for if the ground of forfeiture is contrary to the policy of the law the power is invalid. Thus a power to forfeit the shares of any member of the company who commences litigation against the company is void, although the article containing it also provides that the market value of the forfeited share is to be paid to such shareholder (*d*). It is apprehended that directors of a company have no power to forfeit shares

(*a*) (1880), 17 C. D. 76, 84.
(*b*) See now C. A. 1908, s. 26.
(*c*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409, 417, 429.
(*d*) *Hope* v. *International Financial Society* (1876), 4 C. D. 327.

unless it is expressly given by statute or its regulations, and it has been so decided in the case of a mining adventure conducted on the cost-book system (*e*), and of a company incorporated under a deed of settlement (*f*). A power to forfeit shares is unaffected by an assignment of uncalled capital to trustees for debenture stock holders (*g*).

Various questions with regard to the forfeiture of shares were considered in a number of cases arising in the winding-up of the Agriculturists Cattle Insurance Company. In order to understand the decisions, it is important to note that the company was formed under the Joint Stock Companies Act, 1844. That Act prohibited the purchase of any shares of the company by the directors, or the sale by them of such shares, except shares forfeited for non-payment of calls or instalments payable upon the shares. The creditors of a company registered under that Act were protected by the fact that the liability of the shareholders was unlimited, and by the prohibition against the purchase by the company of its own shares, which prevented the number of shareholders being diminished. In these respects the company resembled a partnership.

Under the deed of settlement of the Agriculturists Cattle Company the directors had power, upon the non-payment of calls upon shares, to forfeit them, and sell the same, or to enforce the payment of such calls by action, and also power to compromise any action or proceedings by the company against shareholders. Great losses occurred in carrying on the business of the company, and there was much division of opinion amongst the shareholders as to whether its business should be carried on or the company wound up. A second call was made in August, 1848, which a number of shareholders refused to pay. A special general meeting was held on the 2nd November, 1848, at which certain terms of arrangement were discussed. The meeting was adjourned to the 13th November, and notice thereof was sent to every shareholder, stating the terms of the proposed arrangement, and that it would be considered at the adjourned meeting. At that meeting an arrangement, known and hereinafter referred to as the Chippenham Arrangement, was agreed to by the meeting, under which any shareholder who before a certain specified day accepted the terms of the arrangement could, upon

(*e*) *Clarke* v. *Hart* (1858), 6 H. L. Cas. 633.

(*f*) *Barton's Case* (1859), 4 De G. & J. 46.

(*g*) *Agency Land and Finance Co. of Australia*: Joyce, J., 12th November, 1903, *Ex rel.* Ed.

paying a certain proportion of the second call by instalments within a month, have his shares forfeited. An order for winding-up the company was made in 1861. In all the cases it is assumed that, although the compromise was *ultra vires* of the directors under the deed of settlement, it was valid, because it had been communicated to and had the consent, express or implied, of each shareholder. The shareholders are referred to in the judgments as partners, and it is assumed that, the transaction being *ultra vires* of the directors, it could only be ratified by *all* the shareholders agreeing thereto. It may be that the basis of this assumption is found in the fact that unless the deed of settlement gave power to effect the arrangement, such power could only be given with the consent of all the parties to the deed; in other words, that, except under a power in the deed, no partner could cease to be a partner unless with the consent of all his co-partners. The distinction between acts *ultra vires* and acts *intra vires* of the company, so important under the Companies Acts, has therefore no application to these cases, for no acquiescence on the part of the shareholders of a company governed by the Companies Acts can make the former class of acts valid (*h*), while a majority of the shareholders can undoubtedly ratify the latter class. The following are the cases in the Agriculturists Cattle Company in which the forfeiture was held to be valid, either under the terms of the Chippenham Arrangement or the power of directors to compromise disputes:—

S. accepted the Chippenham Arrangement, and performed all its conditions with the single exception that he did not at once pay the sum for which he was liable under it, but gave a bill for the amount, which bill was duly honoured (*i*). B. accepted the Chippenham Arrangement, and upon duly paying the sum agreed on his shares were by arrangement transferred to a person in humble circumstances. The transfer was registered, and upon non-payment of any further part of the second call the shares were forfeited (*k*). B. agreed to be a director of the company, and on being informed that he must take shares as a qualification, he, in 1846, applied for and paid a deposit on shares, which were allotted to him, but he never executed the deed of settlement. Having soon afterwards discovered that a qualification was not necessary, he refused to be a shareholder or to pay calls. In 1854 an action against him for calls was compromised by a payment of 50*l.*, and

(*h*) *Ashbury Rail. Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 674, 680.

(*i*) *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249.

(*k*) *Brotherhood's Case* (1862), 31 B. 365; affirmed, 31 L. J. Ch. 861.

by his being released from all liability (*l*). D. authorized an agent of the company to apply for shares upon the faith of a representation which was not made good. The agent applied in D.'s name for the shares, but when D. was requested to pay calls on the shares he denied his liability and claimed a discharge. The directors, upon payment of a certain sum by D., agreed that his shares should be cancelled, and they were cancelled accordingly (*m*).

The following are the cases in which the forfeiture was held to be invalid:—

S. dissented from the Chippenham Arrangement, and obtained a winding-up by the Court. While an action against him for payment of calls was pending, the directors entered into an agreement with him to retire upon conditions differing from those of the Chippenham Arrangement. Upon performance of these conditions, his name was removed, in 1849, from the list of shareholders. The shareholders knew he had retired, but not the terms of retirement. Changes were subsequently made in the business, and dividends paid, in which he did not participate. Held that the transaction, not being within the terms of the Chippenham Arrangement, was *ultra vires* of the directors, and had not been validated by the acquiescence of the shareholders, and that after a lapse of twelve years his name was rightly placed upon the register (*n*). S. did not accept the Chippenham Arrangement, but about a year afterwards (1849), by an agreement with the directors, on payment by him of a certain sum, his shares were forfeited and transferred to the company. In 1861 the forfeiture was held to be invalid, as being *ultra vires* of the directors, and there being no proof of the acquiescence of the shareholders (*o*). The executors of a shareholder who did not accept the Chippenham Arrangement within the time thereby limited, by agreement with the directors in 1849, paid a certain sum in respect of his shares, which were thereupon forfeited. Held to be *ultra vires* of the directors, the terms not being accepted within the time specified (*p*). This decision was followed by the House of Lords in another case, where the arrangement had been made after the time specified had elapsed (*q*).

The following are the principal rules with respect to the forfeiture of shares:—

(*l*) *Belhaven's Case* (1865), 3 De G. J. & S. 41.

(*m*) *Dixon* v. *Evans* (1872), L. R. 5 H. L. 606.

(*n*) *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171.

(*o*) *Stanhope's Case* (1865), L. R. 1 Ch. 161.

(*p*) *Stewart's Case* (1866), 1 Ch. 511.

(*q*) *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263.

Forfeiture.

1. Directors can only exercise a power to forfeit shares for the benefit of the company, and if not so exercised the forfeiture will be void (*r*).

In the following cases a cancellation of shares has been held to be void as not being for the benefit of the company:—where a director of a company proposed to his co-directors that for the benefit of the company each of them should take a certain number of shares to be held in trust for the company, and signed the deed of settlement for 2,000 shares, but the shares were not handed to him, and subsequently, having ceased to be a director, he procured his shares to be cancelled (*s*); where a director and promoter of an insurance company took 500 shares in order that the company might obtain registration, upon an understanding that he was not to pay anything on the shares, and calls were made and the 500 shares were declared to be forfeited, but payment of past calls was not demanded (*t*); where shares were cancelled at the request of the holders thereof, without reference to the question of calls being in arrear, although in fact calls had not been paid, and for years such shares had been treated by the company as cancelled and had been returned to the Registrar of Joint Stock Companies as cancelled (*u*); where directors desiring to benefit a solvent shareholder relieved him of his shares in pursuance of a power to forfeit shares for nonpayment of calls, although there were calls unpaid on his shares, and the shareholder was not a party to the act of the directors (*x*); and where shareholders, alleging they had been induced to take their shares by fraud, refused to pay calls thereon, and subsequently, instead of repudiating the shares, agreed with the directors that the shares should be forfeited, and a resolution was passed by the directors to that effect, but their names were not removed from the list of shareholders (*y*).

The power to forfeit shares being for the benefit of the company, a shareholder in default in paying calls cannot insist upon the directors declaring his shares forfeited, or successfully maintain that they are forfeited, even where the articles provided that in the event of non-payment at the time and place appointed by the notice any share might thereupon be forfeited without any further act to be done by the company (*z*).

(*r*) *Harris* v. *North Devon Rail. Co.* (1855), 20 B. 384.

(*s*) *Richmond and Painter's Cases* (1858), 4 K. & J. 305.

(*t*) *Ex parte Jones* (1858), 27 L. J. Ch. 666.

(*u*) *Finch and Goddard's Cases* (1879), 48 L. J. Ch. 573.

(*x*) *European Arbitration, Manisty's Case* (1873), 17 Sol. J. 745.

(*y*) *Gower's Case* (1868), 6 Eq. 77.

(*z*) *Bigg's Case* (1865), 1 Eq. 309.

A valid forfeiture before the commencement of the winding-up of the company cannot be cancelled by the liquidator, even with the consent of the shareholder (*a*); nor can it be annulled by the company without the consent of the holder of the forfeited share (*b*). In a voluntary winding-up a general meeting of the members of the company may elect directors and sanction the exercise by them of their powers under the articles of forfeiting and selling shares (*c*).

2. Every condition precedent to the exercise of a power of forfeiture must be strictly complied with or the forfeiture will be invalid.

Shares can only be forfeited under the Companies Clauses Act, 1845, ss. 29—35, if (1) the shareholder has made default in paying any call on his shares, with interest, if any, for two calendar months; (2) not less than twenty-one days' previous notice in writing of the intention to forfeit has been given to the shareholder in the manner prescribed by the Act; and (3) the declaration of forfeiture by the directors is confirmed at a general meeting of the company held not less than two calendar months after the date of the notice of intention to forfeit. If so authorized at such meeting or at any subsequent meeting, the directors may sell so many of the member's shares as shall be estimated to produce sufficient to pay the calls owing by him, together with interest and expenses of forfeiture and sale, and any balance is to be paid to the member. If all moneys owing by the member are paid before any forfeited shares are sold, they are to revert to the member. Provision is also made as to the evidence sufficient to protect the purchaser of any share so sold.

The above rule has been applied:—where the regulations contained in Table A scheduled to the Companies Act, 1862, governed the company, and the notice given under Article 17 demanded interest from the date of the call instead of the day fixed for payment thereof (*d*); where under a deed of settlement the company had a lien on the shares of members for debts due to the company, and a power to cancel the shares subject to such lien, by way of satisfaction or liquidation of the debt, and, in forfeiting certain shares under this power, the directors had not given credit for their then market value (*e*); where the call was invalid in respect of which the forfeiture of shares was made (*f*); where notice was not served in the required manner, by leaving it at the shareholder's last or usual

(*a*) *Dawes' Case* (1868), 6 Eq. 232.
(*b*) *Larkworthy's Case*, [1903] 1 Ch. 711.
(*c*) C. A. 1908, s. 186 (3); *Ladd's Case*, [1893] 3 Ch. 450.
(*d*) *Johnson* v. *Lyttle's Iron Agency* (1877), 5 C. D. 687.
(*e*) *Stubbs* v. *Lister* (1841), 1 Y. & C. Ch. 81.
(*f*) *Garden Gully Mining Co.* v. *McLister* (1875), 1 A. C. 39; *Bottomley's Case* (1880), 16 C. D. 681

place of abode (*g*); where notice was not given, as required by the company's articles, that if the member failed to pay the call on or before the day appointed for payment the board might at any time forfeit the shares (*h*); where the forfeiture was made in respect of default in paying a call, as to which a tender of payment was made, and no objection to the tender was taken on the evening of the last day on which such calls were to be paid to avoid forfeiture (*i*); and to a forfeiture made in pursuance of a notice of a meeting to forfeit on Monday the 9th, the 9th being on a Friday (*k*).

Notice given to a bankrupt whose name appears on the register may be sufficient, although the company knows of his bankruptcy (*l*). A forfeiture may be good under the regulations of the company although no notice thereof is given to the member whose shares are forfeited (*m*), or although a notice was given but never in fact seen by him (*n*). Where the power of forfeiture in default of payment of calls is only the alternative to recovering such calls by action, the power of forfeiture cannot be exercised after action is begun (*o*). A tender under protest by a shareholder of the amount due upon his shares in respect of a call is a good tender, although accompanied by a request to the directors to hold the money in trust, and an intimation that he will hold each of them responsible for repayment of the same (*p*).

Where a forfeiture is invalid but the company has re-issued the forfeited shares, and by the articles the remedy of a member for any irregularity in forfeiture is in damages only, the member is entitled in the winding-up of a company to prove for damages under the articles in competition with the other creditors of the company (*q*). The right to relief in respect of an irregular forfeiture may be barred by laches, *e.g.* where the company, being a mining company, there was a delay of ten years in taking proceedings (*r*); and where there was a delay of more than six years (*s*). Where a shareholder has commenced an action claiming rescission of his contract to take shares and rectification of the register, and the company threatens to forfeit the shares for non-payment of moneys due in respect thereof, the proper course to adopt is not to move to restrain forfeiture, but to pay the moneys into Court without prejudice to any question (*t*).

(*g*) *Van Diemen's Land Co.* v. *Cockerell* (1857), 1 C. B. N. S. 732.

(*h*) *New Chile Gold Mining Co.* (1890), 45 C. D. 598.

(*i*) *Clarke's Case* (1873), 27 L. T. 843.

(*k*) *Watson* v. *Eales* (1856), 23 B. 294.

(*l*) *Graham* v. *Van Diemen's Land Co.* (1856), 1 H. & N. 541; 26 L. J. Ex. 73.

(*m*) *Cobre Copper Mining Co.* (1869), 9 Eq. 107.

(*n*) *Sparks* v. *Liverpool Waterworks Co.* (1807), 13 Ves. 428.

(*o*) *Giles* v. *Hutt* (1848), 3 Ex. 18; 18 L. J. Ex. 53.

(*p*) *Sweny* v. *Smith* (1869), 7 Eq. 324.

(*q*) *New Chile Gold Mining Co.* (1890), 45 C. D. 598.

(*r*) *Prendergast* v. *Turton* (1841), 1 Y. & C. Ch. 98.

(*s*) *Rule* v. *Jewell* (1881), 18 C. D. 660.

(*t*) *Ripley* v. *Paper Bottle Co.* (1888), 57 L. J. Ch. 527.

3. A forfeiture may be valid against the company although some formality required by its regulations has not been complied with.

This rule has been applied:—Where there was an entry in the company's books that the shares had been forfeited, but there was no entry of the resolution of the directors declaring the shares forfeited nor any evidence that notice thereof had been sent to the shareholder (*u*); where the shareholder's name had not been removed from the register (*x*); where less than twenty-one days' notice to pay the call, required by the articles of association, had been given (*y*); and where 100*l.* shares had been illegally converted into 20*l.* shares, and, in default of payment of a call on the 20*l.* shares, a member's shares were forfeited in a manner which, if the conversion had been legal, would have been regular (*z*).

4. If so provided by statute, or by the regulations of the company, the forfeiture of shares is no bar to the recovery by action of the moneys owing on such shares at the time of forfeiture.

Under the Companies Clauses Act, 1845, the forfeiture and cancellation of shares, and the issuing of new shares in place of them, do not take away the right of the company to recover arrears of calls due on the forfeited shares (*a*). Where the articles of association of a company provided that any member whose shares had been forfeited should be liable to pay to the company all calls owing on such shares at the time of forfeiture, interest (although, under the articles, payable upon calls) could not be claimed upon forfeited shares (*b*). Forfeited shares may be sold or re-allotted with the amount theretofore paid in respect thereof credited as paid thereon (*c*), but in such a case the company may call up the balance although the purchaser of a share forfeited for non-payment of a call is by the articles to be deemed to be the holder of such share discharged from all calls due prior to such purchase, and it is so stated in the share certificate (*d*); but if the ex-shareholder pays such call subsequently, the holder of the forfeited shares is in the winding-up entitled to credit for

(*u*) *Knight's Case* (1867), 2 Ch. 321.

(*x*) *Lyster's Case* (1867), 4 Eq. 233; *Wollaston's Case* (1859), 4 De G. & J. 437; 28 L. J. Ch. 721; *Moore* v. *Rawlins* (1859), 6 C. B. N. S. 289; *Webster's Case* (1862), 32 L. J. Ch. 135; *Ex parte Collum* (1869), 9 Eq. 236; 39 L. J. Ch. 59.

(*y*) *Austin's Case* (1871), 24 L. T. 932.

(*z*) *King's Case* (1867), 2 Ch. 714, 719, 731.

(*a*) *Inglis* v. *Great Northern Rail. Co.* (1852), 1 Macq. H. L. Cas. 112.

(*b*) *Stocken's Case* (1868), 3 Ch. 412; 37 L. J. Ch. 230.

(*c*) *Ramwell's Case* (1881), 50 L. J. Ch. 827; *Morrison* v. *Trustees, &c., Corporation* (1898), 79 L. T. 605.

(*d*) *New Balkis, &c., Ltd.* v. *Randt Gold Mining Co.*, [1904] A. C. 165.

such payment (*e*). Although shares are duly forfeited by directors, the holders of such shares do not escape liability as past members of the company (*f*). The validity of a forfeiture for non-payment of moneys owing by the shareholder to the company cannot be questioned in bankruptcy upon the application of the company to prove for the moneys so owing, but must be tried in an independent proceeding (*g*).

Under the Bankruptcy Act, 1883, s. 55, the trustee in bankruptcy of a shareholder may disclaim his shares if onerous, and the shares will, from the date of such disclaimer, be deemed to be forfeited, but the company is entitled to prove for the damages it sustains by such disclaimer (*h*).

Surrender of Shares.

By the Companies Clauses Act, 1863 (ss. 9 to 11), companies governed by it are authorized to accept surrenders of shares not fully paid up; but it is expressly provided that "the company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share." Such companies may also re-issue share capital to an amount not exceeding the nominal amount of shares which have been cancelled on forfeiture or surrendered (sect. 11). Table A does not contain an article empowering directors to accept surrender of shares, nor is there any reference to the surrender of shares in the Companies Acts. Sometimes the articles of association of a company empower the directors to accept from any member, on such terms and conditions as shall be agreed, a surrender of his shares. Such a power does not justify directors in accepting a surrender from a shareholder for any valuable consideration paid by the company out of its assets, as such a transaction is in fact a purchase by the company of its own shares (*i*), or in repaying to him the amount paid on his shares (*k*). It is therefore only within proper limits that a surrender or cancellation of shares in a limited company can be valid. In *Trevor* v. *Whitworth*, *supra*, Lord Herschell (*l*) adopts the language of Jessel, M.R., in *Dronfield Silkstone Coal Co.* (*m*): "It is not for

(*e*) *Bandt Gold Mining Co.*, [1904] 2 Ch. 468.

(*f*) *Bridgers and Neill's Case* (1869), 4 Ch. 266; *Creyke's Case* (1869), 5 Ch. 63.

(*g*) *Ex parte Rippon* (1869), 4 Ch. 639.

(*h*) *Ex parte United Ordnance and Engineering Co.*, [1899] 2 Q. B. 579; *Ex parte Hallett*, [1894] 1 Manson, 380.

(*i*) See dicta in *Trevor* v. *Whitworth* (1887), 12 A. C. 418, 438. *Colville's Case* (1879), 48 L. J. Ch. 633, where the company paid 30*l.* upon a surrender of 160 shares of 20*l.* each, on which 10*l.* had been paid, and the surrender was upheld, is therefore virtually overruled.

(*k*) *Lord Wallscourt's Case* (1899), 7 Man's 235; *Walter and Hacking* (1888), 57 L. T. 763.

(*l*) Page 418.

(*m*) (1810), 17 C. D. 76, 85.

me to say what the limits of surrender are which are allowable under the Act, because each case as it arises must be decided upon its own merits." An unlimited company may, however, if so empowered by its memorandum or articles of association, accept a surrender of shares from a member, and *semble* may return to him the capital paid up in respect of his shares (*n*).

The ascertained limits within which a surrender and cancellation of shares of companies limited by shares are valid are as follows:—

5. A surrender of shares is valid when the shares surrendered are liable to forfeiture, provided that the company does not pay any sum of money for or in respect of such surrender (*o*).

6. A surrender of shares is valid when they are surrendered in order to compromise a *bonâ fide* dispute as to whether such shares have been legally issued, or a *bonâ fide* claim for rectification of the register on account of misrepresentation.

In the following cases surrenders have been held valid:—Where the question compromised was as to whether an issue of shares was *ultra vires*, and the directors had no express power to compromise (*p*); where a shareholder repudiated his shares on the ground of misrepresentation, and the directors acquiesced in such repudiation and repaid the deposit (*q*); where an allottee repudiated his shares on the ground of misrepresentation, and the directors agreed to return his deposit, and at the time of the repudiation he was not aware, although they were, of the only misrepresentation which entitled him to repudiate them (*r*); where certain persons, who were named as directors in the prospectus of a company, retired between the application for and the allotment of shares to a person, who applied for shares on the faith of the retiring directors being directors of the company, and who within a reasonable time after discovering the fact repudiated the allotment (*s*); and where persons agreed to accept fully paid shares and shares not fully paid were issued to them (*t*).

(*n*) *Borough, &c., Building Society*, [1893] 2 Ch. 242.

(*o*) *Trevor* v. *Whitworth*, *supra*, pp. 418, 438.

(*p*) *Bath's Case* (1878), 8 C. D. 334.

(*q*) *Ex parte Blake* (1865), 34 B. 639; *Fox's Case* (1868), 5 Eq. 118.

(*r*) *Wright's Case* (1871), 7 Ch. 55.

(*s*) *Anderson's Case* (1881), 17 C. D. 373, V.-C. Malins; approved by Court of Appeal in *Scottish Petroleum Co.* (1882), 23 C. D. 413.

(*t*) *Macdonald, Sons & Co.*, [1894] 1 Ch. 89.

7. A surrender of shares is valid when it does not reduce the paid-up capital of the company or the liability upon its issued shares.

In the following cases surrenders have been held to be valid:—A company under its articles, expressly altered for that purpose, cancelled existing shares and issued new shares in lieu thereof, under an arrangement which varied the liability of the respective shareholders on their shares, diminishing that of some and increasing that of others, but materially increased the amount of uncalled capital on all the shares collectively. Held that the alteration was valid, and that the old shares could be surrendered under the altered articles (*u*); but this decision has been overruled by *Trevor* v. *Whitworth* (*x*). It was decided by Stirling, J., that preference shares could be allotted as fully paid in consideration of the surrender of an equivalent amount of fully paid ordinary shares in the company (*y*); but the same Judge has since stated that this decision was wrong (*z*). A company was formed for the purpose of purchasing several patents and businesses. The vendor to the company agreed to take the consideration for such purchase partly in cash and partly in fully paid-up shares, and also to guarantee to the company a minimum dividend of 15 per cent. on all the paid-up capital of the company. The company agreed that the vendor should be its chairman and managing director for five years. The vendor made up one dividend to 15 per cent., and shortly afterwards the directors (with the sanction of a general meeting) agreed with him that he should be released from his guarantee upon his surrendering his shares, giving up to the company certain patents, and resigning his office of director. The agreement was carried into effect and the shares cancelled (*z*). It is evident that by this transaction the capital of the company, regarded as the fund for meeting the claims of creditors, was not reduced, as the shares surrendered were fully paid up. A company may surrender some of its fully paid shares in another company without receiving any consideration therefor in order to improve the value of those retained (*a*).

The decisions in *Marshall* v. *Glamorgan Iron Co.* (*b*), and in *Snell's Case* (*c*), cannot be considered as binding authorities at the present time (*d*).

(*u*) *Teasdale's Case* (1873), 9 Ch. 54.

(*x*) *Bellerby* v. *Rowland and Marwood's S. S. Co.*, [1902] 2 Ch. 14.

(*y*) *Eichbaum* v. *City of Chicago Grain Elevators*, [1891] 3 Ch. 459.

(*z*) *Sheffield Nickel Co.* v. *Unwin* (1877), 2 Q. B. D. 214.

(*a*) *Thomson* v. *Trustees, &c., Corporation*, [1895] 2 Ch. 454.

(*b*) (1868), 7 Eq. 129.

(*c*) (1869), 5 Ch. 22.

(*d*) See *Trevor* v. *Whitworth and Bellerby* v. *Rowland and Marwood's S. S. Co., supra*; *Hall's Case* (1870), 5 Ch. 707; and *London and Provincial Coal Co.* (1877), 5 C. D. 525.

8. A surrender of shares is valid only when it is for the benefit of the company.

Thus, in *Addison's Case* (*e*), a cancellation of shares under the following circumstances was held void: A person being desirous of lending money to a company accepted an allotment of 100 shares of 5*l.* each, and paid 500*l.* upon them. The acceptance was absolute, but it was part of a transaction by which the company was upon a certain notice to repay to him the 500*l.* and cancel the shares. This was subsequently done, and he executed a transfer of the shares to a nominee of the company. Eight years afterwards the company was wound up, and it was held that the transaction was *ultra vires*, and that he was a contributory.

Where a person is undoubtedly a member of a company the directors have no power to cancel the shares allotted to him so as thereby to relieve him of liability on his shares (*f*).

9. A surrender of shares for valuable consideration paid by the company is valid provided that the reduction of capital resulting therefrom is made in accordance with the statutory provisions relating to reduction of capital (*g*).

(*e*) (1870), 5 Ch. 294.
(*f*) *Adam's Case* (1872), 13 Eq. 474.
(*g*) *British, &c., Finance Corporation* v. *Couper*, [1894] A. C. 399.

CHAPTER XVIII.

RECTIFICATION.

1. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company governed by the Companies Acts, an order for rectification of the register may be obtained (*a*).

This rule has been applied in the following case where the name was wrongly entered.

(1) Where a person has never agreed to be a member of the company, in which case he is entitled to rectification either before or after the commencement of the winding-up of the company, and in the latter case to rectification also of the list of contributories (*b*).

(2) Where a person has agreed to take shares in a company to be formed having certain objects, and the company, when formed, has different objects (*c*). Unless the difference between the objects of the two companies is so great that the Court holds there never was an agreement at all on the ground of fundamental error, as in *Ship's Case*, the right to rectification must be quickly asserted or else it is lost, as the person aggrieved is bound to make himself acquainted with the company's constitution with as little delay as possible after the shares are allotted (*d*).

(3) Where a person is entitled on the ground of misrepresentation to obtain an order for the rescission of his contract to take the shares in question, and takes proceedings for that purpose before the commencement of the winding-up of the company (*e*).

(4) Where an allotment has been made to a person in contravention of sect. 85 of the Companies Act, 1908 (*f*).

(*a*) C. A. 1908, s. 32 (1).

(*b*) *Chapman and Barker's Case* (1867), 3 Eq. 361, 365; approved in *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 350; *Somerville's Case* (1871), 6 Ch. 266; *Wynne's Case* (1873), 8 Ch. 1002; *Arnot's Case* (1887), 36 Ch. D. 702; *Ex parte Stark*, [1897] 1 Ch. 575; *Baillie's Case*, [1898] 1 Ch. 110.

(*c*) *Ship's Case* (1865), 2 De G. J. & S. 544; *Stewart's Case* (1866), 1 Ch. 574.

(*d*) *Oakes* v. *Turquand*, *supra*, 325; *Wilkinson's Case* (1867), 2 Ch. 536; *Peel's Case* (1867), 2 Ch. 674.

(*e*) See *ante*, p. 140.

(*f*) See *ante*, p. 143.

(5) Where a person is an infant at the time he agrees to take an allotment or transfer of the shares, and he takes proceedings by his next friend before attaining his majority (*g*), or in his own name within a reasonable time thereafter, to have the register or list of contributories rectified (*h*).

(6) Where the shares have been issued at a discount, and the holder, within a reasonable time after being registered and before the winding-up of the company, begins proceedings for rectification (*i*), unless he acts or attempts to act as the owner of such shares, *e.g.* by paying calls or receiving dividends thereon or attempting to transfer the shares (*k*).

A trustee of shares cannot have the register rectified by substituting for his name the name of his beneficiary (*l*), but he can have it rectified by striking out his name therefrom if, at the commencement of the winding-up of the company, he is an infant (*m*), or it was agreed that the shares should only be registered in his name with his consent (*n*). A trustee of shares is entitled to be indemnified by his beneficiary (*o*), and if so agreed for valuable consideration between the liquidator and the trustee, the right to indemnity can be enforced by the liquidator in the name of the trustee (*p*).

Rectification can be obtained where in cases of forged transfers the transferee's name has been substituted for that of the true owner (*q*), or where there has been an invalid forfeiture (*r*) or surrender (*s*) of shares; or where the company has made default in registering a transfer, the transferee may obtain rectification (*t*); or, *semble*, where a person has agreed to take shares from the company and the liquidators decline to carry out the contract by registering his name as the holder of the shares (*t*); or

(*g*) *Hamilton* v. *Vaughan, Sherrin, & Co.*, (1894) 3 Ch. 589.

(*h*) *Hart's Case* (1868), 6 Eq. 512; *Wilson's Case* (1869), 8 Eq. 240; *Baker's Case* (1871), 7 Ch. 115. If the infant has had no advantage as the holder of the shares, he can recover or prove for the money paid for them. See *Hamilton* v. *Vaughan, Sherrin & Co., supra.* In the following cases the right was lost by the infant, after attaining twenty-one, acting as a shareholder; *Lumsden's Case* (1869), 4 Ch. 31; and by acquiescence, *Mitchell's Case* (1870), 9 Eq. 363.

(*i*) *Almada and Tirito Co.* (1898), 38 C. D. 415; *Midland Electric Light Co.* (1889), 37 W. R. 471; *Ex parte Higgins* (1889), 60 L. T. 383; *Addlestone Linoleum Co.* (1887), 37 C. D. 191.

(*k*) *Campbell's Case* (1873), 9 Ch. 15; *Ex parte Sandys* (1889), 42 C. D. 98.

(*l*) *Chapman's and Barker's Case* (1867), 3 Eq. 361.

(*m*) *Baker's Case* (1871), 7 Ch. 115.

(*n*) *Gray's Case* (1876), 1 C. D. 664.

(*o*) *James* v. *May* (1873), L. R. 6 H. L. 328; *National Financial Co.* (1868), 3 Ch. 791.

(*p*) *Hemming* v. *Maddick* (No. 2), (1872), 7 Ch. 395.

(*q*) *Johnston* v. *Renton* (1870), 9 Eq. 181; *Bahia & San Francisco Rail. Co.* (1868), L. R. 3 Q. B. 584; *Barton* v. *North Staffordshire Rail. Co.* (1888), 38 C. D. 458.

(*r*) *Bottomley's Case* (1880), 16 C. D. 681.

(*s*) *Bellerby* v. *Rowland and Marwood's S. S. Co.*, [1902] 2 Ch. 14.

(*t*) *Hirsch* v. *Burns* (1897), 77 L. T. 377.

where a transfer is in order, and the directors wrongfully refuse to register the transfer (*u*).

The right of rectification, as between the registered holder of shares and a person claiming to be the registered holder, may be lost by his laches, even although the company has not gone into liquidation. Thus, where the trade assignee of a bankrupt took possession of the certificates of the shares of which the bankrupt was the registered holder, but gave no notice to the company of the bankruptcy for five years, during which period the executrix of the bankrupt transferred the shares to a *bonâ fide* purchaser for value, whose name had been registered, it was held that the right to rectification was barred (*x*).

2. If default is made or unnecessary delay takes place in entering on the register of members of a company governed by the Companies Acts the fact of any person having ceased to be a member, he may obtain an order for rectification of the register (*y*).

Cases of this kind arise out of the non-registration by the company of transfers of shares (*z*). A company cannot make default or be chargeable with unnecessary delay in registering a transfer until it has become bound to register such transfer. Therefore, before there can be default the transfer must be executed or signed in accordance with the company's regulations and lodged for registration (*a*). The company, although it has no power to refuse to register transfers, is entitled to a reasonable time after the transfer is lodged to make inquiries for the purpose of finding out that the transfer is in order; but, after being satisfied on this point, the directors should at their next meeting pass the transfer and order its registration (*b*). The cases with regard to the right of a company to refuse to register transfers are collected in Chapter XVI. The company is not in default if directors, having a discretionary power to refuse registration, have had no opportunity of exercising their discretion (*c*), or if the company, being insolvent at the time when the transfer is lodged, resolve not to register any more transfers (*d*). Rectification of the share register may be obtained after the commencement of

(*u*) See *ante*, Chap. XVI.

(*x*) *London & Provincial Telegraph Co.* (1870), 9 Eq. 653.

(*y*) C. A. 1908, s. 32 (1).

(*z*) *Manchester & Oldham Bank* (1885), 54 L. J. Ch. 926.

(*a*) *Marino's Case* (1867), 2 Ch. 596; *Musgrave and Hart's Case* (1867), 5 Eq. 195.

(*b*) *Otto's Mines*, [1893] 1 Ch. 618, 629; *Shepherd's Case* (1886), 2 Ch. 16. In *Ireland* v. *Hart*, [1902] 1 Ch. 522, 528, this statement of the law was approved by Joyce, J.

(*c*) *Walker's Case* (1866), 2 Eq. 554.

(*d*) *A. Mitchell's Case*, *Rutherford's Case* (1879), 4 A. C. 548; *N. Mitchell* v. *City of Glasgow Bank* (1879), 4 A. C. 624.

the winding-up (*e*) in any of the cases mentioned in Rules 1 and 2 (*f*). Even where default has been made in registering a transfer, rectification cannot be obtained if the proposed transferee is a man of straw, and the directors have power to refuse to register a transfer when the transferee is not a responsible person (*g*).

A transferor is not entitled as against the company to rectification after the commencement of the winding-up where the default is on his part (*h*), even although there has been default on the part of the company, but he is entitled to be indemnified by the transferee (*i*). The company is bound, in a proper case, to register a transfer upon the application of the transferor (*k*).

The application for rectification may be made as respects companies registered in England or Ireland, by motion in the High Court of Justice, or by summons in Chambers, or by application to the judge of the Court exercising the Stannaries Jurisdiction in the case of companies subject thereto, or as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may 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 aggrieved (*l*). It was at one time considered doubtful whether the Courts would exercise the summary jurisdiction given by this section in complicated or difficult cases, and the Court has a discretion to decline to do so, leaving the person aggrieved to claim relief in an action (*m*). It is therefore desirable, where the relief sought is the specific performance of contracts to purchase shares, that an action should be commenced instead of recourse being had to this section. So, too, where a shareholder is seeking to obtain rectification upon the ground of misrepresentation, an action should generally be commenced for that purpose. If relief is sought by motion, it is the practice to direct the motion to be heard with witnesses and to be placed in the witness list.

The application may be made by the person aggrieved, by any member of the company, by the company, or by its liquidator (*n*). On any application the Court may 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

(*e*) *Nation's Case* (1866), 3 Eq. 77; *Fife's Case* (1869), 4 Ch. 768; *Hill's Case* (1866), 4 Ch. 769, n.; *Lowe's Case* (1870), 9 Eq. 589.

(*f*) *Sussex Brick Co.*, [1904] 1 Ch. 598.

(*g*) *Shipman's Case* (1868), 5 Eq. 219.

(*h*) *Head's Case*, *White's Case* (1866), 3 Eq. 84.

(*i*) *Head's Case*, *supra*.

(*k*) *Walker's Case* (1868), 6 Eq. 30; *Gustard's Case* (1869), 8 Eq. 438; *Union Debenture Co.* v. *Fletcher* (1896), 11 T. L. R. 472; C. A. 1908, s. 28.

(*l*) C. A. 1908, s. 32 (3).

(*m*) *Diamond Rock Boring Co.* (1877), 2 Q. B. D. 463.

(*n*) C. A. 1908, s. 32 (1).

members or alleged members *inter se* 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 (*o*).

The ordinary form of order simply directs that the register be rectified, but under special circumstances the order may direct the company to rectify the register within a limited time after service of the order on the company (*p*).

(*o*) *Ibid.* s. 32 (3). (*p*) *L. L. Syndicate, Ltd.*, [1901] W. N. 164.

SHARES.

CANADIAN NOTES.

Shares may be sold for money, money's worth, services or goods. Where shares have been issued as fully paid up for a consideration other than cash, the Courts will not inquire into the value of the consideration unless the agreement under which the shares were issued is impeached for fraud or misrepresentation. *Re Hess Manufacturing Co., Sloan's Case*, 23 S. C. R. 644, and see *Wade* v. *Kendrick*, 37 S. C. R. 32. If, however, the consideration is grossly inadequate the directors may be personally liable for misfeasance and the issue of paid-up shares without consideration is a distinct breach of trust on the part of the directors. *Re Manes Tailoring Co.*, 14 O. L. R. 89. The holders of such shares will be liable unless they are *bonâ fide* holders for value without notice, in which case neither the transferee nor the former holder can be held liable. *Re Wiarton Beet Sugar Co., Freeman's Case*, 12 O. L. R. 149.

Subscription and Allotment.

In a company as defined by the Ontario Companies Act, every member is a shareholder and every shareholder is a member. Persons may become shareholders in various ways—

1. By subscribing to the memorandum of agreement filed on incorporation: the incorporators are shareholders by virtue of sect. 3 of the Act.

2. By applying to the company for shares and receiving notice of allotment after such allotment has been made or something amounting to notice of the acceptance of the application.

3. By taking a transfer of shares from a shareholder and being registered in respect of such shares in the stock register of the company.

4. By registration in succession to a deceased or insolvent shareholder.

5. By estoppel, as by receiving and retaining a certificate of shares and attending meetings or receiving dividends in respect of same: by allowing one's name to appear on the register of shareholders or by acting as a director of the company without the necessary qualifying shares: see *Rose and Machar*, 8 O. R. 417; *Norden Woollen Mills Co.* v. *Heckels*, 17 Man. L. R. 557.

Where an infant held shares in a company and the company was put into liquidation three or four months previous to her coming of age, and where she did not apply to have her name struck off the list of contributories until a year after the winding up had commenced, it was held that she was not liable as a contributory. *Central Bank* v. *Hogg*, 19 O. R. 7.

Subscriber to Memorandum.

The letters patent under sect. 3 of the Ontario Act have the effect of constituting those who petition and any others who have or may thereafter become subscribers to the memorandum a body corporate. Every subscriber to the memorandum or stock book becomes a shareholder on the incorporation of the company, and no allotment or entry on the register of members is necessary: *Patterson* v. *Turner*, 3 O. L. R. 373. *In re London Speaker Printing Co.*, 16 H. R. 508. *In re Haggert Bros. Manufacturing Co., Peaker & Bunion's Case*, 19 A. R. 582. And where a company is being incorporated to take over a growing business it is advisable to have the incorporators subscribe only for a nominal amount of shares. A subscriber cannot, it has been held, repudiate his subscription on the ground of misrepresentation. See as to the statutory provision prior to 1907, *Tilsonberg Agricultural Mfg. Co.* v. *Goderich*, 8 O. R. 565; *Magog Textile & Print Co.* v. *Price*, 14 S. C. R. 664.

A company was incorporated under the Ontario Companies Act. One R. did not sign the memorandum accompanying the petition, but he had signed a memorandum in the same form subscribing for $500 of stock, and alleged that this subscription was not meant to hold him unless the company attempted to buy out a certain rival business, and this not being done he notified the company that he would not take the shares. The company allotted stock to him. Held, that since the memorandum which R. had signed was not the one which accompanied the petition for incorporation, he did not become a shareholder by virtue of the statute and was not liable as

a contributory on the winding up of the company. *In re Nipissing Planing Mills, Ltd.*, 18 O. L. R. 80.

As to the question whether it is possible for a subscriber to a memorandum of association to escape liability for payment in cash, see *In re Rea Deer Mill Co.*, 1 Alta. L. R. 538.

As to vesting shares in a shareholder without allotment or notice under the terms of a special set, see *Union Fire Insurance Co.* v. *Lyman*, 46 U. C. R. 453.

A material alteration after the signature is procured as in the capitalization will operate as a release. *Stevens* v. *London Steel Works*, 15 O. R. 75.

Application for Shares.

If the offer or application be under seal it cannot be revoked. The ordinary rule of proposal and acceptance does not apply to promise made by deed. The promise so made is at once operative without regard to the other party's acceptance. A subscriber cannot get rid of the obligation of his deed by a mere notice of repudiation or notice of withdrawal. *Nelson Coke Co.* v. *Pellatt*, 4 O. L. R. 481; *Re Provincial Grocers*, 10 O. L. R. 705; *Gowganda Mines* v. *Smith*, 16 O. W. R. 709.

Where a subscription for preferred stock has been received, though no preference stock has ever been validly created by the company, and where the allotment is irregular, the holder is not necessarily precluded by a payment on account of the stock and by attendance at meetings from setting up that he is not a shareholder. If he had not notice at the time of the irregularities in the creation of the preference stock or in connection with the allotment, these defences will be open to him. *Higginbotham's Case*, 12 O. L. R. 112.

As to the distinction between an application for shares and what amounts to an offer by the company to sell, which may be accepted by the applicant so that such offer and acceptance closes the bargain, see *McDowell* v. *Macklem*, 4 O. W. R. 482.

Where a companies Act of incorporation provided that no subscription for stock should be legal or valid until 10 per cent. had been paid thereon, it was held that persons who had subscribed but paid nothing were improperly made contributories. *Re Standard Fire Insurance Co., Kelly's Case*, 12 A. R. 486; 12 S. C. R. 644.

A *bonâ fide* subscription for stock in a corporate company by

one person in his own name, but really a trustee and agent for another who had requested such stock to be subscribed for, is valid. *Davidson* v. *Grange*, 4 Gr. 377. See also *Vote* v. *Stadacona Insurance Co.*, 6 S. C. R. 193; *Chisholm's Case*, 7 O. R. 448.

Conditional Application.

If the application for shares is conditional upon the company doing something on its part, the allotment cannot disregard the condition. Where a subscriber for shares stipulates that they are not to be paid for in cash, but in goods, services, etc., this must be regarded as a collateral arrangement and will not prevent him being held liable to pay the shares up in cash in a winding up. *Standard Fire Insurance Co., Copp Clark and Co. Case, Caston's Case*, 7 O. R. 448; see *Freeman's Case*, 12 O. L. R. 149; *McNeill's Case*, 10 O. L. R. 219; *Bank of Hamilton* v. *Johnston*, 7 O. W. R. 111. Where, however, the agreement or subscription is subject to a condition which is not fulfilled, the applicant is released from liability. *Caston's Case, supra.*

And where contemporaneously with a written agreement there is an oral agreement that the written agreement is not to take effect until some other event happens, oral evidence is admissible to prove the contemporaneous agreement. *Ontario Ladies' College* v. *Kendry*, 10 O. L. R. 324.

A stipulation that the applicant was to be a director has been held such a condition. *Turner's Case*, 7 O. R. 488; *Barber's Case*, 7 O. R. 448. An agreement that the applicant was to be solicitor for the company, and that he was to render services for his stock and not pay in cash, was held a collateral agreement as to payment, he having been duly appointed solicitor. *Caston's Case*, 7 O. R. 448; 12 A. R. 486; 12 S. C. R. 644. See also in *Re Victor Wood Works, Limited*, 7 E. L. R. 55; 43 N. S. R. 308. Under the circumstances of this case it was held that the payment of a call did not waive the condition.

Allotment.

The directors of a company cannot delegate to an officer their duties in regard to allotments. *Packenham Pork Packing Co., Galloway's Case*, 12 O. L. R. 100. See *Twin City Oil Co. and Christie*, 18 O. L. R. 324.

Notice of Allotment.

If the shareholder knew of the allotment and assented to it, or through his agent can be taken to have assented to it, formal notice is not necessary. As where the shareholder is present at a board meeting at which the allotment in pursuance of his application is resolved upon. *Standard Bank* v. *Stephens*, 11 O. W. R. 582.

Constructive Allotment.

As to what facts will amount to acceptance of an application, see *Re Provincial Grocers, Calderwood's Case*, 10 O. L. R. 705. In that case passing a draft for part payment, recording the name in the register coupled with a general resolution "allotting all stock now subscribed for," was held not sufficient to constitute the applicant a shareholder. And where a subscriber for a share in a company was debited in the company's stock ledger with one share was placed on the "shareholders' list," and was drawn upon for the first payment of ten per cent. and paid the draft, but there was no formal allotment to him, it was held that what had been done must be taken to have been done by authority of the directors, and to be a mode of allotment "ordained" by them within the meaning of the Companies Act. *Re Provincial Grocers, Hill's Case*, 10 O. L. R. 501. See also *Re Canadian Tin Plate Co.*, 8 O. W. R. 531. *Fischer* v. *Borland*, 8 O. W. R. 579. It should be noted that the provision in the Ontario Act as to the manner in which stock may be allotted, viz.: "as the directors by law or otherwise ordain," is repealed. See sect. 27 (*a*); this would appear to allow a considerable extension of the principle of *Hill's Case*. *Anglo-American Lumber Co.* v. *McLellan*, 14 B. C. R. 93.

In *Galloway's Case*, 12 O. L. R. 100, it was not proved that the applicant actually received notice of any allotment. Furthermore, the secretary assumed to deal with the applications and accept the terms offered without reference to the board of directors, and as there was never any authority to him to act in such a case, it was held that there never was an agreement for shares concluded between Galloway and the company.

Where a subscription had been received and the board of directors passed a resolution that the subscribed stock be called up in full and that the treasurer notify all subscribers of such payment, and this was followed by letter from the treasurer asking payment

of the call, it was held that the resolution and letter constituted a sufficient issue and allotment of the shares. *Nelson Coal & Coke* v. *Pellatt*, 4 O. L. R. 481. See also *Re Henderson Roller Bearing Co.*, 11 O. W. R. 526.

It is doubtful if a mere notice of a call can be regarded as equivalent to a notice of allotment. *Re Canadian Tin Plate Co.*, 8 O. W. R. 531.

Where two provisional directors had not been notified so as to be able to attend directors' meeting, held that there was no meeting and therefore no allotment. *Farmers' Bank* v. *Sunstrum*, 14 O. W. R. 288.

In re Nutter Brewery Co., 1 O. W. N. 400, the allotment was said to have been made at a meeting of the board on the 2nd April, 1907, then consisting of three members. It should consist of five members, and of the three one was not qualified. Held, a valid objection.

Liability on Shares.

Shares may be paid for in money or in money's worth, and if a valid contract be made for the acceptance by the company of property or services of substantial value in payment or part payment of shares, the Courts will not, while the contract stands, inquire into the value of the consideration even at the instance of the liquidator. *Sloan's Case*, 23 S. C. R. 644. *Re North Bay Supply Co.*, 6 O. W. R. 85.

Liability may in most cases be determinated by a valid transfer registered on the books of the company. Thus it has been held that a former holder of bonus shares who, before a winding up, transferred them to persons entitled to hold them as fully paid up, is not liable to be placed on the list of contributories in respect to them; it would also seem, however, that such a shareholder, if a director, commits a breach of trust in being a party to the allotment of the shares as fully paid up, as well as in putting them off on his transferees to the prejudice of the company as fully paid up shares, and such a case is a proper one for an order under sect. 123 of the Dominion Act for contribution by him by way of compensation in respect of such breach of trust. *In re Wiarton Beet Sugar Co., Freeman's Case*, 12 O. L. R. 149.

As to liability on shares held as collateral security, see *Re Perrin Plow Co.*, 11 O. W. R. 186.

It is elementary law that no joint stock company can issue

stock below par unless expressly authorized to do so by the governing statute, as in the case of mining companies. The dominant and cardinal principle is that the shareholder purchases immunity from liability beyond a certain limit on the terms that there shall be a liability up to that limit. See *North-west Electric Co.* v. *Walsh*, 29 S. C. R. 33; *McCracken* v. *McIntyre*, 1 S. C. R. 479.

The fact that a shareholder holds a certificate for stock, which upon its face value states that he is the holder of so much stock paid in full, while evidence of the statement is not conclusive evidence of it apart from the operation of the doctrine of estoppel. The latter doctrine will apply in favour of a purchaser for value from a shareholder, the certificate being marked "paid up," and the purchaser having no notice to the contrary. *The North-west Electric Co.* v. *Walsh*, 29 S. C. R. 33. On the other hand, any person who takes shares of the company, knowing that they have never been issued at all, but come direct from the company's treasury to him, would be liable to pay the shares up in full. *North-west Electric Co.* v. *Walsh*, 29 S. C. R. 33. See also *Re Clinton Thresher Co.*, 15 O. W. R. 645.

The fact that a company's charter is varied by statute does not affect the obligation on the part of a shareholder to complete his payments upon stock. The amending Act is binding on all shareholders whether they assented to the application for it or not. *Canada Car and Manufacturing Co.* v. *Harris*, 24 C. P. 380, and see generally *MacKenzie* v. *Kittridge*, 27 C. P. 674; S. C. R. 368; *Page* v. *Austin*, 30 C. P. 108; *Caston's Case*, 7 O. R. 448.

An original subscriber and provisional director, who had paid only $25 on account, joined with the other provisional directors in passing a resolution at the organization meeting that the shares of stock subscribed for by them should be allotted to them as fully paid up. In 1904 he transferred his shares, receiving therefor $125 more than he had paid. In 1906 the shares were forfeited for non-payment of calls.

Held, in the winding-up proceedings, that the original subscriber was liable as for a breach of trust under sect. 123 of the Winding Up Act in assuming to accept the shares as fully paid up, but the measure of damages was the market value of the shares at the date of allotment and the sum of $125 was all he was liable for. *In re Manes Tailoring*, 18 O. L. R. 572.

In *Stadicona* v. *Hodgson*, 2 P. E. I. R. 480, it was held that the fact that the company reduced the number of shares subscribed for

by the defendant from fifty to twenty-five without his consent released him from his contract to take shares.

Where the defendant originally agreed to subscribe for four shares of $50 each, and informed the secretary that his liability was to be limited to $200, the company tendered him eight shares, and he accepted them, paying $200 therefor. The stock certificate stated that they were fully paid up. Defendant received a dividend on the eight shares. Held, that the defendant having accepted the eight shares and the dividend thereon was liable to be placed on the list of contributories. *Re Niagara Falls H. and S. Co.*, 15 O. W. R. 326.

Holders of stock alleged to be paid up when paid by dividends declared when company was insolvent are liable to be placed on the list of contributories. *Re Northern Constructions Ltd.*, 12 W. L. R. 618.

In *Lindsay* v. *Imperial Steel and Wire Co.*, 21 O. L. R. 375, the company agreed to allot to one B. 50,000 shares of common stock in consideration of the transfer of certain interests. B. was to pay $10 cash to transfer 40,000 shares to a person to be agreed upon so that they might be given as a bonus to purchasers of preferred stock, and the remaining 10,000 shares were to be transferred to the person agreed upon, but not to be delivered until a certain patent should issue. Certain shareholders, suing on behalf of themselves and all other shareholders, brought an action for a declaration that the transfer of the shares to B. was null and void. Held, that if the acts complained of were *intra vires* the corporation the action could not succeed; but that the transaction was a colourable one entered into for the purpose of enabling the company to issue its shares at a discount and was *ultra vires* of the company and that therefore the plaintiffs were entitled to succeed. Held also, that the contract was separable and that the part relating to the block of 10,000 shares should stand.

As to set off by a shareholder in proceedings brought by a creditor of a company, see *Burner* v. *Currie*, 36 U. C. R. 411; *Field* v. *Galloway*, 5 O. R. 502.

Preference Stock.

The shares of companies having a share stock capital are frequently divided into two or more classes, having definite rights attached to them. Sects. 73–77 of the Ontario Companies Act

provide for the creation of preference shares and for the conversion of preference shares into common shares, debenture or debenture stock, and for the conversion of debentures into debenture stock or preference shares, and generally for the conversion of any class of shares or securities into any other class.

While preferred shares are usually created by bye-laws of the company under these sections, advantage may be taken of the provisions of sect. 4, sub-sect. 4, whereby provisions may be inserted in the petition for incorporation, looking to the creation by the letters patent of the preference stock. Where the rights of a class of shareholder are defined in this way in the letters patent their position is somewhat stronger, for rights which attach unconditionally to the particular class of shares by virtue of letters patent cannot be altered or infringed.

The preference ordinarily given is limited to a priority in respect to dividends and in respect to the return of capital in the winding up of the company, but by virtue of sect. 75 of the Ontario Act, preferred stock may confer upon its holders the right to select a stated proportion of the board of directors or to give such other control over the affairs of the company as may be considered expedient.

Where there is any such limitation, it must be fully set out in the stock certificate, failing which the restriction shall be deemed to qualify the rights of preferred shareholders.

A company cannot of course agree to pay interest on its shares irrespective of whether there are profits or not, nor can it guarantee to pay a specific dividend. *Long* v. *Guelph Lumber Co.*, 31 C. P. 129; *Petrie* v. *Guelph Lumber Co.*, 11 S. C. R. 450.

Dividends.

A guarantee of dividends by a company does not constitute the holder of the stock a creditor of the company to the extent of dividends not declared. See *Petrie* v. *Guelph Lumber Co.*, 11 S. C. R. 450.

Ascertainment of Profits.

The proper fund for the payment of dividends is the profits of the company. In all jurisdictions, the payment of dividends out of capital is prohibited. See Ontario Companies Act, sect. 91.

Reserve Fund.

It was held by the Ontario Court of Appeal that in the case of a manufacturing company, there is no principle of law or morality to justify the retention of a large amount of undrawn profits, and it was said that in such a case an action will lie by a minority of shareholders to have the accumulated funds distributed as dividends. *Earle* v. *Burland*, 27 A. R., p. 556.

This judgment was reversed by the Privy Council, and it was laid down that the matter was one to be decided by the directors of the company and that the Court would not interfere. *Burland* v. *Earle*, [1902] A. C. 83.

There is no principle which compels a joint stock company, while a going concern, to divide the whole of its profits amongst its shareholders. Whether the whole or any part should be divided, or what portion should be divided and what portion retained, are questions of internal management which the shareholders must decide for themselves, and the Court has no jurisdiction to control or review their decision, or to say what is a fair and reasonable sum to retain undivided, or what reserve fund may be properly required. They further laid down that it makes no difference whether the undivided balance is retained to the credit of the profit and loss account or carried to the credit of a rest or reserve fund or appropriated to any other use of the company. These are questions for the shareholders to decide subject to any restrictions or directions contained in the charter or bye-laws of the company. And if the company may have a reserve fund or retain a balance of undivided profit it would seem to follow that it has power to invest the moneys so retained. It is not necessary that the company should employ such fund only in its own business. If it were so, the objects for which a reserve fund is needed would in most cases be defeated. It cannot be contended that a company is confined in respect of such fund to investments such as trustees are authorized to make, and the fund may lawfully be invested in such securities as the directors may select, subject to the control of a general meeting. *Ibid.*

Shareholders in a loan company in answer to a proposal from the company paid, towards the reserve fund, dividends paid to them by the company and various other sums of money, with a view to increase the reserve fund to the same amount as the paid-up stock. In winding-up proceedings it was held that such shareholders

were not entitled to rank as creditors upon the assets of the company with the other creditors, depositors and debenture holders, and that any claim that they had against the company and its reserve fund was subject to the payment of the debts of the company. *Re Atlas Loan Co.*, 9 O. L. R. 468.

As to restraining payment of dividends on the ground that the company's reports are misleading, see *Montreal Street Ry.* v. *Ritchie*, 16 S. C. R. 622.

Calls.

The directors are given power by the Ontario Act to make calls at such times and places and in such instalments as the letters patent or the Act or the bye-laws of the company may require. It is the common practice for the bye-laws to contain the governing clauses regarding calls upon the stock and forfeiture for non-payment of calls. In all cases a reasonable notice is required, and further, the notice must state definitely the amount of the call, and the time and place of payment and the name of the party to whom the payment is to be made. The directors in making a call may act by resolution or bye-law.

It has been held that it is not necessary that calls should be made by bye-law and that a resolution is sufficient. *Union Fire Insurance Co.* v. *O'Gara*, 4 O. R. 359.

But in view of the wording of sect. 55 of the Ontario Companies Act, it would appear advisable that if the general bye-laws of the company do not contain clauses respecting the time, place and instalments of calls to be made, a bye-law rather than a resolution should be passed making the same.

It was held under 12 Vict. c. 166, sect. 9 (Can.), that a first call might be made by a quorum of directors, though the other calls were required to be made by a majority. *Ontario Ins. Co.* v. *Ireland* (1855), 5 C. P. 139.

Where a company's Act of incorporation does not allow it to commence operations until certain stock has been subscribed, etc., the words "commence operations" are not intended to prevent calls being made. *North Sydney Mining and Transportation Company* v. *Greener*, [1898] 31 N. S. 41.

The power to make calls is a trust, and must be exercised as such in a fair and impartial manner.

Where directors were empowered in making an assessment to restrict it to half the stock, it was held that this would not justify

excluding part of the stock altogether, but at most allowed them to make an equal assessment on all the stock to that extent. *European and N. A. Ry. Co.* v. *McLeod* (1875), 16 N. B. 3.

But where the subscription of two shareholders had been reduced on the subscription book, it was held that though the calls were made on this basis, they were not necessarily illegal, partial, or unjust. *National Insurance Co.* v. *Halton* (1879), 2 L. N. 238; 24 L. C. J. Q. B. 26.

For a case in which it was held upon the facts that there had been no such preference or discrimination between classes of shareholders as would invalidate a call, see *Provincial Insurance Co.* v. *Cameron*, 31 C. P. 523.

Where a call is made upon all shareholders without discrimination or partiality, the Court will not interfere to determine whether the call was necessary or expedient; but if calls are made in such a way as to favour one set of stockholders and impose an unequal burden upon others, the Court may intervene. *Christopher* v. *Noxon*, 4 O. R. 672.

The power to make calls, being discretionary, cannot be delegated. *Provident Life Assurance Co.* v. *Wilson* (1866), 25 U. C. R. 53.

Irregularities.

In making a call, it is essential that the directors should be duly appointed and duly qualified. The meeting should be regular in all respects, with a quorum in attendance and convened by a proper notice. The resolution should specify the amount of the call, the time and place of payment, and the party to whom it is payable; and all these matters should be set out properly in the minutes.

It will not, however, invalidate the call if the time and place of payment and the party to whom the call is to be paid are not determined in the resolution. If they are determined by the directors it will be sufficient to state them in the notice. It will not be sufficient for the officer sending out the call to determine them. *Union Fire Insurance Co.* v. *Wilson*, 4 O. R. 359; *Provident Life Assurance Co.* v. *Wilson*, 25 U. C. R. 53.

But it is the resolution of the directors, and not the notice, that makes the call. *Provincial Insurance Co.* v. *Worts*, 9 A. R. 56.

For the view that it is not the resolution of the directors making a call upon the shareholders which constitutes the call, but rather the notice, see *Gas Company* v. *Russell*, 6 U. C. R. 657.

The provision contained in the various companies Acts, that 10 per cent. upon the allotted stock shall be called in and made payable within one year from the incorporation of the company is merely directory. It is, no doubt, the duty of the directors to call in the 10 per cent. within one year; but this neglect of duty cannot make a call which is not a call, nor can it render a shareholder liable to pay this 10 per cent. without a call made in the ordinary way. The neglect of directors to make a call as provided in the Act has not the effect of making shareholders in arrear for the 10 per cent., so as to prevent their transferring their shares. *Ontario Investment Co.* v. *Sippi*, 20 O. R. 440.

Where there is a variation in the days of payment between the resolution of the directors making the call and notice of the call, there is such an irregularity as to invalidate the call. *Provincial Insurance Co.* v. *Worts*, 9 A. R. 56.

But where a shareholder has made payment upon a call which is invalid, owing to a variation in the day of payment between the resolution and the notice of the call, such shareholder cannot raise the question in validity. *Provincial Insurance Co.* v. *Cameron*, 31 C. P. 523.

Regularity of Calls.

As to the right of a company to call all its unpaid stock at one time, see *Lake Superior Navigation Co.* v. *Morrison*, 22 C. P. 217.

As to sufficiency of declaration for calls, see *Marmora Foundry Co.* v. *Murnery*, 1 C. P. 1; *Marmora Foundry Co.* v. *Dougall*, *Ibid.* 192.

Where an Act specifies that no instalment shall be called except after the lapse of one calendar month from the time that the last instalment was called for, it would seem that calls made for the 1st of May, June, July and August would be illegally made. *Gas Co.* v. *Russell*, 6 U. C. R. 567.

Three persons were appointed "joint assignees" of a company for the purpose of winding up under 41 Vict. c. 21 (Dom.). Two of the assignees met and made two calls at 10 per cent. each on the stock of the company. Held, that the assignees must all join in making calls and that these calls were therefore invalid, and that a subsequent meeting of the three joint assignees after the notice of these calls had been mailed purporting to confirm the action of the two assignees in making the calls had not that effect. *Ross* v. *Machar*, 8 O. R. 417.

Where the company's Act of incorporation provided that successive calls should be made at intervals of not less than two months between such calls and that no call should exceed 10 per cent. and that thirty days' notice should be given of every call, and a resolution was passed by which a call was made of 10 per cent. payable on the 1st of March and a further call of 10 per cent. on the 1st of September, this was held clearly not to be a call of 20 per cent., but two calls of 10 per cent. each, and the fact of the second call being illegal did not invalidate the first call because it was contained in the same resolution. *Union Fire Insurance Co.* v. *O'Gara*, 4 O. R. 359.

Where it is provided that calls shall be made at certain intervals several calls cannot be legally made at one time. In computing the interval the time must be reckoned exclusively of the day on which the previous call was payable. *Bank of Nova Scotia* v. *Forbes* (1883), 16 N. S. 4; Russ. and Geld. 295; and where no call could be made at a less interval than two months from the previous call, it was held that calls made on the 1st of September, 1st of November, 1st of January were bad. *Buffalo, Brantford and Goderich Ry. Co.* v. *Parke* (1855), 12 U. C. R. 607. See also *Port Dover and Lake Huron Ry. Co.* v. *Grey* (1875), 36 U. C. R. 425.

As to when interest will be allowed, see *Provincial Insurance Co.* v. *Cameron*, 31 C. P. 523.

Where the notice published specifies different days than those mentioned in the resolution fixing calls, the calls must be regarded as illegal, being unauthorized by the resolution, and the fact that a shareholder has written to the company enclosing his note for a portion of the calls and promising to send his note for a balance and stating that on account of absence from the country he had no knowledge of any of the calls, is not sufficient to estop him from disputing them. *London Gas* v. *Campbell*, 14 U. C. R. 143.

Where thirty days' notice of the call is required to be given, the call being payable on the 6th of September and notice of the call being deposited in the post office on the 5th of August; this was held sufficient notice, although the notice was not actually received until the 8th of August. *Union Fire Insurance Co.* v. *O'Gara*, 4 O. R. 359.

Where it was provided that no call shall exceed 10 per cent. or become payable in less than thirty days after public notice in one or more newspapers, it was held that the times fixed for payment of instalment need not be thirty days apart, but that instalments might be made at any time provided that no call exceeded 10 per

cent. and thirty days intervened between the day of notice of the call and the day on which it was payable. *Provincial Insurance Co.* v. *Worts*, 9 A. R. 56.

Where not less than thirty days' notice of a call is required the mailing of a notice on the 27th of June requiring a call to be met on the 27th of July was held not to be sufficient notice. *National Insurance Co.* v. *Egleson*, 29 Gr. 406.

A provision that notice of a call must be given in each district in which stock may be held will invalidate a call as to any person living in a district in which notice has not been given, but the call will be valid as against persons living in a district where a notice has been given. *Provincial Insurance Co.* v. *Cameron*, 31 C. P. 523.

To prove a call on March 15th, a Gazette of the 28th May was put in, in which the notice bore the date on the 15th of March. This was held insufficient as the paper could not be taken as evidence of any notice prior to its own date. *Buffalo, Brantford and Goderich Ry. Co.* v. *Parke* (1855), 12 U. C. R. 607.

In the absence of special provision to the contrary, the fact that a notice of call has been posted to the shareholder's address will be sufficient evidence of the call having been made. *Ross* v. *Converse* (1883), 27 L. C. J. 143, and see also *Bank of Liverpool* v. *Bigelow* (1880), 12 N. S. 3; Russ. and Ches. 236.

In the case of a sundry body of shareholders it may be assumed that all parties look on the Post Office as the understood medium for notices of any kind. The only intelligible course must be to hold that if the notice is duly deposited thirty days before the time appointed for payment it is sufficient. The Post Office must be regarded as the common agent of both the company and the shareholder. See *Union Fire Insurance Co.* v. *Fitzsimmons*, 32 C. P. 602.

Where the Act of incorporation provided that one month's notice of calls "shall be given," O'Connor, J., was of the opinion that in the absence of any provision as to the manner in which notice should be given, it must be given as required by common law, that is, in such a manner that the fact of the delivery to or receipt by the person to be notified may be proved. *Ross* v. *Machar*, 8 O. R. at p. 432.

Where shares are held by a firm a notice of a call may be sufficiently given by mailing the notice to one partner. Notice to one partner is in a partnership transaction treated as notice to the other, and this obtains after dissolution as to matters which are thereafter to be completed; and after dissolution, so far as the company is concerned, the members of the firm are liable to pay just as

before, and the same notice as would suffice before should be enough after dissolution. *National Insurance Co.* v. *Egleson*, 29 Gr. 406.

Payment of Calls.

Until registration of the transfer in the books of the company, both the transferor and transferee are under the Ontario Act jointly and severally liable to the company. And a person ceasing to be a shareholder after a call, *e.g.*, by transfer of his shares, remains liable for the amount of the call. *Montreal Mining Co.* v. *Cuthbertson* (1852), 9 U. C. R. 78.

A company may take note from a shareholder from the amount of a call if the Act of incorporation contains no provision to the contrary. *St. Stephen Branch Ry. Co.* v. *Black* (1870), 13 N. B. 139.

Enforcing Payment of Calls.

A provision that in case of non-payment of calls, the shares shall be forfeited and sold does not restrict the company to the remedy by forfeiture, but it may sue the shareholder for the calls. *Marmora Foundry Co.* v. *Jackson*, 9 U. C. R. 509.

A mandamus will issue at the instance of a creditor who is also a shareholder, compelling directors to make calls to discharge the indebtedness of the company. *Harris* v. *Dry Dock Co.* (1869), 7 Gr. 450.

Where the defendant has subscribed for shares in a company, which against the defendant's wish subsequently applied for and had its powers increased by a Dominion Act, it was held no defence in an action for calls, as the new Act was binding upon the shareholders, whether assenting or not to the application for it. *Canada Car and Manufacturing Co.* v. *Harris* (1874), 24 C. P. 380.

A company was not authorized to carry on business until $10,000 of its stock had been subscribed and $30,000 paid thereon within six months of incorporation, but began business after the six months by virtue of a fictitious subscription to its capital. It was held that these facts constituted a good defence to an action against a subscriber for calls. *Brown* v. *Dominion Salvage and Wrecking Co.* (1891), 20 S. C. R. 203.

In a proceeding by a receiver of an insurance company for calls the objection that the company's licence has been revoked is not tenable. *Union Fire Insurance Co.* v. *Fitzsimmons*, 32 C. P. 602.

The Statute of Limitations does not commence to run against the company until a call is made and notice given. *Re Haggart Bros. Mfg. Co., Peaker & Runion's Case*, 19 A. R. 582.

As to what acts show intent to transfer shares of directors with the intention of defeating liability for calls, see *Thompson* v. *Canada Fire Insurance Co.*, 9 O. R. 284, and see *McGregor* v. *Currie*, 26 C. P. 55.

Lien.

In view of the restrictions upon transfers authorized by sect. 48, it would appear to be possible for a company by bye-law to create a lien upon shares of those shareholders who are indebted to the company by providing that no transfer shall be made until such debt should be discharged. *Bradford* v. *Briggs* (1886), 12 App. Cas. 29. But see *Re Imperial Starch Co.*, 10 O. L. R. 22. See *Walterton Binber Twine Co.* v. *Higgins*, 1 O. W. R. 403. See *Montgomery* v. *Mitchell*, 18 Man. R. 37, as to right of company to maintain a lien against an execution creditor of a shareholder.

It was held in an earlier case that there was no common law lien, and the company was not justified in refusing to register a transfer of shares when the shareholder was indebted to the company. *McMurrich* v. *Bondhead Harbour Co.*, [1852] 9 U. C. R. 333.

Mortgages of Shares.

The fact that a transfer to the mortgagee is absolute in form and entered in the books of the company as an absolute transfer does not estop him from proving that the transfer was by way of mortgage. *Page* v. *Austin*, 7 A. R. 1, 10 S. C. R. 132.

As to the duty of the mortgagee to take proceedings against purchaser of stock sold by him at auction to complete the purchase, see *Daniels* v. *Noxon*, 17 A. R. 206.

Forfeiture.

The power of forfeiture for non-payment of calls is one which must be expressly conferred, and is a power that is intended to be exercised only when circumstances render its exercise expedient in the interests of the company.

Accordingly, where a resolution is passed which is in reality for the

benefit of the shareholders and for the benefit of the company or its creditors, the proceedings by way of forfeiture may be regarded as entirely nugatory, and notwithstanding resolutions or other acts the shareholder does not cease to be a shareholder. *Common* v. *McArthur*, 29 S. C. R. 239.

Forfeiture is strictly treated by the Courts, and it is essential that all formalities be exactly observed. A slight irregularity may be fatal. See *Nellis* v. *Second Mutual Building Society of Ottawa*, 29 Gr. 399.

Where the board of directors are not regularly constituted a resolution by them forfeiting the stock is invalid. *Christopher* v. *Noxon*, 4 O. R. 672. But see *Gilman* v. *Royal Canadian Ins. Co.* (1884), 7 L. N. 352, and 1 M. L. R. S. C. 1. If he is dead it is essential that a personal representative should be appointed and the notice given to him. *Glass* v. *Hope* (1869), 16 Gr. 420.

See further as to notice of forfeiture. *Provincial Insurance Company* v. *Cameron* (1880), 31 C. P. 523; *Gilman* v. *Robertson* (1884), 7 L. N. 353, and 1 M. L. R. S. C. 5; *Robertson* v. *Hochelaga Bank* (1881), 4 L. N. 315 S. C. *Jones* v. *North Vancouver*, 11 W. L. R. 220.

An illegal or irregular forfeiture of shares may be restrained by injunction, and in such a case the company may be a proper party. See *Christopher* v. *Noxon*, 4 O. R. 672.

A proceeding by a company to forfeit shares of a deceased shareholder in the absence of a personal representative is illegal, and when administration or probate is taken out the personal representative will be entitled to relief, and the lapse of time between the attempted forfeiture and the appointment of a personal representative will be no answer to the claim. *Glass* v. *Hope*, 14 Gr. 484, 16 Gr. 429.

Liquidators of a company in course of being wound up have not, nor have creditors, a right to take advantage of any irregularities in proceedings for forfeiture of shares; and shareholders whose shares have been forfeited to the company cannot be placed on the list of contributories merely because there have been irregularities in the proceedings prior to forfeiture. In *Re D. Wade Co.*, 2 Alta. L. R. 117.

Surrender of Shares.

It is elementary law that a shareholder cannot without statutory authority surrender unpaid shares to a company and

thereby get rid of his liability as a shareholder. *Common* v. *McArthur*, 29 S. C. R. 239.

No such power is given by the Ontario Companies Act, and the surrender of shares only partly paid is a diminution of the capital of the company and can only be justified under circumstances which would justify a forfeiture of shares and as a more convenient substitute for that procedure.

The power to cancel shares must also be given by express words. What is meant by this power is the capacity after the shares are allotted or accepted, where no dispute exists as to the liability of the shareholder to cancel such shares and determine the liability thereon. This must not be confused with the closely-allied proceedings of compromising disputes between the shareholder of the company and the rescission of what has been wrongly done by inadvertence. These two latter are proceedings which every corporation may engage in without express authority. This must be so in the nature of things if the contract is voidable at the election of the subscriber. It becomes void when he so elects, and it would indeed be anomalous if the directors had not power to cancel the shares which the subscribers had the power to hand back and upon which all liability has ceased to exist; so where a shareholder subscribed upon the faith of a statement which subsequently proved to be incorrect and threatened legal proceedings to compel cancellation of the stock, it was held that a bye-law passed by the shareholders cancelling the stock was valid. *Wheeler* v. *Wilson*, 6 O. R. 421.

Companies have the power to compromise claims made by a shareholder to be relieved of his shares, either by reason of fraud or misrepresentation or any other cause which would enable the Court to decree such relief, but as the Court, if the shareholder were to make a claim against the company for compensation and damages in respect of some matter not in any way related to the validity of the shares held by him, could not decree the cancellation *pro tanto* of those shares so that the company itself cannot validly compromise a claim for damages against it by accepting the surrender of and by cancelling the shares of its capital stock held by the claimant. *Livingston* v. *Temperance Colonization Society*, 17 A. R. 379.

Directors may make compromises just as they may make other agreements, but in doing so they may not introduce any illegal element. They may not do anything *ultra vires* in making an agreement of compromise any more than in making any other

agreement. Where there is a dispute whether a man is a shareholder or whether shares have been allotted and accepted the dispute must be settled somehow and the directors have power to settle it, but unless by charter or statute they have power to cancel or take a surrender of shares, undisputed shares cannot be so dealt with incidentally in a dispute about some other matter. *Livingston* v. *Temperance Colonization Society*, 17 A. R. p. 383.

Where power was given by the Act of incorporation to any shareholder of the company to surrender his stock by notice in writing within a certain time and a shareholder desiring to surrender his stock transferred it within the time by an ordinary assignment to the president "in trust," both intending the transfer to operate as a surrender, it was held a valid surrender. *Harte* v. *Ontario Express and Transportation Co., Kirk and Marling's Case*, 24 O. R. 340.

It was further held in winding-up proceedings, that those who had thus surrendered their shares were not liable as contributories even to the extent of the 10 per cent. which they ought to have paid at the time of subscription but had not. In *re Ontario Express and Transportation Co.* (1893), 24 O. R. 216.

Rectification of Register.

Sect. 116 of the Ontario Companies Act provides a summary means of redress in case of wrongful entries in or omissions from the stock register of the company, and the judge may under that section decide any question relating to the title of any person to have his name entered or omitted from such register. *Re Panton and Cramp Steel Co.*, 9 O. L. R. 3; *Re Imperial Starch Co.*, 10 O. L. R. 22; *Re Dominion Oil Co.*, 2 O. W. R. 826.

In re J. A. French Co., 1 O. W. N. 864. A motion was made under this section on the ground that the applicant had been defrauded by those connected with the organization of the company. The alleged fraud was prior to the issue of the charter. Held, the Court had no jurisdiction to act under this section.

This section affords a summary remedy where a name is imperfectly entered or omitted from the register of shareholders or unnecessary delay takes places in removing the name from the register. There should be a demand on the proper officer of the company, and a refusal or unreasonable delay in complying before

launching the motion. *Nelles* v. *Windsor Railway Co.*, 11 O. W. R. P. 467.

Apart from the relief thus afforded, a mandamus will lie to compel the company to make the transfer on its books. *Smith* v. *Canada Car Co.*, 6 P. R. 107; *McDonald* v. *Mail Printing Co.*, 6 P. R. 309; *Goodwin* v. *Ottawa Ry. Co.*, 22 U. C. R. 186; *Guillot* v. *Sandwich Road Co.*, 26 U. C. R. 246. See *Nelles* v. *Windsor Ry. Co.*, 11 O. W. R., p. 467. See also *Warren Gzowski* v. *Peterson Lake*, 1 O. W. N. 211.

A distinct refusal to register the transfer is necessary before mandamus will lie, but a refusal in effect though not in direct terms would be sufficient. See also *Boulton* v. *Hugel*, 35 U. C. R. 402.

On an application for mandatory order, the applicant must show a demand and refusal to register. Such demand may be served upon the secretary of the company. *Re Goodwin and Ottawa Ry. Co.*, 13 C. P. 254.

In case of a wrongful refusal to register, a suit in equity would lie for a decree compelling the company to register the transfer. Such decree, however, would not be made in the face of superior opposing equities, nor where there has been laches, nor at the instance of the donee. *Smith* v. *Bank of Nova Scotia*, 8 S. C. R. 558. A company is not bound to register a *bonâ fide* holder of a certificate of shares, such certificate being fraudulently issued by the managing director of the company without the company's knowledge or authority. *Mackenzie* v. *Monarch Life Assur. Co.*, 23 O. L. R. 342. A transferee may also claim damages against the company. *MacMurrich* v. *Bond Head Harbour Co.*, U. C. R. 333.

Transfers.

A transfer in blank confers on the holder of the certificate, for the time being, authority to fill in the name of the transferee, and each successive holder passes on this authority when he delivers the certificate to his immediate transferee. In general the holder for the time being takes not the property in the shares, but a title, legal and equitable, which enables the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner. *Smith* v. *Rogers*, [1899] 30 O. R 256.

And where brokers improperly deposited a certificate transferred in blank as security for advances to them with a bank, who received it in the ordinary course of business without any notice of the owner's rights, it was held that the bank was entitled to hold the shares as against the owner. *France* v. *Clark*, 26 Ch. D. 257, distinguished. *Smith* v. *Rogers, supra.* And see *Re Central Bank, Baines' Case*, 16 A. R. 237.

A *bonâ fide* assignment or pledge for value of shares is valid between the assignor and assignee notwithstanding that no entry of the assignment or transfer is made in the books of the company; and as only the debtor's interest in the property seized can be sold under execution, the rights of a *bonâ fide* assignee cannot be cut out by the seizure and sale of the shares under execution against the assignor after the assignment. *Morton* v. *Cowan*, 25 O. R. 529.

As to the operative effect of unregistered transfers see also *Hamilton* v. *Grant*, 30 S. C. R. 566; *Brock* v. *Ruttan*, 1 C. R. 218; *Crawford* v. *Provincial Insurance Co.*, 8 C. P. 263. It is usual for the transferee to sign a formal acceptance of shares upon receipt of the certificates, but this is not necessary to render him liable. *Ross* v. *Machar*, 8 O. R. 417; *Woodruff* v. *Harris*, 11 U. C. R. 490.

As to transfers to a man of straw see *Re Peterboro' Cold Storage Co.*, 9 O. W. R. 850. Directors must make good to the company as damages any sums which on winding up may be required and which cannot be made good by the ostensible transferees who are to be called upon in the first instance. *Re Peterboro' Cold Storage Co.*, 9 O. W. R. 850.

A transfer of shares in a company to a person to hold as a trustee for such company is illegal, the company having no power to sell its own stock, and the trustee in such case would be personally liable. As to the liability of the transferor, it has been considered that this depended on his knowledge or ignorance of the illegal trust: *McCord's Case*, [1891] 21 O. R. 264. See also *Paton's Case*, 5 O. L. R. 392.

When shares in the stock of a company are sold for cash and a transfer endorsed purporting to be signed by the holder named therein who is not the seller, the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate and transfer. *Castleman* v. *Waghorn*, 41 S. C. R. 88.

Restriction on Transfers.

If a purchaser of stock has no notice of special restrictions upon transfers contained in its bye-laws he is, upon compliance with the necessary formalities, entitled to be registered as a transferee. He is not affected with notice of the contents of the company's bye-laws. *Re McKain* v. *Birbeck Co.*, 7 O. L. R. 341.

The directors of a company have no discretion to refuse to transfer fully paid shares and cannot refuse to transfer shares not fully paid to a purchaser of apparently sufficient means unless a bye-law has been passed restricting transfers. *Re Panton and Cramp Steel Co.*, 9 O. L. R. 3.

Such a bye-law, however, cannot go the length of authorizing the directors to refuse to make any transfer of paid up shares. *Re Imperial Starch Co.*, 10 O. L. R. 22.

In this case the Court said that the power of the directors does not extend beyond refusing to transfer stock which has not been fully paid up. This seems to be scarcely in accord, however, with previous decisions.

And a resolution of directors closing the transfer books at the time of the annual meeting will not prevent a shareholder from obtaining a mandatory order compelling the transfer to be recorded. *Ibid.*

The directors may, however, after passing a bye-law declaring a dividend and closing the transfer books for a period of two weeks immediately preceding the payment of the dividend. See sect. 51 of Ontario Act.

The Company cannot refuse to allow a transfer of shares without assigning a sufficient reason therefor. In *re Smith* v. *Canada Car Co.*, 6 P. R. 107.

In *re Shantz*, 15 O. W. R. 534, Teetzel, J., held on a motion to compel a company to transfer to plaintiff five fully paid up shares that the Act did not authorize a company to refuse to transfer on their books fully paid up shares, notwithstanding that the company had passed a bye-law providing that no transfer should be valid until approved by the directors, and his decision was affirmed by a Divisional Court in 16 O. W. R. 30; 21 O. L. R. 153. (An appeal is pending to the Court of Appeal.)

One who purchases his shares in good faith without any notice of an infirmity in the title of his vendor is entitled to a mandatory order for the transfer of the stock on the books of the company.

Re Dominion Oil Co., 2 O. W. R. 826. But should the vendor place an impediment in the way of the transfer, he may be liable in damages. And the fact that the delay takes place as a result of an injunction in proceedings commenced by the vendors does not alter the principle. *Boultbee* v. *Willis*, 15 O. L. R. 227. If there is no objection to the transfer, it should be registered within a period reasonable under the circumstances. See *Nelles* v. *Windsor Ry. Co.*, 11 O. W. R. 463.

Delay on the part of the company in registering the transfer will not, however, release the transferee from being placed on the list of contributories where a transfer had actually been registered before the winding up. *Re Cole and Canada Fire and Marine Insurance Co., Close's Case* (1885), 8 O. R. 92.

Where a company had no stock-book in which could be executed a regular transfer of stock, but a shareholder's name was erased from the list of shareholders, and his transferee substituted, it was held that there was an entry in the books sufficient to constitute a due entry within the meaning of the Act. *Hudson's Case*, 6 O. W. R. 574.

Where certain parties to whom share certificates had not been issued transferred their stock, it was held that the transferee had an immediate right to the possession of the unissued certificate, and that on presentation of the assignment to him he was entitled to a transfer of the stock into his name. The secretary could not require, before transferring the stock to a purchaser, that each person, after he had assigned his stock, must come in person and demand his stock certificate, and when obtained, hand it over to the purchaser. The assignment is, in itself, a transfer by the stock-holder of his certificate, then in the hands of the secretary. *Meyers* v. *Lucknow Elevator Co.*, 6 O. W. R. 291.

A shareholder is not estopped by the mere fact of having received transfers of certificates of stock from questioning the legality of the issue of such stock. *Page* v. *Austin* (1882), 10 S. C. R. 132.

A company is estopped from denying that the person to whom a share certificate has been granted is the registered shareholder entitled to the specific shares included in the certificate; and in the case of a *bonâ fide* transferee, without notice to the contrary, that the amount certified to be paid has been paid, and this even against creditors of the company. *McCracken* v. *McIntyre* (1877), 1 S. C. R. 479.

A shareholder assigned the shares to the plaintiff for value, and

gave the certificate to him with an assignment endorsed thereon. The plaintiff gave no notice to the company, and did not apply to be registered as a shareholder until several months had elapsed. In the meantime, the shareholder executed another transfer of the shares for value to an innocent transferee, who was registered by the company as the holder of the shares without production of the certificate. Under these circumstances, it was held that the transfer to the plaintiff conferred upon him a more equitable title, which was cut out by the subsequent transfer, and that while the company might have insisted upon production of the certificate, they were not bound to do so, and were not estopped from denying the plaintiff's right to the shares. *Smith* v. *Walkerville Malleable Iron Co.*, 23 A. R. 95.

CHAPTER XIX.

CONTRACTS OF COMPANIES.

Where promoters contemplate forming a company for the purpose of acquiring any property or business from a person who is in no way connected with the promotion of the company, it is usual for the promoters to procure a contract for sale to the company between the vendor and some person purporting to act as agent or trustee for the intended company. The agreement is in the usual form, with additional clauses giving power to either party to rescind, unless within a time stated a certain proportion of the capital of the company is subscribed and a contract entered into between the company and the vendor in terms similar to the terms of that agreement. In this way the promoters, before incurring the expense incidental to the registration and floating of the company, procure a contract binding upon the vendor, in case the company is successfully floated, without themselves incurring any liability. If, however, no power is reserved to the agent or trustee for the intended company to rescind, he is liable in damages for breach of contract in case the company is not formed, or, being formed, refuses to buy the property on the terms of the agreement; for he comes within the rule that a person who contracts as agent for a non-existent principal is himself liable as principal on his contract (*a*). He is liable, although by the contract it is expressly agreed that he shall incur no personal liability thereunder, as such a provision will be rejected as repugnant. Such personal liability remains until the company has, with the consent of the vendor, entered into a contract with him in terms similar to the preliminary agreement, or the vendor releases the agent or trustee from liability (*b*).

1. Unless so provided by statute, a company can neither sue nor be sued on a contract entered into prior to

(*a*) *Job* v. *Lamb* (1856), 11 Ex. 539.
(*b*) *Kelner* v. *Baxter* (1867), 2 C. P. 174; *Scott* v. *Ebury* (1867), 2 C. P. 255.

its incorporation by any person on its behalf (*c*); and it cannot ratify such a contract (*d*).

This rule obtains, although the articles of association of a company governed by the Companies Acts expressly adopt the contract (*e*). The company can only be bound if it enters into a new contract; and although the acts of the company in reference to the subject-matter of the preliminary agreement may be evidence of a new agreement (*f*), they will not be so if such acts have been done under the mistaken belief that the preliminary agreement is binding on the company (*g*), nor is the company bound by a resolution of the directors purporting to adopt and confirm the agreement (*h*). Therefore, although the memorandum or articles of association expressly state that a contract entered into on behalf of the company before its formation shall be binding upon it, the company is not thereby bound, and directors can and should, before entering into a fresh agreement, or doing any acts which might be evidence of a fresh agreement, consider whether it is desirable in the interests of the company to enter into the agreement, and, if so, whether any and what modification of it should be made. Where a company is incorporated by a special Act, the Act may, by apt provision, make contracts entered into on its behalf prior to its incorporation binding upon the company. A general Act (*i*) empowers promoters of a railway to enter into contracts for the purchase of land, which shall be binding upon the company subsequently incorporated under that Act, by the certificate of the Board of Trade, for making and working such railway.

2. Until directors are appointed, the persons who for the time being constitute the company can contract so as to bind it.

Where a company is incorporated by a special Act or charter, the persons who constitute the company are either named or described in the Act or charter. In companies incorporated under the Companies Acts,

(*c*) *Caledonian Rail. Co.* v. *Halensburgh* (1856), 2 Macq. H. L. Cas. 391.

(*d*) *Melhado* v. *Porto Alegre Rail. Co.* (1874), 9 C. P. 503; *Empress Engineering Co.* (1880), 16 C. D. 125; *Dale and Plant, Ltd.* (1889), 61 L. T. 206; 1 Meg. 338. In *Spiller* v. *Paris Skating Rink Co.* (1878), 7 C. D. 368, there was a new contract.

(*e*) *Northumberland Avenue Hotel Co.* (1886), 33 C. D. 16.

(*f*) *Howard* v. *Patent Ivory Co.* (1888), 38 C. D. 156.

(*g*) *Northumberland Avenue Hotel Co.* (1886), 33 C. D. 16; approved by the House of Lords in *Humber and Co.* v. *John Griffiths Cycle Corporation*, 20th May, 1901, *Ex rel.* Ed.; *Natal Land Co. Pauline Colliery Syndicate*, [1904] A. C. 120; *Bagot Co.* v. *Clipper Co.*, [1902] 1 Ch. 146.

(*h*) *North Sydney Investment, &c., Co.*, [1899] A. C. 263.

(*i*) Railways Construction Facilities Act, 1864.

the persons who subscribe the memorandum and articles of association constitute the company until the first issue of its shares is made.

Where the vendor is a promoter of the company, the agreement for sale is commonly made with the company shortly after its incorporation. Sometimes it is entered into on behalf of the company by the subscribers to the memorandum of association, or a majority of them.

3. The articles of association of a company governed by the Companies Acts only constitute a contract between the company and its members in their capacity as members, and between each member and every other member (*k*).

Many unsuccessful attempts were made, in reliance upon sect. 16 of the Companies Act, 1862, (see now s. 14 (1) of the Companies Act 1908) to establish from the articles of association a contract between (a) the company and a member in his individual capacity; and (b) the company and third persons. That section provided:—"The articles of association . . . when registered . . . shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act." It is difficult to understand this section, as the company, being a distinct legal person, cannot be bound otherwise than by statute, or by its own covenant or contract; and the words after "thereof" apparently only impose an obligation on the members. If that is the true construction of the section, it is obvious that no clause contained in the articles can constitute a contract between the company and third persons or the company and its members, but only a contract between the members themselves. But it is submitted that the above rule correctly states the effect of the section and of the corresponding section of the Act of 1908. Thus the registration of articles of association adopting a contract for the issue of paid-up shares did not satisfy sect. 25 of the Companies Act, 1867 (*l*). An article providing that certain payments shall be made by the company to promoters does not give them any right of action against the company (*m*). An article providing for the employment of a named person as the solicitor of the company does not

(*k*) See *Wood* v. *Odessa Waterworks Co.* (1889), 42 C. D. 636, 642, and *Salmon* v. *Quin & Axtens, Ltd.*, [1909] 1 Ch. 311.

(*l*) *Crickmer's Case* (1875), 10 Ch. 614; *Pritchard's Case* (1878), 8 Ch. 956.

(*m*) *Melhado* v. *Porto, &c., Rail Co.* (1874), 9 C. P. 503; *Hereford Wagon, &c., Co.* (1876), 2 C. D. 621; and see cases cited in next note.

constitute a contract between him and the company (*n*). An article, adopting an agreement entered into on behalf of the company before its incorporation, does not make that agreement binding on the company (*o*). Articles of association or a prospectus may be evidence of the terms of a contract between the company and a member or third person (*p*).

4. Any contract made by a company governed by the Companies Acts after the 31st December, 1900, before the date at which it is entitled to commence business is provisional only, and is not binding on the company until that date when it becomes binding (*q*).

A company limited by shares cannot previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus except subject to the approval of the statutory meeting (*r*). The report to be sent to the members of the company by the directors must state, *inter alia*, 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 proposed modification (*s*).

5. In making contracts on behalf of the company the directors should act for its benefit.

The success of companies often depends upon the contracts which directors enter into shortly after its formation. Whether they are or are not the nominees of the vendors to the company or of its promoters, it is incumbent upon them to satisfy themselves that the proposed contracts are for the benefit of the company. Large profits may be made by the vendors upon a sale to a company, and yet it may be beneficial to the company. The directors should by obtaining the reports of experts who are independent of the promoters, satisfy themselves as to the propriety of affixing the company's seal to the contract. The legal advisers of the company will, of course, ascertain before the purchase-money is paid that a good title is shown to the property sold; and that the purchase-money

(*n*) *Eley* v. *Positive Life Assurance Co.* (1875), 1 Ex. D. 20, 88. See also *Browne* v. *La Trinidad* (1887), 37 C. D. 1; *Rhodessan Properties*, [1901] W. N. 130.

(*o*) *Melhado* v. *Porto Alegre Co.* (1874), 9 C. P. 503; *Northumberland Avenue Hotel Co.* (1886), 33 C. D. 16; *Browne* v. *La Trinidad*, *supra*; *Dale and Plant, Ltd.* (1889), 61 L. T. 207.

(*p*) *Swabey* v. *Port Darwin Gold Mining Co.* (1889), 1 Meg. 385; *Isaacs' Case*, [1892] 2 Ch. 158; *Hercynia Copper Co.*, [1894] 2 Ch. 403; *Browning* v. *Great Central Mining Co.* (1860), 5 H. & N. 856.

(*q*) C. A. 1908, s. 87 (3). See *ante*, p. 33.

(*r*) C. A. 1908, s. 83. As to statutory meetings, see *post*, p. 325.

(*s*) C. A. 1908, 65 (3c).

is only handed over upon the execution of a conveyance, vesting such property, free from incumbrances, in the company. When the property is situate abroad the greatest care should be taken. In most foreign countries immovable property is conveyed by a notarial act duly registered in the local registry, and in such cases the purchase-money should not be paid until registration. Sometimes the vendor contracts to guarantee the payment of a certain dividend upon the subscribed capital (*t*); and contracts for the construction of work sometimes bind the contractors to pay interest on the subscribed capital during construction (*u*). Some valuable observations by Bramwell, L. J., as to the duties of directors who are nominees of the promoters of the company, are found in *Tywcross* v. *Grant* (*x*). It is incumbent upon directors nominated by promoters, in purchasing property, although in pursuance of an agreement adopted by the articles, to do everything that prudent agents of a vendee would do, and which they would do if they were purchasing with their own money. They should make, or cause to be made, independent inquiries as to the value of the property, whether mines, patents, concessions, or property of any other kind; and if, without taking such precautions, they enter into the contract, they may be liable to proceedings for breach of trust or misfeasance. Where the contract for sale to the company includes the good-will of a business it should be seen that the vendors enter into covenants restraining them from carrying on a rival business. Such a covenant is valid if the restriction is not greater than is reasonably necessary for the protection of the company, and is not injurious to the public (*y*). The restriction may be reasonable although without limit as to the area of restriction (*y*). As such covenants are severable (*y*) it is desirable to procure the vendors to covenant not to carry on business within certain limits which are clearly reasonable, and then add an alternative covenant comprising a larger area, so that if the covenant as to the larger area is bad, the covenant as to the smaller being reasonable will be enforced. In any case the burden of proving that the covenant is invalid lies upon the vendors (*y*).

A contract with a company procured by bribing its directors cannot be enforced against the company (*z*).

6. A contract between a company and a promoter of it is voidable at the option of the company, unless full disclosure is made to the company of all material facts relating to the contract.

(*t*) See *post*, p. 318, as to the validity of such a guarantee.

(*u*) See *post*, p. 317, as to the validity of such a stipulation.

(*x*) (1877), 2 C. P. D. 469, 494.

(*y*) *Nordenfelt* v. *Maxim-Nordenfelt Guns Co.*, [1894] A. C. 53.

(*z*) *Maxwell* v. *Port Tennant Co.* (1857), 24 B. 495.

If full disclosure is made to the company, promoters of the company may make a valid contract between themselves and the company, although the directors who enter into the contract on behalf of the company are nominees of the promoters and are not an independent board. Full disclosure may be made by the company's articlesof association or by a prospectus, or, in the case of a private company, all the members may be nominees of the promoters and therefore well acquainted with the facts (*a*).

7. A contract between a company and any of its directors is voidable at its option, unless by its special Act, charter, or regulations such a contract is expressly or by necessary implication permitted, and the contract is made in conformity therewith.

This appears to be the principle upon which the Scotch case of *Aberdeen Rail. Co.* v. *Blaikie* (*b*) was decided, and the judges were of opinion that the same principle obtained in English law. The judgments, however, are based upon the assumption that directors of a company are trustees, and as such are incapable of contracting with their *cestui que trust*. As, however, directors are not trustees, but agents of the company (*c*), it is submitted that the true principle is that if permitted by statute, or the charter or regulations of the company, a director thereof or his firm may enter into a valid contract therewith, and not be accountable for any profits arising therefrom (*d*), provided that (1) such contract is made in the manner and form (if any) prescribed by statute or the company's regulations; (2) such director does not act on behalf of the company in relation to such contract; and (3) he makes full disclosure to the company of his interest in such contract. Where these conditions are not complied with, the Court will not enforce specific performance of the agreement (*e*), or permit the director to retain the profits (*f*). A voidable contract between a director and a company may be affirmed by the company (*g*).

The Companies Clauses Act, 1845, ss. 85, 86, provides among other things that no director shall be capable "of being interested in any contract with the company during the time he shall be a director," and

(*a*) *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; *Seligman* v. *Prince*, [1895] 2 Ch. 617; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392. See *post*, p. 350.

(*b*) (1853), 1 Macq. 461.

(*c*) *Ante*, p. 77.

(*d*) *Costa Rica Rail. Co.* v. *Forwood*, [1901] 1 Ch. 746.

(*e*) Cf. *Flanagan* v. *G. W. Rail. Co.* (1868), 7 Eq. 116.

(*f*) *Imperial Mercantile Credit Association* v. *Coleman* (1873), 6 H. L. 189.

(*g*) *North Western Transportation Co.* v. *Beatty* (1887), 56 L. J. C. P. 102; *Grant* v. *United Kingdom Switchback, &c., Co.* (1888), 40 C. D. 135.

that "if any of the directors at any time subsequently to his election . . . be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, then . . . the office of such director shall become vacant"; but sect. 87 excepts contracts made with another incorporated company of which the director is a member, but prohibits him from voting on any question relating to such contracts. These sections do not invalidate a contract made between a director or his firm and the company (*h*), but such a contract is, by the general law, voidable at the option of the company (*i*); and the assignees of such a contract cannot enforce it (*j*).

Sometimes the regulations of a company, expressly or by implication, permit contracts to be made between a company and one of its directors, provided that the terms of such contract are submitted to and approved by the next general meeting of the company. This was the case under the Act 7 & 8 Vict. c. 110, s. 29, and the decisions upon that section, although the Act has been repealed, are still valuable in construing regulations of a similar nature. The section applies to a loan to a company (*k*). The meeting may be either the next ordinary general meeting or a special meeting called for that purpose (*l*). The director with whom the contract is to be made, although expressly prohibited from voting as a director upon it, may vote as a shareholder at the meeting (*m*). The contract cannot be enforced against the company unless the terms of the section are strictly complied with (*n*). Under this section a contract was invalidated which was made with a person who, at the time of entering into it, was elected an honorary director until completion, and after completion an ordinary director (*o*).

Where articles of association provide that no director shall vacate his office by reason of his being a member of any company or partnership which has entered into contracts with or done any work for the company, or by reason of his being interested, either in his individual capacity or as a member of any company or partnership, in any adventure or undertaking in which the company may also have an interest, but that the director is not to vote on contracts of this kind, and if he does his vote is not to be counted—there is an implied power to a director to enter into contracts with the company, and the company cannot recover profits made

(*h*) *Foster* v. *Oxford Rail. Co.* (1853), 13 C. B. 200.

(*i*) *Aberdeen Rail. Co.* v. *Blaikie* (1853), 1 Macq. 461.

(*j*) Cf. *Flanagan* v. *G. W. Rail. Co.* (1868), 7 Eq. 116.

(*k*) *Faversham* v. *Cameron's Co.* (1860), 1 Dr. & Sm. 55.

(*l*) *Murray's Executors' Case* (1854), 5 De M. & G. 746.

(*m*) *East Pant Du, &c., Co.* v. *Merryweather* (1864), 2 H. & M. 254. See *North Western Transportation Co.* v. *Beatty* (1887), 12 A. C. 589.

(*n*) *Ernest* v. *Nicholls* (1857), 6 H. L. Cas. 401; *Ridley* v. *Plymouth Baking Co.* (1848), 2 Ex. 711.

(*o*) *Stear* v. *South Essex Gas Co.* (1858), 30 L. J. C. P. 49.

by him upon such contracts (*p*), but he cannot be reckoned in estimating the quorum present at the time when the resolution authorizing any such contract is passed (*q*).

Semble, assuming that a resolution of a board of directors, signed by the chairman, would be sufficient to revive against a company a debt owing to a director barred by the Statute of Limitations, the acknowledgment will be vitiated if the director were himself present at the meeting at which the resolution was passed (*r*).

The cases upon the personal liability of a director upon contracts made by him on behalf of his company will be found in Chapter XXVIII.

8. Directors should not, on behalf of the company, enter into or affix its seal to any agreement which is illegal or is *ultra vires* of the company or of the directors.

Where a part of the consideration for a contract is illegal, or the contract contains illegal stipulations which are not severable from the rest of the contract, it is void (*s*); but where a contract contains clauses which are illegal or *ultra vires*, and they are clearly severable from the other clauses, the latter are valid (*t*). The law as to acts *ultra vires* of the company has been dealt with in Chapter III., and the liabilities of directors who part with any property of the company in carrying out agreements which are not within the powers of the company, or their own powers, are considered subsequently (*u*). There is, however, one class of contracts, viz. negotiable instruments, which specially demand notice, and the rule as to the power of a company incorporated by or under a statute with respect to such instruments is as follows :—

9. A company cannot draw, accept, make, or indorse bills of exchange or promissory notes, unless express power to issue bills and notes has been given to it by the terms of its incorporation, or such a power may be implied from the nature of its business.

The principle has been applied to companies incorporated by special Act of Parliament. Thus, in the absence of express power the following

(*p*) *Costa Rica Rail. Co.* v. *Forwood*, [1901] 1 Ch. 746.

(*q*) *Greymouth, &c., Coal Co.*, [1904], 1 Ch. 32.

(*r*) *Lowndes* v. *Garnett Gold Mining Co.* (1864), 33 L. J. Ch. 418.

(*s*) *James* v. *Eve* (1873), L. R. 6 H. L. 335.

(*t*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 459.

(*u*) *Post*, p. 342.

companies cannot issue bills or notes:—A railway company (*x*), a waterworks company (*y*), a mining company (*z*), a cemetery company (*a*), a gas company (*b*), a salt company (*c*), a salvage company (*d*). A joint stock company not otherwise having the power to issue bills or notes has not, under the Companies Act, 1908, s. 77, power to accept bills of exchange (*e*). That Act does not confer upon all companies registered thereunder the power to issue negotiable instruments. Such a power only exists where, upon a fair construction of the memorandum and articles of association, it appears that it was intended to be conferred (*e*). It is submitted, with regard to industrial and provident societies, that although the Industrial Societies Act of 1893 contemplates the issue of negotiable instruments (*f*), yet a society cannot issue them unless expressly authorized by its rules, or unless such a power is necessarily implied from the nature of its business.

Directors having authority to give a bill or promissory note for a debt of 1000*l*., and giving a note therefor, can exchange the note for bills amounting together to that sum (*g*).

Directors authorized to issue promissory notes, and to purchase mines in consideration of payment in shares, cash, rents, or royalties, cannot issue notes payable at long dates for the purchase of a mine (*h*). A proviso in a bill of exchange drawn by a joint stock company with unlimited liability, limiting the liability thereunder, is void (*i*). A managing director of a company has only implied authority to give a promissory note on its behalf when the giving of it is necessary for carrying on its business, or is in the ordinary course of such business (*k*).

10. Unless otherwise provided by statute or the regulations of the company, directors can on its behalf enter into any contract which is incidental to the conduct of its business.

Sometimes the regulations of a company require certain contracts to be made with the approval of the company in general meeting. Where

(*x*) *Bateman* v. *Mid-Wales Rail. Co.* (1866), L. R. 1 C. P. 499, 504.

(*y*) *Broughton* v. *Manchester Waterworks Co.* (1819), 3 B. & Ald. 1.

(*z*) *Dickinson* v. *Valpy* (1829), 10 B. & C. 128.

(*a*) *Steele* v. *Harmer* (1845), 14 M. & W. 831.

(*b*) *Bramah* v. *Roberts* (1837), 3 Bing. N. C. 963.

(*c*) *Bult* v. *Morrell* (1840), 12 Ad. & E. 745.

(*d*) *Thompson* v. *Universal Salvage Co.* (1848), 1 Ex. 694.

(*e*) *Peruvian Rails. Co.* (1867), 2 Ch. 617. Decided under the corresponding section of the C. A. 1862, viz. s. 47.

(*f*) Sect. 33.

(*g*) *Thompson* v. *Wesleyan Newspaper Association* (1849), 8 C. B. 849.

(*h*) *Moseley Green Coal Co.* (1864), 10 L. T. 819.

(*i*) *Ex parte Meredith and Convers* (1863), 32 L. J. Ch. 300.

(*k*) *Cunningham & Co.* (1887), 36 C. D. 532.

directors have entered into a contract without authority, the contract can be confirmed by the company in general meeting if the contract is within the powers of the company (*l*).

11. Contracts with a company should be made in compliance with the forms prescribed by statute and its regulations.

The forms in which contracts by companies may be made, varied, or discharged, unless otherwise provided by their regulations (*m*), are divisible into three classes, according as such contracts, if made between private persons, would by law be valid if made (1) in writing and under seal, (2) in writing and signed by the parties to be charged therewith, or (3) by parol only and not reduced into writing. The Companies Clauses Act, 1845, s. 97, permits contracts to be made, varied, or discharged by directors or a committee of directors as to class (1) in writing under the common seal of the company, class (2) in writing signed by such committee or any two of the committee or of the directors (*n*), and class (3) by parol. The Companies Act, 1908, s. 76, is almost a transcript of sect. 97 of the Companies Clauses Act, 1845, except that classes 2 and 3 may be made, varied, or discharged by any person acting under the express or implied authority of the company (*o*). Sect. 35 of the Industrial Societies Act, 1893, is to the same effect. The old rule as to corporations being only able, subject to certain exceptions, to bind themselves by contracts under seal, does not apply to trading companies (*p*).

Distinguishing a contract from a conveyance or transfer of property, the author is not aware of any contract which is required by law to be made under seal except a contract for the sale of sculpture with copyright, and contracts made without a valuable consideration. It is, however, usual for companies to make under their common seal all important contracts.

It is beyond the limits of this work to do more than briefly indicate the different classes of contracts which must be in writing or evidenced by writing.

Certain contracts are required by the Statute of Frauds (*q*) and the Sale of Goods Act, 1893, s. 4, to be in writing or evidenced by some

(*l*) *Grant* v. *United Kingdom Switchback Co.* (1888), 40 C. D. 135.

(*m*) *Crampton* v. *Varna Rail. Co.* (1872), 7 Ch. 562.

(*n*) *Leominster Hotel Co.* v. *Shrewsbury Rail Co.* (1857), 26 L. J. Ch. 764.

(*o*) *Beer* v. *London and Paris Hotel Co.* (1875), 20 Eq. 412; *Smith* v. *Hull Glass Co.* (1852), 11 C. B. 897; *Totterdell* v. *Fareham Blue Brick Co.* (1866), 1 C. P. 674; *King's Cross Industrial Dwellings Co.* (1870), 11 Eq. 149.

(*p*) *South of Ireland Colliery Co.* v. *Waddle* (1869), 4 C. P. 617; *Contract Corporation* (1869), 8 Eq. 14; *Wilson* v. *West Hartlepool Rail.* (1865), 2 De G. J. & S. 475.

(*q*) 29 Car. 2, c. 3, s. 4.

memorandum or note thereof in writing signed by the parties to be charged therewith, or their agents thereunto lawfully authorized. It has been decided that where a chairman of a company signs a minute containing a resolution that a certain draft agreement be executed, his signature, although only made for the purpose of verifying the accuracy of the minute, is the signature of an agent of the company within the meaning of the statute (*r*). So far as these classes affect companies they consist of: contracts of guarantee or suretyship (*s*); contracts affecting lands, tenements, or hereditaments, or any interest therein (*t*); "any agreement that is not to be performed within the space of one year from the making thereof" (*tt*); executory contracts for the sale of goods or chattels of the value of 10*l.* or upwards, whether such goods are or are not in existence at the time when the contract was made. Contracts are executory when the buyer has not accepted or received any of the goods or given something in earnest to bind the contract or in part payment (*u*). A company is bound by a parol agreement concerning land where there has been part performance (*x*).

The contracts made by issuing, accepting, or indorsing negotiable instruments, such as bills of exchange, promissory notes, bills of lading, dock warrants, and delivery orders, must be in writing (*y*).

The Companies Act, 1908, s. 63, requires the name of the company to appear in any bill of exchange, promissory note, indorsement, cheque, or order for money or goods purporting to be signed by or on behalf of the company, and in default imposes a penalty of 50*l.* upon the directors and officers signing it or authorizing it to be signed; in addition to which they are personally liable on the instrument. This is so even where a mistake is made in the name of the company on the bill (*z*); and sect. 77 of the same Act provides that "a bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of or by or on behalf or on account of the company by any person acting under its authority." Although the regulations of a company give power to the directors to delegate any of their powers to a committee consisting of a member or members of the board, this does not, as between the company and a third person, entitle him to say that a director was acting under its authority

(*r*) *Jones* v. *Victoria Graving Dock Co.* (1877), 2 Q. B. D. 314.

(*s*) "Any special promise to answer for the debt, default, or miscarriages of another person": sect. 4 of the Statute of Frauds.

(*t*) "Any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them": sect. 4 of the Statute of Frauds.

(*tt*) Statute of Frauds, sect. 4.

(*u*) Sale of Goods Act, 1893, s. 4.

(*x*) *Howard* v. *Patent Ivory Co.* (1888), 38 C. D. 156, 163. Cf. *London and Birmingham Rail. Co.* v. *Winter* (1840), Cr. & Ph. 57; *Wilson* v. *West Hartlepool* (1864), 2 De G. J. & Sm. 475.

(*y*) See Bills of Exchange Act, 1882, and the Act 18 & 19 Vict. c. 111.

(*z*) *Atkins & Co.* v. *Wardle* (1889), 58 L. J. Q. B. 377; 61 L. T. 23.

within the meaning of this section in accepting a bill of exchange, he having no authority in fact (*a*). Sect. 33 of the Industrial and Provident Societies Act, 1893, is to the same effect. There are no provisions of this kind in the Companies Clauses Acts, because few companies incorporated by special Act have power to issue negotiable instruments.

By the Stamp Act, 1891, s. 93, contracts of marine insurance must be made in writing, with some few exceptions.

12. If a contract, bill of exchange, promissory note, or cheque does not purport to be made, accepted, drawn, indorsed, or signed in the name or on behalf of the company, it is not binding thereon, although accepted or signed by some of the directors, and countersigned by the secretary of the company (*b*).

So, too, it was held, that where the company was not mentioned in an agreement under seal to which it was not a party, the company was not bound, although the managing director was a party to the contract, and informed the other party thereto that he was acting on behalf of the company, and the company paid money under the contract (*c*).

13. Misrepresentations made or frauds committed by directors or other persons acting for the company, within their authority, have the same effect upon the agreements induced by such misrepresentations or frauds as if they had been made or committed by the company; but misrepresentations made or frauds committed by directors or persons purporting to act on behalf of the company in matters which do not fall within their authority do not affect the company.

A contract between the company and any person, procured by a misrepresentation of the directors or other agents of the company, can be rescinded, whether the misrepresentation is fraudulent or not; and where it is fraudulent, he can either rescind the contract or affirm it and sue the company and the directors or agents for damages, except that in the case of agreements to take shares the company cannot be sued for damages if the shareholders affirm the agreement (*d*). A secretary of a company

(*a*) *Premier Industrial Bank* v. *Carlton Manufacturing Co.*, [1909] 1 K. B. 106.

(*b*) *Serrell* v. *Derbyshire, &c., Rail. Co.* (1850), 19 L. J. C. P. 371.

(*c*) *Pickering's Claim* (1871), 6 Ch. 525.

(*d*) See *post*, p. 228.

is a mere servant, and has no implied authority to make any representation as to the financial position of the company (*e*), or any representation in order to induce a person to subscribe for its shares (*f*). He has implied authority to give certification of transfer of shares in the company (*g*) but has no implied authority to register any transfers of shares which directors may in their discretion refuse (*h*).

(*e*) *Barnett, Hoares & Co.* v. *South London Tramways Co.* (1887), 18 Q. B. D. 815.

(*f*) *Newlands* v. *National Employers' Accident Association* (1885), L. J. Q. B. 428.

(*g*) See *ante*, p. 190.

(*h*) *Chida Mines* v. *Anderson* (1905), 22 T. L. R. 27.

CONTRACTS OF COMPANIES.

CANADIAN NOTES.

It is provided by the Ontario Companies Act, sect. 108, that a contract made by a public company before it is entitled to commence business as specified in that Act shall be provisional only, and shall not be binding on the company until that date and on that date it shall become binding.

These latter words would probably not prevent a contract from being impeached on grounds such as fraud, after it shall "become binding."

The question of *ultra vires* cannot be made to depend upon the further question whether a certain contract was or was not beneficial to the company. Benefit or no benefit had really no bearing upon the question of *ultra vires*. The circumstances that a contract may require for its full or maximum performance an increased plant is not in itself sufficient to render the contract *ultra vires*. It would be different if such increased plant had been required to carry on a new or different business from that then being carried on by the company. *National Malleable Castings Co.* v. *Smith's Falls*, 14 O. L. R. 22.

Authority of Agent.

A company, being an incorporated person, must act through its agents. The directors and officers of the company are its agents, but are not necessarily the only agents of a company. It is usual for them to employ other persons to act for the company, and such persons will have power to bind the company within the limits of their agency. Their authority cannot, as a rule, be denied unless their employment is beyond the power of the directors, or unless they have been irregularly employed, and the person dealing with them had notice of the irregularity. *Thompson* v. *Brantford Electric Co.*, 25 A. R. 340; and see also *Ontario Western Lumber Co.* v

Citizens' Telephone Co., 32 C. L. J. 237; *Bain* v. *Anderson*, 27 O. R. 369; *Davidson* v. *St. Anthony Gold Mining Co.*, 15 O. W. R. 446.

In *Thomas* v. *Walker*, 16 O. W. R. 751, the plaintiff brought an action against a company on a certain contract for damages for breach of contract. The execution of the contract under the corporate seal and signature by the president and secretary was proved. The statute of incorporation gave the directors power to make contracts for the construction of a railway, provided that every such contract was sanctioned by a resolution of the shareholders representing two-thirds in value of the paid-up stock. The fact that no such resolution was ever passed was held to be a good defence to the action. The parties dealing with the company or with the directors were at least bound to read the Special Statute, so that the case did not fall within the principle of *Royal British Bank* v. *Turquand*, 5 E. & B. 248.

In *Selkirk* v. *Windsor*, 21 O. L. R. 109, the provisional directors had power to make the contract in question "when sanctioned by a note of the shareholders at any general meeting." Held, following *McDougall* v. *Lindsay*, 10 P. R. 247, that the plaintiff's contract was not affected by the non-observance of this direction: and apart from that, the contract was approved before and after it was made by the whole body of shareholders, though not formally assembled in general meeting.

In *Foley* v. *Barber*, 14 O. W. R. 699, 16 O. W. R. 607, the plaintiffs sought to set aside their subscriptions for unpaid stock on the ground of misrepresentation, and the defendant, the liquidator, counter-claimed to have the plaintiff declared liable to be placed on the list of contributions. The plaintiff Foley set up the defence to the counter-claim that his company could not purchase shares in any other company in the absence of a bye-law expressly authorizing it, and relied upon *R. S. M.* 1902, Ch. 30, sect. 68. Held, that as the Foley Company were given the special power to purchase shares in other companies by their Letters Patent, their vice-president had acted within his wide, general powers of management, and his company was bound, despite the absence of a bye-law. *Royal Bank* v. *Turquand*, 6 Q. B. 327, followed.

In the case of *National Malleable Castings Co.* v. *Smith's Falls*, 14 O. L. R. 22, the validity of a contract entered into by the managing director of a company was considered.

In that case no bye-law had been passed defining the general powers of the board of directors or of the managing director except

as to borrowing for the purposes of the company. The managing director without consulting the board signed a letter agreeing to furnish the plaintiffs in the action with a special line of goods. He knew that in order to carry out his contract a substantial extension of the company's plant and premises would be necessary and the plaintiffs also knew this. It was held that in the absence of bad faith or notice that the plaintiffs were entitled to assume that the managing director was authorized to enter into an agreement, it being one in regard to which the Board would have the power to bind the company. The Court of Appeal said that the contract being one which the board of directors could have entered into they could have authorized the manager of the company to do so on behalf of the company. Accordingly, in the total absence of bad faith or motive, the plaintiffs were entitled to assume that he had been duly clothed with the real authority which he was ostensibly exercising in entering into the contract in question. See also *Sheppard* v. *Bonanza Nickel Co.*, 25 O. R. 305.

Form of Contract.

A resolution expressed to be for the remuneration of an officer of the company was held sufficient to form a contract when acted upon which will bind the company in case of direct action to recover payment. *Fayne* v. *Langley*, 31 O. R. 254.

Seal.

Where a contract is produced under the seal of the company, the seal is presumed to be regularly affixed. *Woodhill* v. *Sullivan*, 14 C. P. 265; *Fell* v. *South*, 24 U. C. R. 196.

The power existing, the Courts will not scrutinize as to how it came to be formerly carried out in the face of a duly authenticated and properly drawn instrument under the corporate seal. *Sheppard* v. *Bonanza Nickel Co.*, 25 O. R. 309; *McKain* v. *Birbeck Co.* 7 O. L. R. 341. See also *Re The Red Deer Milling Co.*, 1 Alta. L. R. 237, and *Campbell* v. *Community General*, 20 O. L. R. 467.

Necessity for Seal.

The question of the necessity of the corporate seal has recently been discussed by the Ontario Court of Appeal in the case of

National Malleable Castings Co. v. *Smith's Falls*, 14 O. L. R. 22. The following statements are to be taken in the main from the judgment of Mr. Justice Garrow in that case.

The common law was strict that all contracts by a corporation must be executed under the common seal, but it was early departed from in the case of commercial or trading companies in matters of trivial or everyday occurrence, and this departure widened until it included practically all executed contracts which with a seal would have been lawful.

But in the case of executory contracts, although the apparent tendency has been towards greater freedom, it cannot be said that the Courts have yet fully approved of placing them entirely in the same category with executed contracts.

The furthest advance in this direction was made in the case of *South of Ireland Colliery Co.* v. *Waddle*, L. R. 3 C. P. 463; 4 C. P. 617. In that case a contract had been made by the defendants with the plaintiffs to supply a pumping engine required in the plaintiff's operations, and the plaintiffs had paid a part, not all of the price. The action was brought to recover damages for a failure to deliver the engine, and the defence was the absence of the plaintiffs' corporate seal. The broad rule there laid down is that a trading corporation may be bound by any and all contracts entered into for the purpose for which it was incorporated, although not under the corporate seal, a rule said by Pollock, C.B., in *Australian Royal Mail Steam Navigation Co.* v. *Marzetti*, [1855] 11 Exch. 228, to be founded on justice and common sense.

With this may be compared the judgment in *Wingate* v. *Enniskillen Oil Refining Co.* (1864), 14 C. P. 379, where an opposite conclusion was reached in a case resembling the present. But that decision was before the case of *South of Ireland Colliery Co.* v. *Waddle*. In the Supreme Court of Canada, it is true, in a municipal case, and upon an executed contract, the *South of Ireland Colliery Case* was referred to with unqualified approval by Gwynne, J., in whose judgment the majority of the Court concurred, in the case of *Bernardin* v. *Municipality of North Dufferin* (1891), 19 S. C. R. 581, at page 610. On the other hand, in the *Garland Manufacturing Co.* v. *The Northumberland Paper Co.* (1899), 31 O. R. 40, a Divisional Court, according to the head-note, fully maintained the old distinction between executory and executed contracts and apparently declined to follow or at least distinguish the *South of Ireland Colliery Case*. The case, however, really proceeds upon the special facts which brought it within *Finlay* v. *Bristol and Exeter R. W. Co.* (1852),

7 Ex. 409, a decision which it was held was not over-ruled by the *South of Ireland Colliery Case*, apparently also the view of Gwynne, J., who while explicitly approving of the judgment in the last-mentioned case in the same judgment, page 598, treats the earlier case of *Finlay* v. *Bristol and Exeter R. W. Co.* as still good law. That, like the case of the *Garland Manufacturing Co.* v. *Northumberland Paper Co.*, was an action to recover money for the use and occupation of land, and the Court refused to infer from the circumstances a contract to pay, where the land had not in fact been occupied. The learned Judge goes on to say:

"There may be reasons for refusing to imply a parol contract in the case of a trading corporation which would under similar circumstances be implied between individuals. The cases before referred to of *Finlay* v. *Bristol and Exeter R. W. Co.*, and the *Garland Manufacturing Co.* v. *Northumberland Co.*, are no doubt authorities for that position, but if the before-quoted rule laid down in the *South of Ireland* v. *Waddle Case* is to be fully adopted, and I think it should be, these cases seem to me to be at least illogical survivals, in fact, of the older and narrower rule of the common law. For if a trading corporation may be bound by an express contract not under seal, I am unable to understand why it should not also be bound by a similar contract implied by law in the interests of justice, always providing, of course, that the contract to be implied would have been unobjectionable if it had been under seal."

In the *Bernardin Case*, Mr. Justice Gwynne has laid down the following proposition:—

"When a corporation aggregate have by their managing body procured work to be done within the purposes for which the corporation was created, under a parol contract, and when the managing body of such corporation has accepted the work as completed under the parol contract, and the corporation have received the benefit thereof, it would be a fraud of the corporation to resist payment of the price or value of the work upon the ground that the contract was not executed under their corporate seal, and therefore, unless by some express statutory enactment the contrary governing the particular case, they cannot upon any principle of justice and sound sense, be permitted to do so either in Courts of Law or Equity, whose principles as to the prevention of committing such a fraud are identical."

In another case it was said that the contracts not under the corporate seal with trading corporation relating to purposes for which they are incorporated or apparently formed, and of such a

nature as would induce the Court to decree specific performance thereof if made between ordinary individuals will be enforced against them. *Ontario Western Lumber Co.* v. *Citizens Telephone Co.* (1896), 32 C. L. J. 237; *Thompson* v. *Brantford Electric Co.*, 25 Ont. A. R. 340; *Finlay* v. *Bristol and Exeter R. W. Co.* (1852), 7 Ex. 409, discussed and followed. *Garland Co.* v. *Northumberland Paper Co.*, 31 O. R. 40.

Appointments of an important character such as that of a manager of a company, in order to be binding must be under seal and should be made by bye-law. *Birney* v. *Toronto Milk Co.*, 1 O. W. R. 736. See also *Gold Leaf Mining Co.* v. *Clark*, 6 O. W. R. 1035.

A company having accepted goods purporting to be sold by an agreement made in the name of the company prior to its incorporation, and having paid promissory notes for a portion of the price, is (it seems) estopped as against the seller of the goods from denying that the agreement is as valid and as binding on the company as if formally executed under the seal of the company subsequent to incorporation. *Re* the *Red Deer Milling Co.*, 1 Alta L. R. 237.

CHAPTER XX.

BORROWING AND MORTGAGING POWERS

The regulations of a company usually contain provisions enabling directors to borrow for the purposes of the company, and to mortgage property of the company to secure the sum so borrowed. It is therefore necessary that directors should, before authorizing any borrowing on behalf of the company, and that persons should, before lending any money to the company, refer to its regulations, in order to see the nature and limits of the borrowing and mortgaging powers of the company and of its directors. If the borrowing powers are limited in amount, it should be seen that the amount has not been exceeded. The acceptance of a loan to the company is equivalent to a representation by the directors who authorize it that the company has power to borrow the amount lent; but if in fact the company has borrowed to the extent of its borrowing powers, the loan will be irrecoverable as against the company or its property, although the directors who borrowed the money will be liable in damages to the lender for the loss sustained by him (*a*). It should also be ascertained that the borrowing powers are exerciseable by the directors, and that the conditions and formalities prescribed for the exercise of borrowing and mortgaging powers are complied with, and that there is power to mortgage the property proposed to be given as security. The amount of money lent upon the security of the debentures and debenture stock of companies is so large that it will be convenient to devote a separate chapter to such securities, and to treat in this chapter of borrowing and mortgaging powers generally.

1. The power of a company or its directors to borrow or mortgage may be either express or implied.

Companies governed by the Companies Clauses Acts have no power

(*a*) See *post*, p. 394.

to borrow or raise money by mortgage, bond, debenture, or otherwise, unless it is given by the company's special Act (*b*). The Building Societies Act, 1874, sect. 15, confers upon societies incorporated thereunder a limited power of borrowing. In the case of companies governed by the Companies Acts, power to borrow and mortgage is usually given by their memoranda of association or deeds of settlement, and in default of any express power the following rule applies to trading companies.

2. A trading company may borrow money for the purposes of the company, and mortgage or charge all or any part of its property to secure the money so borrowed, although no express power to borrow and mortgage is given to them.

This rule has been applied in the case of a banking company (*c*), a shipping company (*d*), an omnibus company (*e*), a file manufacturing company (*f*), an insurance company (*g*), and an auction, estate, loan, and discount company (*h*). A mining company has no implied power of borrowing (*i*). It is submitted that companies other than trading and chartered companies can only borrow if authorized by statute, or, in the case of companies governed by the Companies Acts, by their memoranda or articles of association.

3. Any condition precedent to the exercise of a power to borrow or mortgage should be performed.

Where directors have only power to borrow upon the security of debentures when a certain proportion of the capital has been subscribed, any debentures issued before such subscription will be invalid (*k*). But where the borrowing powers of a company are only to arise upon completion of a portion of its railway, the company may before completion, in consideration of a present advance, validly agree to issue debentures to secure the same when it is completed (*l*).

(*b*) See *post*, p. 266.

(*c*) *Bank of Australasia* v. *Breillat* (1847), 6 Moore, P. C. 152.

(*d*) *Australian Steam Clipper Co.* v. *Mounsey* (1858), 4 K. & J. 733.

(*e*) *Bryon* v. *Metropolitan Saloon Omnibus Co.* (1858), 3 De G. & J. 123.

(*f*) *Patent File Co.* (1870), 6 Ch. 83, 86, 88.

(*g*) *International Life Assurance Society* (1870), 10 Eq. 312.

(*h*) *General Auction, Estate and Monetary Co.* v. *Smith*, [1891] 3 Ch. 432.

(*i*) *Burmester* v. *Norris* (1851), 6 Ex. 796; *Ricketts* v. *Bennett* (1847), 4 C. B. 686; *German Mining Co.* (1853), 4 De G. M. & G. 19.

(*k*) *West Cornwall Rail. Co.* v. *Mowatt* (1848), 17 L. J. N. S. Ch. 366.

(*l*) *Bagnalstown and Wexford Rail. Co.* (1870), Ir. Rep. 4 Eq. 505.

When any company is authorized, by a special Act incorporating Part 3 of the Companies Clauses Act, 1863, to create and issue debenture stock, such creation and issue require the consent of a three-fifths majority (or the majority prescribed by the special Act) at a special meeting, duly convened for that purpose.

A company governed by the Companies Acts, cannot exercise any borrowing powers unless and until it becomes entitled to commence business under sect. 87 of the Companies Act, 1908 (*m*). The company, however, is entitled to offer debentures and debenture stock for subscription simultaneously with shares, and to receive moneys payable on application therefor (*n*). Directors should, before first exercising any borrowing powers, have produced to them the certificate of the Registrar of Joint Stock Companies that the company is entitled to commence business (*n*). Every person intending to lend money to a newly formed company should also call for the production of this certificate before doing so. It is submitted that any money lent to the company before it is entitled to commence business would be irrecoverable, but that the directors would be liable in damages to the lender for breach of warranty of authority.

4. Where the condition precedent is a matter pertaining to the internal management of the company, its non-performance does not invalidate a loan by a person acting in good faith, without notice of such non-performance, nor any security given in respect thereof by the company (*o*).

This rule has been applied where the power to borrow and issue debentures required the consent of a general meeting of the company, which had not been given (*p*), and where the execution of a mortgage (*q*) and the issue of debentures (*r*) had not been duly authorized by the directors.

(*m*) See *ante*, p. 33. As to penalty on default, see *post*, p. 404.

(*n*) *Ibid.*

(*o*) See *ante*, p. 101.

(*p*) *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327; *Agar* v. *Athenæum Life Society* (1858), 3 C. B. N. S. 725; *Fountaine* v. *Carmarthen Rail. Co.* (1868), 5 Eq. 316; *Land Owners' Co.* v. *Ashford* (1880), 16 C. D. 411; *Hampshire Land Co.*, [1896] 2 Ch. 743.

(*q*) *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.*, [1895] 1 Ch. 629.

(*r*) *Davies* v. *R. Bolton & Co.*, [1894] 3 Ch. 678. In this case the articles of association of the company provided that any debenture bearing the common seal of the company issued for valuable consideration should be binding on the company, notwithstanding any irregularity touching the authority of the directors to issue the same. See also *Bank of Syria*, [1900] 2 Ch. 272; [1901] 1 Ch. 115; and *Duck* v. *Tower Galvanising Co.*, [1901] 2 K. B. 314.

It has been suggested (*s*) that the decision in *The Royal British Bank* v. *Turquand* depended upon the terms of the power, which was one enabling the directors to borrow with consent, and that where borrowing is prohibited, unless with consent, the case would be different; but it is submitted that there is no substantial difference between the two cases. Where the person lending money has notice of the non-performance of such a condition, he cannot recover the amount of the loan (*t*). The assignee of a security not transferable at law, and the equitable assignee of a security so transferable respectively, take it subject to any equities which may have affected the person to whom it was originally issued, although such assignee took the assignment for value, and without notice of the circumstances giving rise to such equities, unless by the terms of issue or the conduct of the company the company is estopped from denying its liability on the security (*u*). Where the security is transferable at law, an irregularity in the issue cannot be set up against a *bonâ fide* assignee for value without notice of the irregularity, even although the original holder had notice thereof (*x*); and where the security is not transferable at law, a company may, by the terms of issue of the security, or by its subsequent conduct, be estopped from denying the legality of the security as against a *bonâ fide* assignee for value without notice of any irregularity (*y*), and this is so in the case of a Lloyd's bond (*z*).

5. The forms imperatively prescribed for the exercise of a power of borrowing or mortgaging should be complied with strictly.

The forms prescribed for the exercise of a power to borrow or mortgage may be either imperative or obligatory, or directory. In the former case they must be complied with, or else the loan or mortgage is void; but in the latter case non-compliance does not invalidate the loan or mortgage (*a*). As it is difficult to distinguish forms which are imperative from those

(*s*) *Commercial Bank of Canada* v. *Great Western Rail. Co. of Canada* (1865), 13 L. T. 105.

(*t*) *Magdalena Steam Navigation Co.* (1860), Johns. 690; *Howard* v. *Patent Ivory Co.* (1886), 38 C. D. 156.

(*u*) *Athenæum Life Insurance Society* v. *Pooley* (1858), 3 De G. & J. 294; *Natal Investment Co.* (1868), 3 Ch. 355; *Christie* v. *Taunton & Co.*, [1893] 2 Ch. 175; *Palmer's Decoration Co.*, [1904] 2 Ch. 743.

(*x*) *Webb* v. *Commissioners of Herne Bay* (1870), L. R. 5 Q. B. 642; *Romford Canal Co., Carew's Claim* (1883), 24 C. D. 85, 89.

(*y*) *Blakely Ordnance Co.* (1867), 3 Ch. 154; *Dickson* v. *Swansea Vale Co.* (1868), L. R. 4 Q. B. 44; *Higgs* v. *Northern Assam Tea Co.* (1869), L. R. 4 Exch. 387; *Imperial Land Co. of Marseilles* (1870), 11 Eq. 478; *Hercules Insurance Co.* (1874), 19 Eq. 302; *Romford Canal Co., Pocock and Trickett's Claims* (1883), 24 C. D. 85, 93.

(*z*) *South Essex Estuary Co.* (1870), 11 Eq. 157.

(*a*) *Landowners', &c. Inclosure Co.* v. *Ashford* (1880), 16 C. D. 411; *Hansard Publishing Union* (1892), 8 T. L. R. 280; *Powell* v. *London & Provincial Bank*, [1893] 2 Ch. 555.

which are directory, it should be seen that all the prescribed forms are complied with strictly. Under the Companies Clauses Act, 1845, s. 41, every mortgage by a company, to which that section is applicable, must be made by deed, under its common seal, duly stamped, and wherein the consideration is truly stated. But it is sufficient if the consideration is apparent on the face of the deed, though not in terms stated; and *semble*, the provision as to stamping and stating the consideration is not imperative (*aa*).

6. The terms of a power to mortgage must be complied with strictly.

This rule applies to *inter alia* the property that can be mortgaged. Thus a charge upon the uncalled capital of a company is not authorized by a power to charge its "funds or property" (*b*), or to charge its "works, hereditaments, plant, property, and effects" (*c*), or to charge its "property" (*d*). But such a power authorizes a charge on calls already made or determined upon (*e*). And when a company with power to charge its uncalled capital issues debentures charging only its undertaking and its present and after-acquired property, the charge does not include uncalled capital (*f*), nor does a charge on "all the lands, tenements and estates of the company and all their undertaking" (*g*), or on "their undertaking and property and receipts and revenues" (*h*), or on "their real and personal estate" (*i*). The ground upon which all these decisions rest is the well-known distinction between property and "a power." The property of a company does not include the liability of its members to contribute to its funds. The 38th section of the Companies Clauses Act, 1845, empowers a company governed by it, which is authorized to borrow money on mortgage or bond, to secure the repayment of any money so borrowed by mortgaging its undertaking and future calls on its shareholders. Where, either by the memorandum of association or the articles of association (whether original or amended (*k*)) of a company governed by the Companies Acts, power is given in express terms to mortgage future calls, they may be validly mortgaged, and such mortgage may be enforced,

(*aa*) See note (*a*) on page 233.

(*b*) *Stanley's Case* (1864), 4 De G. J. & S. 407; on appeal, 33 L. J. Ch. 535.

(*c*) *Sankey Coal Co.* (No. 2) (1870), 10 Eq. 381.

(*d*) *Bank of South Australia* v. *Abrahams* (1875), L. R. 6 P. C. 265.

(*e*) *Sankey Coal Co.* (1870), 9 Eq. 721; *Gibbs and West's Case* (1870), 10 Eq. 312.

(*f*) *Russian Spratt's Patent, Ltd.*, (1898), 2 Ch. 149; approving *Streatham and General Estates Co.*, [1897] 1 Ch. 15.

(*g*) *King* v. *Marshall* (1864), 33 B. 565.

(*h*) *Marine Mansions Co.* (1867), 4 Eq. 601.

(*i*) *Ex parte Bradshaw* (1879), 15 C. D. 465.

(*k*) *Newton* v. *Anglo-Australian Investment Co.*, [1895] A. C. 244, 248; *Jackson* v. *Rainford Coal Co.*, [1896] 2 Ch. 340.

while the company is a going concern, by appointing a receiver, and either ordering the directors to make calls and pay the proceeds over to the receiver or ordering him to make the calls (*l*). Such a charge can also be enforced after the company goes into liquidation (*m*), but it is the liquidator only who can make and enforce the calls, although upon an adequate indemnity being given, a receiver so appointed may obtain leave to use the liquidator's name in proceedings to enforce the calls (*n*). A charge upon uncalled capital is authorized by a power to mortgage "the company's properties and rights" (*o*), "to receive money on loan . . . upon any security of the company or upon the security of any property of the company" (*p*), to borrow money on the security of "all or any of the real and personal assets . . . of the company" (*q*), or to borrow "in such other manner as the company may determine," when the first alternative power covers everything it could charge except uncalled capital (*r*). If a special resolution has been passed under the Companies Act, 1908, sect. 59, prohibiting any portion of the uncalled capital of a company limited by shares being called up except in the event of and for the purposes of the company being wound up, directors cannot subsequently mortgage such uncalled capital, although the memorandum of association empowers them to mortgage the uncalled capital of the company (*s*). Where a temporary loan is made by bankers to a company upon the security of its uncalled capital the charge is frequently made by a resolution of the board, *i.e.* by parol for the purpose of saving stamp duty, and it has been decided that such a charge is good (*t*).

A charge upon future or after-acquired property is good (*u*), and directors of a company when so empowered can effectually charge its future or after-acquired property (*x*). In *Florence Land, &c., Co.* (*y*), the question was suggested by the judges whether the Judicature Act, 1875,

(*l*) *Phœnix Bessemer Co.* (1875), 44 L. J. Ch. 683. See also *English Channel Steamship Co.* v. *Rolt* (1881), 44 L. T. 135; *Pyle Works Co.* (1890), 44 C. D. 535, and cases cited in note (*k*).

(*m*) *Pyle Works Co.* (1890), 44 C. D. 535; *Queensland Mercantile, &c., Co.*, [1891] 1 Ch. 536; *Newton* v. *Anglo-Australian Investment Co., supra.*

(*n*) *Fowler and Broad's Patent Night Light Co.*, [1893] 1 Ch. 724; *Harrison* v. *St. Etienne Brewery Co.*, [1893] W. N. 108.

(*o*) *Howard* v. *Patent Ivory Manufacturing Co.* (1888), 38 C. D. 156.

(*p*) *Newton* v. *Anglo-Australian Investment Co., supra.*

(*q*) *Pyle Works* (No. 2) (1891), 1 Ch. 173. See also *Page* v. *International Agency, &c., Trust* (1893), 62 L. J. Ch. 568.

(*r*) *Jackson* v. *Rainford Coal Co., supra.*

(*s*) *Bartlett* v. *Mayfair Property Co.*, [1898] 2 Ch. 28.

(*t*) *Tilbury Portland Cement Co.* (1893), 62 L. J. Ch. 814.

(*u*) *Tailby* v. *Official Receiver* (1888), 13 A. C. 523.

(*x*) *Bloomer* v. *Union Coal and Iron Co.* (1873), 16 Eq. 383; *Anderson* v. *Butler's Wharf Co.* (1879), 48 L. J. Ch. 824; *Marine Mansions Co.* (1867), 4 Eq. 601; *Panama, &c., Royal Mail Co.* (1870), 5 Ch. 318; *General South American Co.* (1876), 2 C. D. 337.

(*y*) (1878), 10 C. D. 530.

sect. 10, affected the power of companies to charge their after-acquired property as against their other creditors; but in *Re Dublin Drapery Co.* (*z*), it was held that the corresponding section (28 (1)) of the Irish Judicature Act, 1877, did not affect it. A charge upon the "undertaking" of a company constitutes a floating charge on all its property (*a*), and such a charge necessarily comprises after-acquired property.

A railway company may create a valid mortgage of its surplus lands to secure moneys advanced to it for the purposes of the company (*b*), and also of the proceeds of the sale of surplus lands to secure a debt due to the contractors for the construction of the line (*c*).

7. A register of the mortgages, bonds, and debenture stock of companies governed by the Companies Clauses Acts must be kept by the company containing the prescribed particulars (*d*).

In the case of any mortgage or bond the register must specify the number and date of such mortgage or bond, the sum secured thereby, and the names of the parties thereto with their proper additions, and the entry in the register must be made within fourteen days after such date. In the case of debenture stock the register must specify the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled. Each of such registers may be inspected at all reasonable times by any mortgagee, bondholder, debenture-stockholder, shareholder, or stockholder of the company without the payment of any fee. A shareholder or stockholder is entitled to a general inspection (*e*), and to take copies, even although he is acting in the interests of another company (*f*).

8. A register of all mortgages and charges specifically affecting the property of a limited company governed by the Companies Acts must be kept by the company containing the prescribed particulars (*g*).

(*z*) (1884), 13 L. R. Ir. 174.

(*a*) *Panama, &c., Royal Mail Co.* (1870), 5 Ch. 318; *Marshall* v. *Rogers & Co.* (1898), 14 T. L. R. 217.

(*b*) *Imperial Mercantile Credit Association* v. *L. C. & D. Rail. Co.* (1867), 15 W. R. 1187.

(*c*) *Gardner* v. *L. C. & D. Rail. Co.* (1867), 2 Ch. 201. See also *Stagg* v. *Medway Navigation Co.*, [1903] 1 Ch. 169.

(*d*) Companies Clauses Act, 1845, s. 45: Companies Clauses Act, 1863, s. 28.

(*e*) *Holland* v. *Dickson* (1888), 37 C. D. 669.

(*f*) *Mutter* v. *Eastern & Midlands Rail. Co.* (1888), 38 C. D. 92.

(*g*) C. A. 1908, s. 100. As to penalty on default, see *post*, p. 405.

The register must contain in the case of each mortgage or charge a short description of the property comprised therein, the amount thereof, and (except in the case of bearer securities) the names of the persons entitled thereto. The register is to be open to inspection at all reasonable times of any creditor or member of the company without fee or of any other person on payment of such fee not exceeding one shilling for each inspection as the company may prescribe (*h*). In addition to the penalty (*h*), as regards companies registered in England or Ireland, any judge of the High Court sitting in Chambers or the judge of the Court exercising the Stannaries jurisdiction in the case of companies subject thereto, may by order compel an immediate inspection of the register (*i*). This right of inspection includes the right to take copies (*k*). A creditor is entitled to inspect either by himself or his solicitor (*l*). Where debentures are secured by a covering deed and do not themselves charge any property not comprised in the deed, it is sufficient to register the deed, but in any other case debentures containing a charge should be registered. *Semble*, in the case of registered debentures, the entry of the names of the first persons to whom the debentures are issued is sufficient (*m*). Omitting to register a mortgage does not render it void, even although made to a director (*n*). A solicitor acting for a company may be an officer within the meaning of the penalty sub-section of sect. 100 (*o*), but not the bankers of the company (*p*).

9. No mortgage or charge created by a company governed by the Companies Clauses Acts, or by the Companies Acts, requires registration under the Bills of Sale Acts (*q*).

It must, however, be remembered that any mortgage or charge made after the 31st December, 1900, by a company registered under the Companies Acts in England or Ireland created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale, must be registered with the registrar of joint stock companies (*r*). The debentures of a company incorporated by registration in Guernsey do not require to be registered under the Bills of Sale Acts (*s*).

(*h*) C. A. 1908, s. 101. As to penalty on default, see *post*, p. 405.

(*i*) C. A. 1908, s. 101.

(*k*) *Nelson* v. *Anglo-American Land Co.*, [1897] 1 Ch. 130.

(*l*) *Credit Co.* (1879), 11 C. D. 256.

(*m*) *Dublin Drapery Co.* (1884), 13 L. R. Ir. 174.

(*n*) *Wright* v. *Horton* (1887), 12 A. C. 371.

(*o*) *Ex parte Valpy* (1872), 7 Ch. 289; cf. *Dublin Drapery Co.*, *supra*.

(*p*) *Ex parte National Bank* (1872), 14 Eq. 507.

(*q*) *Standard Manufacturing Co.*, [1891] 1 Ch. 640.

(*r*) See *post*, p. 238.

(*s*) *Clark* v. *Balm Hill & Co.*, [1908] 1 K. B. 667.

10. Certain classes of mortgages and charges created by companies governed by the Companies Acts must be registered with the Registrar of Joint Stock Companies (*t*).

Every mortgage or charge created after the 1st July, 1908, by a company (*u*) governed by the Companies Acts, and registered in England or Ireland, must be registered with the registrar of joint stock companies if it falls within any of the following classes:—

(1) A mortgage or charge for the purpose of securing any issue of debentures or debenture stock (*v*).

(2) A mortgage or charge on uncalled share capital (*w*) or any book debts of the company or any land wherever situate or any interest therein.

(3) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale (*x*).

(4) A floating charge (*y*) on the undertaking or property of the company.

Where debentures are not secured by a trust deed or other instrument the creation of a debenture means only its sealing, and not its issue, as it cannot be issued until after it is registered (*z*). A resolution authorizing an issue of debentures cannot be regarded as the creation of debentures (*a*). Unless the prescribed particulars (*b*) of the mortgage or charge, together with the instrument (if any) by which it is created or evidenced, are delivered to or received by the registrar of joint stock companies in accordance with the Act within twenty-one days after it is created, it is void as against the liquidator and any creditor of the company, but the contract or obligation for repayment of the money thereby secured is not prejudiced, and the same becomes immediately payable.

Class 1 of the mortgages or charges requiring registration includes cases where the charge is contained in the debentures or debenture stock certificates as well as mortgages or charges contained in trust deeds

(*t*) C. A. 1908, s. 93.

(*u*) *Bristol United Breweries, Ltd.* v. *Abbott*, [1908] 1 Ch. 279. See *Herts and Essex Waterworks Co.*, [1909] W. N. 48, as to registration of debentures issued between January 1st, 1901, and July 1st, 1908.

(*v*) See *post*, p. 257, as to what is a debenture.

(*w*) See *ante*, pp. 234, 235, as to uncalled capital.

(*x*) See *post*, p. 240, as to what is a bill of sale.

(*y*) See *J. C. Johnson & Co.*, [1902] 2 Ch. 101; *Illingworth* v. *Houldsworth*, [1904] A. C. 355; and *post*, p. 258, as to what is a floating charge.

(*z*) *Spiral Globe, Ltd.*, [1902] 2 Ch. 209; *New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621.

(*a*) *Abrahams, Ltd.*, [1902] 1 Ch. 695; *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498, 502.

(*b*) See *post*, p. 245, as to what particulars are required.

securing or creating debentures or debenture stock. A trust deed or covering deed may be registered before any debentures or stock thereby secured are issued, and if so registered it is unnecessary to register any issue or issues from time to time of the debentures or stock thereby secured (*c*). In a case where the covering deed was executed in 1897, and therefore could not be registered under the Companies Act, 1900, the trustees had power to sell any part of the mortgaged premises and, at the request of the company, to invest the proceeds of sale in the purchase of the other property to be held upon the trusts of the covering deed. The trustees purchased property from the company, which was duly conveyed to them to be held upon the trusts of the covering deed, and it was held that the conveyance must be registered (*d*).

In a somewhat similar case, except that the property was not purchased from the company, it was held that the conveyance did not require registration as it was not a mortgage or charge created by the company (*e*). In another case, where the covering deed was executed containing specific equitable charges on specific ships, it was held that subsequent statutory mortgages of those specific ships which were required to complete the security, and also statutory mortgages of ships substituted therefor under the powers of the covering deed, did not require registration (*f*).

Class 2 does not include a deposit of a negotiable instrument given to secure the payment of any book debts of a company where the deposit is made to secure an advance to the company (*g*), nor does it include a mortgage or charge by the company on debentures entitling the holder to a charge on land (*h*).

The third class of mortgages and charges which require registration under sect. 93 are mortgages or charges created or evidenced by instruments which, if executed by an individual, would require registration as bills of sale. It is therefore important to ascertain what classes of instruments require registration as bills of sale.

The law relating to bills of sale was consolidated and amended by the Bills of Sale Acts, 1878 and 1882, neither of which applies to Scotland or Ireland (*i*); and all bills of sale given to secure debts, if executed by individuals, require registration under those Acts, or otherwise they are invalid. The Bills of Sale Act, 1878, applies to absolute bills of sale as well as to conditional bills of sale; but the Companies Act, 1908, only applies to bills of sale given by companies by way of security.

(*c*) *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498.

(*d*) *Cornbrook Brewery Co.* v. *Law Debenture Corporation*, [1904] 1 Ch. 103.

(*e*) *Bristol United Breweries, Ltd.* v. *Abbott*, [1908] 1 Ch. 279.

(*f*) *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564.

(*g*) C. A. 1908, s. 93, sub-s. 1 (3).

(*h*) *Ibid.*, sub-s. 1 (4).

(*i*) Bills of Sale Act, 1878, s. 24; Bills of Sale (1878) Amendment Act, 1882, s. 18.

Mortgages and charges on personal chattels may be divided into two classes:—

(1) Where the possession of the chattels does not pass to the mortgagee.

(2) Where the possession of the chattels passes to the mortgagee.

No instrument can be a bill of sale unless the grantor was in possession of the goods at the time of its execution, and remains in possession notwithstanding such execution. Therefore a pledge of goods is not a bill of sale, because a pledge is always effected by putting the pledgee in possession of the goods pledged, and an instrument regulating or qualifying the rights of the pledgee does not require registration (*j*). Where there is an absolute sale of goods with a contemporaneous instrument giving the grantor the right of re-purchasing the goods, the instrument is not a bill of sale, because both the property in the goods and possession of the goods pass to the purchaser (*k*). A *bonâ fide* hire-purchase agreement is not a bill of sale (*l*); but as the Court judges of a transaction not by its form, but by its true nature, a transaction purporting to be a sale of chattels, followed by the buyer entering into a hire-purchase agreement with the seller comprising the same chattels, must be looked at as a whole, and may be a bill of sale (*m*).

A document is not a bill of sale unless it is a document on which the title of the transferee of the goods depends, either as being the actual transfer of the property or an agreement to transfer it, or a document of title taken at the time as a record of the transaction; and if the title to the goods does not depend on the document, but is complete before the document is given, it is not a bill of sale (*n*). On the other hand, if the title does depend on the document it is a bill of sale (*o*).

The four classes of documents mentioned in the Act of 1878 which require registration as bills of sale are—

(1) Assurances of personal chattels, *e.g.*—

Bills of Sale.

Assignments.

Transfers.

Declarations of trust without transfer.

(*j*) *Ex parte Hubbard* (1886), 17 Q. B. D. 690; *Charlesworth* v. *Mills*, [1892] A. C. 231, 242; *Grigg* v. *National Guardian Assurance Co.*, [1891] 3 Ch. 206.

(*k*) *Manchester, Sheffield, &c., Railway Co.* v. *North Central Wagon Co.* (1888), 13 A. C. at p. 568.

(*l*) *Ex parte Crawcour* (1878), 9 C. D. 419; *Ex parte Rawlings* (1899), 22 Q. B. D. 193; *McEntire* v. *Crossley Bros.*, [1895] A. C. 457; *United, &c., Club* v. *Bexton*, [1891] 1 Q. B. 28, n.

(*m*) *Ex parte Odell* (1878), 10 C. D. 76; *Madell* v. *Thomas & Co.* (1891), 1 Q. B. D. 230; *Re Watson* (1890), 25 Q. B. D. 27; *Becket* v. *Tower Assets Co.*, [1891] 1 Q. B. 638; *Maas* v. *Pepper*, [1905] 1 Ch. 102.

(*n*) *Marsden* v. *Meadows* (1881), 7 Q. B. D. 80; *Jones* v. *Tower Furnishing Co.* (1889), 61 L. T. 84.

(*o*) *Ex parte Cooper* (1878), 10 C. D. 313, as explained in *Woodgate* v. *Godfrey* (1879), 5 Ex. D. 24.

Inventories of goods with receipt thereto attached, or receipts for purchase-money of goods.

Other assurances of personal chattels (*r*).

(2) Powers of attorney, authorities or licences to take possession of personal chattels as security for any debt (*r*).

(3) Agreements whereby a right in equity to any personal chattels or to any charge or security thereon is given (*r*).

(4) Every attornment, instrument, or agreement (not being a mining lease, or a lease by a mortgagee who has taken actual possession to his mortgagor as tenant at a fair rent (*p*)) whereby a power of distress upon personal chattels is given or agreed to be given by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only (*q*).

All the above-mentioned four classes are concerned with personal chattels only, and the Act of 1878 defines what are personal chattels for the purposes of the Act.

The expression "personal chattels" means (*r*)—

(i.) Goods, furniture and other articles capable of complete transfer by delivery.

(ii.) Fixtures, when separately assigned or charged (*s*), except fixed motive powers (*t*), fixed power machinery (*u*), and

(*p*) This exception does not apply when the demise is contained in the mortgage deed: *Re Willis* (1888), 21 Q. B. D. 384; *Green* v. *Marsh*, [1892] 2 Q. B. 330.

(*q*) Bills of Sale Act, 1878, s. 6.

(*r*) *Ibid.* s. 4.

(*s*) Fixtures or growing crops are not to be deemed separately assigned or charged by reason only that they are assigned or charged by separate words or that power is given to sever them from the land or building to which they are attached or the land on which they grow, provided that any freehold or leasehold interest in such land or building passes by the same instrument to the same person. (Bills of Sale Act, 1878, s. 7; *Ex parte Moore & Robinson's Banking Co.* (1880), 14 C. D. 379.) The instrument to be a bill of sale must contain express power for the mortgagee to sell the fixtures separately from the land (*Re Yates* (1888), 38 C. D. 112; *Johns* v. *Ware* (1899), 1 Ch. 359), and the power of sale implied in a mortgage by a mortgagor conveying as beneficial owner is not such an express power. (*Re Yates, supra.*) If, however, there passes by a mortgage anything which would not pass by a conveyance of the freehold, such mortgage is a bill of sale. (*Small* v. *National Provincial Bank of England*, [1894] 1 Ch. 686; cf. *Re Brook*, [1894] 2 Ch. 600.)

(*t*) Such as water wheels and steam engines, and the steam boilers, donkey engines and other fixed appurtenances of such motive powers.

(*u*) Such as the shafts, wheels, drums, and their fixed appurtenances which transmit the action of the motive powers to the other machinery fixed and loose.

pipes for steam, gas and water in any factory or workshop (*x*).

(iii.) Machinery used in or attached to any factory or workshop (*x*) other than the machinery comprised in the exception to Class ii.

(iv.) Growing crops, when separately assigned or charged (*y*).

Personal chattels do not include (*z*)—

(v.) Chattel interests in real estate.

(vi.) Fixtures, when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, except machinery included in Class iii.

(vii.) Growing crops when assigned together with any interest in the land on which they grow.

(viii.) Machinery and effects excepted from Class ii. (*a*).

(ix.) Shares or interests in the stock, funds or securities of any government, or in the capital or property of incorporated or joint stock companies.

(x.) Choses in action (*b*).

(xi.) Any stock or produce (*c*) upon any farm or lands, which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving such bill of sale.

Having explained what are and what are not personal chattels for the purposes of the Bills of Sale Acts, it is proposed to treat separately of the four classes of bills of sale mentioned on pages 240, 241, *ante*.

(1.) **Bills of Sale.**—For the purposes of the Bills of Sale Acts bills of sale do not include the following documents (*d*)—

Assignments for the benefit of the creditors of the persons making or giving the same (*e*).

Transfers or assignments of any ship or vessel (*f*), or any share thereof.

(*x*) "Factory or workshop" means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or the altering, repairing, ornamenting or finishing of any article, or to the adapting for sale any article. See Bills of Sale Act, 1878, s. 5.

(*y*) See note (*s*), *supra*.

(*z*) Bills of Sale Act, 1878, s. 4.

(*a*) *Topham* v. *Greenside Glazed Brick Co.* (1887), 37 C. D. 281; *Ex parte Byrne* (1888), 20 Q. B. D. 310.

(*b*) *E.g.*, book and other debts, bills, promissory notes, cheques, policies of insurance.

(*c*) See *Brantom* v. *Griffits* (1876), 1 C. P. D. 355, where Brett, J., was of opinion that stock or produce meant produce already severed from the land.

(*d*) Bills of Sale Act, 1874, s. 4.

(*e*) See *Hadley* v. *Beedon*, [1895] 1 Q. B. 646.

(*f*) *Gapp* v. *Bond* (1887), 19 Q. B. D. 200.

Transfers of goods in the ordinary course of business (*g*) of any trade or calling.

Bills of sale of goods in foreign parts or at sea.

Bills of lading.

India warrants.

Warehouse-keepers' certificates.

Warrants or orders for the delivery of goods.

Any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented (*h*).

Any instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory or store, or to their being reshipped for export or delivered to a purchaser not being the person giving or executing such instrument (*i*).

An assignment of chattels personal may in general be made by parol, that is, either by mere writing or simply by word of mouth, and does not require a deed or the delivery of possession; and if made in writing, it may be either in the form of a mere note or memorandum or by a regular deed of assignment, which last is ordinarily denominated (whether the transaction be between buyer and seller or not) a bill of sale (*j*). Sect. 3 of the Bills of Sale Act, 1878, makes that Act apply to every bill of sale, whether absolute or subject or not subject to any trust whereby the holder or grantee has power, either with or without notice and either immediately or at any future time, to seize or take possession of any chattels comprised in or made subject to such bill of sale.

Assignments—Transfers.—An assignment or transfer must be a document which, though not in form a bill of sale, assumes to transfer the property in goods in the same way as a bill of sale would (*k*). An assignment of contractual rights is not a bill of sale, even although contained in a document which in part is void as a bill of sale.

Declaration of Trust without Transfer.—A declaration of trust of personal chattels without any transfer being made, in equity passes the property in the chattels to the person in whose favour the trust is declared.

(*g*) As to the meaning of "ordinary course of business," see *Taylor* v. *McKeand* (1880), 5 C. P. D. 358; *National Mercantile Bank* v. *Hampson* (1880), 5 Q. B. D. 177; *Payne* v. *Fern* (1881), 6 Q. B. D. 620; cf. *post*, p. 259.

(*h*) Bills of Sale Act, 1874, s. 4.

(*i*) Bills of Sale Act, 1891, s. 1.

(*j*) Stephens' Commentaries, 48.

(*k*) *Ex parte Hubbard* (1886), 17 Q. B. D. 690, 696.

Inventories of Goods, with Receipt thereto attached, or Receipts for the Purchase-money of Goods.—Inventories and receipts are only bills of sale when they operate as assurances of chattels. Therefore an inventory and receipts subsequently given by a sheriff to a person who has bought goods from the sheriff which he has seized under a writ of *fi. fa.*, is not a bill of sale, although after the sale the buyer allows the former owner of the goods to have possession of them, because by the sale the property in and possession of the goods passed to the buyer (*l*). Where there has been an oral agreement to give a security on goods, a mere receipt for the money advanced is not a bill of sale (*m*). These words are intended to apply to cases where the person who is in possession of goods, in order to give a security, might try to evade the enactment by making a verbal agreement to pass the property, and giving at the same time an inventory of the goods and a receipt for the price and continuing to remain in possession of the goods (*n*).

Where, upon a sale for 150*l.* of goods in the possession of the purchaser, an inventory of the goods and a receipt for the purchase-money was signed, and at the same time an agreement was made for the demise of the goods to the seller in consideration of the payment of 170*l.* on a future day, with power in default of payment for the purchaser to determine the agreement and to sell the goods and pay to himself the 170*l.*, any surplus to be paid to the hirer, and in the event of the payment of the money by the hirer the goods to be his property, it was held that the transaction, taken as a whole, was a bill of sale (*o*).

(2.) This class includes a licence in writing given by the owner of goods, empowering a person from whom he has borrowed money to take immediate possession of all the goods in the borrower's possession and to sell the same, and out of the proceeds to repay himself the moneys borrowed (*p*).

(3.) An agreement conferring a right in equity to any personal chattels, or to any charge or security thereon, is a document which creates a right in equity as distinct from a right at law. Thus an agreement in a building contract that all building and other materials brought by the builder on the land to be built upon shall become the property of the landowner, is not a bill of sale, as it does not constitute an assurance of personal chattels or give a right thereto in equity (*q*). On the other hand, an instrument purporting to assign, or agreeing to assign, any goods which the assignor may hereafter acquire, as a security

(*l*) *Woodgate* v. *Godfrey* (1879), 5 Ex. D. 24; *Marsden* v. *Meadows* (1881), 7 Q. B. D. 80.

(*m*) *Newlove* v. *Shrewsbury* (1888), 21 Q. B. D. 41.

(*n*) *Marsden* v. *Meadows*, *supra*, p. 87.

(*o*) *Ex parte Odell* (1878), 10 Ch. D. 76; *Cochrane* v. *Matthews*, *ibid.* 80, n.

(*p*) *Ex parte Parsons* (1886), 16 Q. B. D. 532.

(*q*) *Reeves* v. *Barlow* (1883), 12 Q. B. D. 436.

for a debt, is a bill of sale, because it gives to the assignee an equitable right in such goods as and when they become the property of the assignor (*r*).

A debenture containing a floating charge upon all the real and personal property, present or after-acquired, of an individual to secure payment of a debt, is a bill of sale, as it is a document conferring a right in equity to personal chattels. An agreement to grant a bill of sale on specific goods, if relied on as creating an equitable interest in the goods, is a bill of sale (*s*). A charge upon a debt secured by a bill of sale is also a bill of sale (*t*).

(4.) A power conferred by a lease on the lessor to enter and seize, or distrain upon and sell, the goods of the lessee on the demised premises for the purpose of enabling the lessor to obtain payment for goods to be supplied by the lessor to the lessee if default is made in payment, is a bill of sale (*u*). A mortgage by a builder to secure advances made to enable him to build on the mortgaged land, containing power for the mortgagee to sell the materials brought by the builder on the land without retaking possession, is a bill of sale (*x*) and so is a mortgage by a builder of his interest in a building agreement, together with all plant then on or thereafter to be brought on the land comprised in the agreement (*y*). A power in a building agreement enabling the employer upon default of the builder to re-enter upon the land comprised in the agreement, and forfeit all the materials brought thereon by the builder as and for liquidated damages for breach of the agreement, is not a bill of sale, as it is not a licence to take possession of personal chattels as security for a debt (*z*). The licence to seize must be given by the owner of the goods, so that a power in a hire and purchase agreement to enter and retake possession of the goods is not a bill of sale (*a*).

The Companies Act, 1908, provides for the keeping of a register of all mortgages and charges requiring registration under the Act (*b*), and also of a chronological index thereto, in the form, and with the particulars prescribed by the Board of Trade (*c*). The registrar upon payment of the prescribed fee must in respect of each such mortgage or charge enter in the register—

(*r*) *Baghott* v. *Norman* (1880), 41 L. T. 787; *Holroyd* v. *Marshall* (1862), 10 H. L. C. 227.

(*s*) *Ex parte Mackay* (1873), 8 Ch. 643; *Edwards* v. *Edwards* (1876), 2 C. D. 291.

(*t*) *Jarvis* v. *Jarvis* (1893), 63 L. J. Ch. 10.

(*u*) *Pulbrook* v. *Ashby & Co.* (1887), 56 L. J. Q. B. 376; *Stevens* v. *Marston* (1890), 60 L. J. Q. B. 373.

(*x*) *Climpson* v. *Coles* (1889), 23 Q. B. D. 465.

(*y*) *Church* v. *Sage* (1893), 67 L. T. 800.

(*z*) *Ex parte Newitt* (1881), 16 C. D. 522.

(*a*) *McEntire* v. *Crossley Brothers*, [1895] A. C. 457, 462.

(*b*) Sect. 93 (2).

(*c*) Sect. 98.

(1) the date of its creation;
(2) the amount thereby secured;
(3) short particulars of the property mortgaged or charged;
(4) the names of the mortgagees or persons entitled to the charge;

or, in the case of a series of debentures containing or giving by reference to any other instrument any charge by the company to the benefit of which the holders of debentures of that series are entitled *pari passu* (*d*);

(1) the total amount secured by the whole series;
(2) the dates of the resolution authorizing the issue of the series;
(3) the date of any covering deed by which the security is created or defined;
(4) a general description of the property charged;
(5) the names of the trustees (if any) for the debenture holders.

If more than one issue is made of debentures of the same series the company must send to the registrar particulars of the date and amount of each issue, but an omission to do so does not affect the validity of the debentures.

Particulars as to the amount or rate per cent. of any commission, discount or allowance paid or made by the company in respect of the issue (*e*) of any debentures or debenture stock must be included in the particulars sent for registration, but an omission to do so does not affect the validity of the issue (*e*).

Where the mortgage or charge is created out of the United Kingdom, comprising solely property situate outside the United Kingdom, a verified copy of the instrument creating or evidencing it may be substituted for the instrument, and twenty-one days after the date on which the instrument or copy could in due course of post, and if despatched with reasonable diligence, have been received in the United Kingdom, shall be substituted for the period before prescribed for registration (*f*). Where the mortgage or charge is created in the United Kingdom, but comprises property outside the United Kingdom, the instrument creating it may be sent for registration, notwithstanding that further proceedings may be necessary to make such mortgage a charge valid according to the *lex loci* (*f*). In the case of a series of debentures or debenture stock entitled *pari passu* to the benefit of a charge, the delivery to the registrar of the particulars secondly above mentioned within twenty-one days after the execution of the covering deed (if any) or after the first issue of any debenture or stock of the series (if no deed), together with the deed (if any) or (if none) one of the debentures or stock certificates is sufficient to satisfy the Act (*g*). Such registration protects all debentures or stock of the series

(*d*) Sect. 93 (3).

(*e*) Sect. 93 (4). Deposit of debentures as security is not an issue at a discount for the purposes of this subsect.

(*f*) Sect. 93 (1).

(*g*) Sect. 93 (3).

subsequently issued, and all debentures or stock issued not more than twenty-one days before registration (*h*).

The non-registration of any document requiring registration under sect. 93 of the Companies Act within the prescribed time will not affect the validity of the charge as against the company itself, but if the company has gone into liquidation the charge will be void as against such of the chattels comprised in the instrument as were the property of the company at the time of the commencement of the winding-up (*i*), and as against any creditor of the company who has levied execution upon such goods while they are the property of the company, and also against any subsequent incumbrancer who has duly registered an instrument containing a mortgage or charge upon the same chattels. This section, unlike the Bills of Sale Act, 1878, does not make the bill void in the case only where the goods are in the possession, or apparent possession, of the grantor of the bill of sale. Therefore, if a receiver appointed by the Court has entered into possession under an unregistered instrument on behalf of the person entitled to the charge thereby created, such receiver could not claim to remain in possession of the goods as against the liquidator or an execution creditor of the company, or a receiver appointed on behalf of a registered mortgagee, but the liquidator creditor or mortgagee would have to apply to the Court for leave to take possession of or to levy execution upon the goods (*k*). It is submitted that the charge given by the unregistered instrument in the case of an execution or of a subsequent incumbrance duly registered would only be void so far as was necessary to give effect thereto (*l*); but the fact that the creditor or subsequent incumbrancer knew of the prior charge before the company became indebted to him, or the subsequent incumbrance was created, would not affect his right to have it declared void as against him (*m*). A seizure of goods within the twenty-one days would not avoid the title of the mortgagee as against the creditor on whose behalf the seizure is made, although the mortgage is never registered (*n*).

Sect. 9 of the Bills of Sale Act, 1878, avoids certain duplicate bills of sale, which are given merely for the purpose of evading the provisions of that Act as to registration. There is, however, nothing to prevent sect. 93 of the Companies Act, 1908, from being evaded by the giving of successive debentures in respect of the same property, provided that each renewal takes place within twenty-one days of the giving of the previous debenture. Under the Bills of Sale Act, 17 & 18 Vic. cap. 36, which provided that a bill of sale, unless

(*h*) *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498; *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564.

(*i*) See *post*, p. 415, as to when a winding-up commences.

(*k*) See *post*, p. 278.

(*l*) *Ex parte Blaiberg* (1883), 23 C. D. 254.

(*m*) *Edwards* v. *Edwards* (1876), 2 C. D. 291.

(*n*) *Brignall* v. *Cohen* (1872), 21 W. R. 25.

registered within twenty-one days of the making, should be void as against execution creditors, it was held that successive bills of sale could be given in respect of the same goods, in order to escape the necessity of registration, and that, although the transaction might be an evasion of that Act, there was nothing in that statute to render it illegal (*o*). Bankers often advance money for a short time on securities which under the Act require to be registered, and it is probable that in such cases successive charges will be given by way of renewal, so as to avoid registration. Registration of a mortgage or charge under the Act of 1908, does not give the mortgagee priority over a previous mortgage requiring registration if the previous mortgage is registered within twenty-one days from its creation.

It is the duty of the registrar to give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of sect. 93, stating the amount thereby secured and the certificate in conclusive evidence (*p*) that the requirements of the section as to registration have been complied with (*q*).

It is the duty of the company to send to the registrar the particulars required for registration, but registration may be effected on the application of any person interested therein, and in that case he is entitled to recover from the company the fees properly paid by him for registration (*r*).

A copy of every instrument creating any mortgage or charge requiring registration or in the case of a series of uniform debentures a copy of one of them is to be kept at the registered office of the company (*s*), and is to be open to inspection in like manner and under the like penalty as the register of mortgages under sect. 100 (*t*).

The registrar may on evidence being given satisfying him that the debt secured by any registered mortgage or charge has been paid or satisfied order that a memorandum of satisfaction be entered on the register, and must if required furnish the company with a copy thereof (*u*).

A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the prescribed period, or that the omission or mis-statement of any particular with respect thereto 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

(*o*) *Ramsden* v. *Lupton* (Ex. Ch.) (1873), L. R. 9 Q. B. 17, and this decision has been followed in a case decided under s. 14 of the C. A. 1900 (now replaced by s. 93 of the C. A. 1908), where the debenture was ultimately registered and transferred to a *bond fide* purchaser for value without notice: *Renshaw & Co.*, [1908] W. N. 210. See also *N. Defries & Co.*, [1904] 1 Ch. 37.

(*p*) *Re Yolland, &c., Ltd.*, [1908] 1 Ch. 152; *Cunard S. S. Co.* v. *Hopwood*, [1908] 2 Ch. 564.

(*q*) Sect. 93 (5).

(*r*) Sect. 93 (7). As to penalties on default, see s. 99 and *post*, p. 404.

(*s*) Sect. 93.

(*t*) Sect. 101. See *ante*, p. 237.

(*u*) Sect. 97.

the company, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any person interested, and on such terms and conditions as seem just and expedient, order that the time for registration be extended, or that the omission or mis-statement be rectified (*v*).

Many orders have been made in exercise of the jurisdiction thus conferred upon the Court (*w*); but relief will not be granted after the beginning of the winding-up of the company (*x*). The application for relief may be made by an originating summons, but is usually made by motion. The motion or summons must be assigned by ballot to a particular judge in the usual way (*y*). The order giving relief expressly states that it is without prejudice to the rights of parties acquired prior to the time when the debentures shall be actually registered (*z*), but this form of order will when necessary be varied so as not to confer priority on debentures previously issued forming part of a series intended to rank *pari passu* (*a*). An order in the above form does not entitle unsecured creditors to rank *pari passu* with the debenture-holders, unless the creditors had obtained a charge or the company had gone into liquidation (*b*).

11. A mortgage or charge executed or made by a society registered under the Industrial and Provident Societies Act, 1893, which is a bill of sale within the meaning of the Bills of Sale Acts, must be registered under those Acts (*c*).

12. An agreement to lend money upon mortgage other than an agreement to take up and pay for debentures or debenture stock (*d*) will not be specifically enforced against the intended lender (*e*), but if the lender advances the money specific performance will be granted if the agreement is to create a legal

(*v*) C. A. 1908, s. 96.

(*w*) See cases cited in notes (*y*) to (*b*), *infra*.

(*x*) *S. Abrahams & Sons*, [1902] 1 Ch. 695.

(*y*) *Legal and General Investment Co.*, [1901] W. N. 72.

(*z*) *Joplin Brewery Co.*, [1902] 1 Ch. 79; *Sviral Globe*, [1902] 1 Ch. 396.

(*a*) *J. C. Johnson & Co.*, [1902] 2 Ch. 101, 111.

(*b*) *Erlmann Bros., Ltd.*, [1906] 2 Ch. 697; *Anglo and Oriental Carpet Manufacturing Co.*, [1903] 1 Ch. 914; *Cardiff Workmen's Cottage Co.*, [1906] 2 Ch. 627.

(*c*) *G. N. Rail.* v. *Coal Co-operative Society*, [1896] 1 Ch. 187, where debentures issued by the society contained a charge upon chattels.

(*d*) C. A. 1908, s. 105.

(*e*) *South African Territories* v. *Wallington*, [1898] A. C. 309.

mortgage upon property specifically described (*f*), and if not the lender will in equity be entitled to a charge upon the property so described.

If the intended borrower can prove that he has sustained any special damage by reason of the refusal to make the loan, he may by action recover such damage, but as a rule only nominal damages are recoverable (*e*).

Where directors of a company deposited incomplete mortgage bonds by way of security in pursuance of written agreements, it was held that, independently of the bonds, a valid charge was created upon the property which the bonds purported to charge (*g*).

Under an agreement to issue debentures of a certain series to a creditor, he will be entitled to rank *pari passu* with the holders of the series although no debentures are issued to him (*h*). Where a person subscribed for debentures on the terms of the company's prospectus, which stated that the debentures were first mortgage debentures and were to be secured upon the entire property of the company, it was held that he was entitled to a charge thereon *pari passu* with the other debenture holders, although no debentures were issued, and the company went into liquidation (*i*), but if the statement as to charge had been omitted from the prospectus he would have had no charge (*k*).

13. A power to borrow can only be used in good faith for the benefit of the company, and not for purposes other than those for which it has been conferred (*l*).

But a director of a company may, unless prohibited by statute or its regulations, lend money to a company, providing that in so doing he is acting for its benefit, although the loan is made upon the security of a debenture issued at a discount to the director (*m*). A power to borrow must be exercised for the purposes of the company, or otherwise the loan cannot be recovered by a lender with notice of the purpose for which it is to be applied (*n*); but if he has no notice, it can be recovered even

(*f*) *Hermann* v. *Hodges* (1873), 16 Eq. 18; *Ashton* v. *Corrigan* (1871), 13 Eq. 76.

(*g*) *The Strand Music Hall Co.* (1865), 3 De G. J. & S. 147.

(*h*) *Queensland Land and Coal Co.*, [1894] 3 Ch. 181; *Pegge* v. *Neath and District Tramways Co.*, [1898] 1 Ch. 183.

(*i*) *Stevenson's Case* (1890), 2 Meg. 360.

(*k*) *Quin's Case*, *ibid.*

(*l*) See *London and County Assurance Co.* (1861), 30 L. J. Ch. 373.

(*m*) *Campbell's Case* (1876), 4 C. D. 470.

(*n*) *Moye* v. *Sparrow* (1870), 18 W. R. 400; *Durham Building Society* (1871), 12 Eq. 516, where the directors borrowed money for the purpose of lending it to another Society.

although the money is borrowed in order to pay for the purchase of the borrowing company's own shares (*o*). And where there is a general power to borrow, a lender is not bound to inquire as to the intended application of the money lent (*p*).

14. Where directors have power to borrow they can, unless otherwise provided by statute or the regulations of the company, borrow to such an amount and upon such terms and security, and for such purposes for the benefit of the company, as they think fit.

A company governed by the Companies Acts cannot make a valid mortgage or charge as against the liquidator of any books or documents of the company which the company is bound by statute to keep, *e.g.* registers of members and mortgages, minute books, share certificate books, or books which are required by the liquidator for the purpose of performing his duties, *e.g.* letter books, cash books, bank books, ledgers, &c. (*q*). Directors can issue debentures or debenture stock at a discount (*r*), but they cannot pay a bonus in fully paid shares of the company to a person subscribing for debentures (*s*), nor can debentures be issued in satisfaction of a discount agreed to be allowed upon shares of a railway company (*t*). Companies may issue debentures repayable at a premium (*u*). Where directors issue debentures, being part of the issue authorized, at a discount, they can issue the balance to directors in trust for the company, and create a valid mortgage of them by way of security for an advance to the company. The mortgagee is entitled to receive dividends on the total nominal amount of the debentures so mortgaged *pari passu* with the holders of the other debentures, but not to receive more than the amount secured by the mortgage (*x*). Where directors have power to issue bonds or debentures to secure sums borrowed, they can borrow on other securities as well (*y*). The issue of debenture stock by way of security is not *ultra vires* of a company governed by the Companies Clauses Act,

(*o*) *Marseilles Extension Rail. Co.* (1871), 7 Ch. 161.

(*p*) *David Payne & Co.*, [1904] 2 Ch. 608.

(*q*) *Engel* v. *South Metropolitan Brewing Co.*, [1892] 1 Ch. 442. See *Clyn Tin Plate Co.* (1882), 47 L. T. 439.

(*r*) *Campbell's Case* (1876), 4 C. D. 470; *Webb* v. *Shropshire Rails.*, [1893] 3 Ch. 307.

(*s*) *Railway Time Tables Co.* (1893), 62 L. J. Ch. 935.

(*t*) *West Cornwall Rail.* v. *Mowat* (1848), 17 L. J. Ch. 366.

(*u*) *Hooper* v. *Western Counties Telephone Co.*, (1892), 9 T. L. R. 17.

(*x*) *Regent's Canal Iron Works Co.* (1876), 3 C. D. 43.

(*y*) *Commercial Bank of Canada* v. *Great Western Rail. of Canada* (1865), 13 L. T. 105.

1863, s. 22 (*z*), and may be made by a company governed by the Companies Acts (*a*).

Where directors have power to mortgage, they may exercise it for the following purposes amongst others: to secure a past debt, provided that the mortgage is not given under such circumstances as to make it a fraudulent preference (*b*); to secure sums owing upon a bill of exchange given by directors to secure a debt of the company, although they had no power to accept such bills (*c*); to secure a guarantee by way of indemnity (*d*). They may issue debentures in satisfaction of the debts of an insolvent business which the company has taken over and against which it has agreed to indemnify the vendor of the business (*e*), or for the purpose of giving the vendor of a solvent business preference over unsecured creditors in respect of such part of the purchase price as is satisfied in debentures (*f*).

15. Where a company has no power to borrow, a loan made thereto is irrecoverable as a debt, and any security given for the loan is void (*g*), but the lender may recover such part of the loan as has been applied in payment of the debts and liabilities of the company duly incurred (*h*).

The rule is the same with regard to building societies (*i*). Where the lender was a company which had no power to lend, and the borrowing company had no power to borrow, it was held that in borrowing the money the latter company was party to a breach of trust, and that the money lent was recoverable (*k*).

16. Where a company has borrowing powers, the amount that can be borrowed may be restricted, either expressly or by implication.

(*z*) *Whitehaven Joint Stock Banking Co.* v. *Reed* (1886), 54 L. T. 360.

(*a*) *Robinson* v. *Montgomeryshire Brewery Co.*, [1896] 2 Ch. 841.

(*b*) *Shears* v. *Jacob* (1866), 1 C. P. 513; *Inns of Court Hotel Co.* (1868), 6 Eq. 82; *Patent File Co.* (1870), 6 Ch. 83. See *post*, p. 448.

(*c*) *Scott* v. *Colburn* (1858), 26 B. 276.

(*d*) *Pyle Works* (No. 2), [1891] 1 Ch. 173.

(*e*) *Seligman* v. *Prince & Co.*, [1895] 2 Ch. 617.

(*f*) *Salomon* v. *Salomon & Co.*, [1897], A. C. 22.

(*g*) *Troup's Case* (1860), 29 B. 353.

(*h*) See *post*, p. 255.

(*i*) *National Building Society* (1869), 5 Ch. 309; *Cunliffe, Brookes & Co.* v. *Blackburn Building Society* (1884), 9 A. C. 857.

(*k*) *Ernest* v. *Croysdill* (1860), 29 L. J. Ch. 580.

Where, by a special Act incorporating a company, power is given to borrow a certain sum of money, or a sum not exceeding a specified amount, borrowing in excess of that amount is, by implication, forbidden (*l*).

The liabilities of directors to the lenders of moneys to the company in excess of its borrowing powers are treated of at p. 394.

The Companies Act, 1908, does not contain any provision with respect to the borrowing powers of companies incorporated thereunder, and therefore, in order to see whether any limit is placed on the amount which a company governed by the Companies Acts can borrow, regard must be had to its memorandum of association. If the memorandum, expressly or by implication, places a limit on the borrowing powers of the company, any borrowing beyond that limit will be *ultra vires* of the company, and therefore void; but if the limit is only imposed by the articles of association, the articles may be altered by a special resolution, so as to extend or remove the limit. It has been decided in an Irish case that where, in the memorandum of association, no limit is imposed upon the power to borrow thereby given, but by the articles the power is limited, a general meeting of the company cannot sanction any borrowing in excess of the limit (*m*); but it is submitted that, by analogy to the decision in *Grant* v. *United Kingdom Switchback Co.* (*n*), a company can, in such a case, ratify a borrowing beyond the limit. By sect. 15 of the Building Societies Act, 1874, a permanent society incorporated thereunder may borrow, but so that the amount borrowed and not repaid cannot exceed two-thirds of the amount for the time being secured to the society by mortgages from its members; and a terminating society incorporated thereunder may borrow to that limit, or to an amount not exceeding twelve months' subscriptions on the shares for the time being in force. In ascertaining the limits of this power the total amount borrowed from all sources must be included, and the total amount secured to the society by mortgages from its members, whether upon their shares or otherwise (*o*), including fines and interest (*p*).

17. Where the borrowing powers of a company are limited to a certain sum, any amount lent to the company in excess of that sum cannot be recovered from the company, except so far as it has been applied in payment of the debts and liabilities of

(*l*) *Chambers* v. *Manchester and Milford Co.* (1864), 5 B. & S. 588; *Wenlock* v. *River Dee Co.* (1885), 10 A. C. 354.

(*m*) *Bansha Woollen Mills Co.* (1888), 21 L. R. Ir. 181.

(*n*) (1888), 40 C. D. 135.

(*o*) *West Riding Building Society* (1890), 45 C. D. 463.

(*p*) *Neath, &c., Building Society* v. *Luce* (1889), 43 C. D. 158.

the company duly incurred (*q*), and any security given therefor is void. Even although subsequently the limit is increased, the transaction, being *ultra vires* of the company, cannot be ratified (*r*).

In *Fountaine* v. *Carmarthen Rail. Co.* (*r*), Vice-Chancellor Wood suggested that when the company, by reason of the payment off of some of the debentures, acquired power to borrow, the company could have given the holder of the void debenture a new one in exchange therefor; but this dictum is inconsistent with the authorities as to acts *ultra vires* of the company, and is dissented from in *Ex parte Watson* (*s*). If, however, the money advanced upon the security of the void debenture had been applied in payment of the debts or liabilities of the company properly incurred, then, as the person advancing the money would have a claim against the company for the amount so applied (*q*), it is conceived that the forbearance to enforce such claim would be a sufficient consideration to support the new debenture (*t*).

The above rule is applicable to building societies (*u*).

The Companies Clauses Act, 1869, s. 4, provides that money borrowed by a company governed by that Act for the purpose of and duly applied in paying off bonds or mortgages, properly made by the company, shall to the extent of such application be deemed money borrowed within its statutory borrowing powers.

An overdraft at a company's bankers is a loan (*x*). In *Yorkshire Rail. Waggon Co.* v. *Maclure* (*y*), it was held that a railway company having exhausted its borrowing powers could raise money by a *bonâ fide* sale of part of its rolling stock, although accompanied by a hiring agreement of the same stock at a rent which would repay the purchase-money and interest, and enable the company at the end of the term to purchase the stock for a nominal consideration. If this transaction had been a mere device to evade the restriction upon the borrowing powers of the company it would have been void (*z*).

(*q*) See *post*, p. 255.

(*r*) *Fountaine* v. *Carmarthen Rail. Co.* (1868), 5 Eq. 316.

(*s*) (1888), 21 Q. B. D. 301, 303, 306.

(*t*) Cf. *Ex parte Watson*, 21 Q. B. D. 307.

(*u*) *Chapleo* v. *Brunswick Building Society* (1881), 6 Q. B. D. 696; *Looker* v. *Wrigley* (1882), 9 Q. B. D. 397; *Ex parte Watson* (1888), 21 Q. B. D. 301.

(*x*) See *Cunliffe, Brooks & Co.* v. *Blackburn Benefit Society* (1884), 9 A. C. 857; *Chambers* v. *Manchester and Milford Rail. Co.* (1864), 5 B. & S. 588; *Looker* v. *Wrigley* (1882), 9 Q. B. D. 397; *Blackburn Building Society* v. *Cunliffe, Brooks & Co.* (1882), 22 C. D. 61; *Blackburn Building Society* v. *Cunliffe, Brooks & Co.* (1885), 29 C. D. 902; overruling *Cefn Mining Co.* (1868), 7 Eq. 88; and *Waterlow* v. *Sharp* (1869), 8 Eq. 501.

(*y*) (1882), 21 C. D. 309.

(*z*) *Ibid.* 317, per Lindley, L.J.

18. Where the borrowing power of directors is limited to a certain sum, they cannot borrow more than that amount so as to bind the company (*a*).

Where, however, directors borrow in excess of their own powers, but not in excess of the powers of the company, such borrowing may be ratified by the company in general meeting (*b*), and ratification can be inferred (*c*). A special resolution would not be necessary for that purpose (*d*). Where directors may borrow any sum not exceeding two-thirds of the uncalled capital of the company, they may borrow up to two-thirds of the nominal capital not called up, whether issued or unissued (*e*).

19. A person lending money to a company without borrowing powers, or to a company having borrowing powers, in excess of the sum it or its directors can borrow, can recover in equity such part of the sum lent as has been applied in payment of the debts and liabilities of the company properly incurred.

In such a case as this, there has been no addition to the liabilities of the company, and in equity a company which has paid a legitimate debt out of moneys advanced to it for that purpose cannot dispute the right of the person to recover the amount of such advance from the company (*f*). The lender does not, as was at one time supposed to be the law (*g*), recover upon the equitable principle that he is entitled to be subrogated to the rights of the creditor whose debt has been paid out of his loan. The lender is merely entitled to have his loan treated as valid to the extent to which it has been so applied; therefore a bank which advances money to a company whose borrowing powers are exhausted in order to pay interest on its debenture stock is not subrogated to the rights of the stockholders in respect of such interest (*h*). *Hoare's Case* (*i*) seems to

(*a*) *Worcester Corn Exchange Co.* (1853), 3 De G. M. & G. 180; *Pooley Hall Colliery Co.* (1870), 21 L. T. 690; *Fountaine* v. *Carmarthen Rail. Co.* (1868), 5 Eq. 316.

(*b*) *Irvine* v. *Union Bank of Australia* (1877), 2 A. C. 366.

(*c*) See *Magdalena Steam Navigation Co.* (1860), Johns. 690; and as to ratification generally, p. 107, *ante*.

(*d*) Cf. *Grant* v. *United Kingdom Switchback Co.* (1888), 40 C. D. 135.

(*e*) *English Channel Steamship Co.* v. *Rolt* (1881), 17 C. D. 715.

(*f*) *Troup's Case* (1860), 29 B. 353; *Magdalena Steam Navigation Co.* (1860), Johns. 690, 694; *Blackburn Building Society* v. *Cunliffe, Brooks & Co.* (1882), 22 C. D. 61; (1884), 9 A. C. 857.

(*g*) *Wenlock* v. *River Dee Co.* (1887), 19 Q. B. D. 155.

(*h*) *Wrexham, Mold, &c., Rail.*, [1899] 1 Ch. 440.

(*i*) (1861), 30 B. 225.

extend the principle so as to entitle the lender to recover money *bonâ fide* applied for the purposes of the company, but this case is very briefly reported, and the judge said it was undistinguishable from *Troup's Case* (*k*). "Debts and liabilities" includes those accruing subsequently to the date of the loans (*l*). It is upon this principle, also, that the efficacy of the instruments known as Lloyd's bonds rests. Statutory companies frequently issue these bonds to secure debts contracted after they had exhausted their borrowing powers; the bonds containing an acknowledgment of debt, and a covenant to pay it with interest at a future day. These bonds were often given to contractors in payment for work done in constructing the railway or other works of the company. Persons suing on these bonds could only recover such part of the sum therein mentioned as had been applied for the benefit of the company (*m*). If the issue of Lloyd's bonds be a mere device to evade the restrictions on the company's power to borrow, they are void (*n*). When three companies, each of which had power to borrow for its own purposes on the security of debentures, issued debentures to secure moneys lent to all the companies under which they were jointly and severally liable to repay such moneys with interest, it was held that the debentures were not wholly void but were good against each company to the amount of the moneys which it had received (*o*).

(*k*) *Supra*.

(*l*) See note (*g*), p. 255.

(*m*) *Cork and Youghal Rail. Co.* (1869), 4 Ch. 748. See also *White* v. *Carmarthen Rail. Co.* (1863), 1 H. & M. 786.

(*n*) *Chambers* v. *Manchester and Milford Rail. Co.* (1864), 5 B. & S. 588; approved in *Cork and Youghal Rail., Co., supra*, 748, 757.

(*o*) *Johnston Foreign Patents Co.*, [1904] 2 Ch. 234.

CHAPTER XXI.

DEBENTURES AND DEBENTURE STOCK.

HAVING regard to the provisions of the Companies Act, 1908, s. 93, with respect to the registration of any mortgage or charge for the purpose of securing any issue of debentures or debenture stock, it is important to determine what instruments are denoted by the term "debentures." It has been said that no accurate definition of the word can be found (*a*). Generally, if not always, a debenture "imports an obligation or covenant to pay. This obligation or covenant is, in most cases at the present day, accompanied by some charge or security; so that there are debentures which are secured and debentures which are not secured" (*b*). A debenture is generally one of a serial issue of documents, but a debenture may consist of one document only (*c*). In *Levy* v. *Abercorris Slate Co.*, Chitty, J., said (*d*): "A debenture means a document which either creates a debt or acknowledges it;" but see as to this case the observations of North, J., in *Topham* v. *Greenside Glazed Brick Co.* (*e*). A debenture may only create a personal obligation, but generally it gives in addition a charge, by way of a floating security, upon the property and undertaking of the company, including sometimes its uncalled capital, and frequently a deed is executed by which property of the company is specifically mortgaged to trustees for the debenture holders to further secure the payment of the moneys owing on the debentures. A debenture usually contains an undertaking by the company to pay the principal and interest at the prescribed time, a charge, if it is a mortgage debenture, and a statement that it is issued subject to the conditions indorsed upon it. Debentures may be either bearer debentures (*f*), in which case interest coupons are attached, and the principal and interest are payable respectively upon presentation and delivery of the debentures and

(*a*) *British India Steam Navigation Co.* v. *Inland Revenue Commissioners* (1881), 7 Q. B. D. pp. 169, 172.

(*b*) Per Chitty, J., *Edmonds* v. *Blaina Furnaces Co.* (1887), 36 C. D. 215, 219.

(*c*) *Ibid.*; *Levy* v. *Abercorris Slate Co.* (1887), 37 C. D. 260.

(*d*) *Ibid.* p. 264.

(*e*) (1887), 37 C. D. 281, 290, 292.

(*f*) Bearer debentures are rarely issued, as the *ad valorem* duty payable thereon is 10*s.* per cent. instead of 2*s.* 6*d.* per cent., the duty payable upon registered debentures.

coupons; or registered debentures, in which case the principal and interest are only payable to the registered holders of the debentures—unless they are issued with coupons payable to bearer, in which case the interest is payable on presentation and delivery of the coupons. Where moneys are payable on "presentation" of a debenture or coupon, it must be delivered (*g*). A debenture is generally issued under the company's seal, but sect. 19 of the Conveyancing Act, 1881, conferring on a mortgagee a right of sale where the mortgage is by deed, does not apply to debentures of a joint stock company (*h*).

Perpetual debenture stock differs from debentures and redeemable debenture stock, as the only obligation of the company is to pay an annuity of a certain amount in perpetuity (*i*). Where the stock is redeemable, it principally differs from a debenture in that, subject to any restriction imposed by the stock conditions, any fraction of the stock may be transferred. Debenture stock may either be mortgage debenture stock or not. In the former case the stock is generally secured by a trust deed containing a charge upon the property of the company, although sometimes the charge is made by the stock certificate. Where the stock is not secured, it is generally created by resolution of the directors. Whether the stock is or is not secured a stock certificate is issued to each purchaser and transferee of stock, stating *inter alia* in the case of registered stock that the person named therein is the registered proprietor, or in the case of bearer stock that the bearer thereof is the proprietor of the amount of stock therein mentioned, and having printed thereon the conditions on which the stock is issued and held. Debentures or debenture stock are not invalid although made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long (*k*). Debentures or debenture stock to bearer issued in Scotland are valid (*l*).

Floating Securities or Charges.

It is the rule for mortgage debentures to contain a charge upon the undertaking of the company and all its property, real or personal, whether present or after-acquired, with or without a charge upon its uncalled capital, and for debenture conditions to provide that the charge so given shall be a floating security or charge. Where debentures or debenture stock are secured by a trust deed, then, in addition to specific property of the company being thereby assigned to the trustees to secure

(*g*) Cf. *Bartlett* v. *Holmes* (1853), 13 C. B. 630.

(*h*) *Blaker* v. *Herts, &c., Waterworks Co.* (1889), 41 Ch. 399.

(*i*) *Southern Brazilian, &c., Rail. Co.*, [1905] 2 Ch. 78.

(*k*) C. A. 1908, s. 103.

(*l*) *Ibid.* s. 106.

the debentures or stock, a floating charge is generally given to them upon all the other property of the company, present or future, and its undertaking, and in some cases upon its uncalled capital.

A floating security is only a charge on the assets or on certain of the assets (*m*) for the time being of the company, so that the company may, in the ordinary course of its business (*n*), unless it is otherwise agreed and until such security becomes a fixed security, sell (*o*), let, specifically mortgage (*p*), or otherwise deal with any of its assets, and pay dividends out of profits just as if the floating charge had not been created (*q*). A charge upon the undertaking of a company constitutes a floating charge upon all its property (*r*). By the terms of the security a floating charge may become a fixed charge upon the happening of a specified event, but that depends upon the true construction of the instrument. It has been held that where the property is charged "to the intent that the same charge shall, until default in payment of the principal or interest, be a floating security," it ceases to be a floating charge if such event happens, and that a purchaser of land from the company is entitled to reasonable evidence that there has been no such default (*s*); but the House of Lords has held upon the construction of a somewhat similar condition that such a security continues to be a floating security after default, unless and until the debenture holders obtain the appointment of a receiver, or the company goes into liquidation (*t*). Upon the security ceasing to be a floating charge it becomes a fixed charge, and the company cannot deal with any part of the property so charged except subject to such charge. A floating charge becomes a fixed charge by the appointment of a receiver on behalf of the debenture holders, whether by the Court, or under a power given to the debenture holders or to their trustees by the

(*m*) *Illingworth* v. *Houldsworth*, [1904] A. C. 355, where the charge was upon the book debts present and future of the company.

(*n*) As to what acts or payments are considered to come within the ordinary course of business, see *Willmott* v. *London Celluloid Co.* (1886), 34 C. D. 147; *Hubbard & Co.* (1898), 68 L. J. Ch. 54; *Vivian (H. H.) & Co.*, [1900] 2 Ch. 654. Cf. *Borax Co.* (1901), 70 L. J. Ch. 162, [1901] 1 Ch. 326; *Bushmills Distillery*, [1897] 1 Ir. R. 489; *Wallace* v. *Evershed*, [1899] 1 Ch. 891.

(*o*) *Vivian (H. H.) & Co.*, [1900] 2 Ch. 654.

(*p*) *Florence Land and Public Works Co.* (1878), 10 C. D. 530; *Hamilton's Windsor Iron Works* (1879), 12 C. D. 707; *Wheatley* v. *Silkstone Coal Co.* (1885), 29 C. D. 715; *Ward* v. *Royal Exchange Shipping Co.* (1887), 58 L. T. 174; *Hubbard & Co., supra*; *Cox Moore* v. *Peruvian Corporation*, [1908] 1 Ch. 604.

(*q*) *Robson* v. *Smith*, [1895] 2 Ch. 118, 124; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93, 103; *Yorkshire Woolcombers Assn.*, [1903] 2 Ch. 284; *Edward Nelson & Co.* v. *Faber & Co.*, [1903] 2 K. B. 367.

(*r*) *Panama, &c., Royal Mail Co.* (1870), 5 Ch. 318; *Marshall* v. *Rogers & Co.* (1898), 14 T. L. R. 217.

(*s*) *Horne* v. *Hellard* (1885), 29 C. D. 736.

(*t*) *Government Stock Investment Co.* v. *Manila Rail. Co.*, [1897] A. C. 81; *Edward Nelson & Co.* v. *Faber & Co.*, [1903] 2 K. B. 367.

debentures, or trust deed, or by an effective resolution being passed, or an order being made, for the winding-up of the company (*u*).

A floating security may be in jeopardy, or the principal and interest owing on the debenture may be in arrear (*x*), but unless otherwise agreed the company's power to sell, mortgage and deal with its assets in the ordinary course free from the floating charge remains unaffected (*x*). It is therefore necessary for the protection of the debenture holders in such a case to obtain the appointment of a receiver so that the charge may be made a fixed charge, and also to give notice of the appointment to the persons carrying on the business of the company (*y*). The Court will make the appointment when the company has made default in payment of any principal or interest, or when the security is in jeopardy, or the company has ceased to be a going concern (*z*). Issuing a writ asking for a receiver is not enough, for until he is appointed the company's power of disposition is unaffected (*a*); and unless the Court grants leave to the receiver to act at once, or his appointment as a receiver is unconditional, he does not become a receiver until his security is perfected, as his appointment is usually made conditional upon that being done (*b*).

Sometimes the power of the company to deal with the property subject to the floating charge is limited by the trust deed or debentures so as to prevent the company creating any mortgage or charge ranking in priority to or *pari passu* with the floating charge. In the absence of such a provision the company can raise money by creating a specific charge having priority over the floating charge (*c*), but of course the floating charge attaches to the money so raised. It may ruin a company to be prevented from specifically charging its property in the ordinary course of its business, as it cannot give an equitable charge to its bankers or raise money on bills of lading or other negotiable instruments. Where such a restriction exists, a company may be only able to raise money by a forced sale of some of its assets, so that the security of the debenture holders may also be materially impaired. In such a case, where a distillery company sells whisky to some of its creditors at a fair price in order to find money to carry on the company's business, it is a sale in the ordinary course of its business, although the creditors are not dealers in whisky (*d*). Such a provision does not, however, prevent a solicitor

(*u*) *Government Stock Investment Co.* v. *Manila Rail. Co.*, *supra*; *Hodson* v. *Tea Co.* (1880), 14 C. D. 859; *Wallace* v. *Universal Automatic Machine Co.*, [1894] 2 Ch. 547.

(*x*) *Government Stock Investment Co.* v. *Manila Rail. Co.*, *supra*.

(*y*) *Arauco Co.* (1898), 79 L. T. 336.

(*z*) See *post*, p. 276.

(*a*) *Hubbard & Co.* (1898), 68 L. J. Ch. 54.

(*b*) *Roundwood Colliery Co.*, [1897] 1 Ch. 373, 393. See *post*, p. 277.

(*c*) *Cox Moore* v. *Peruvian Corp.*, [1908] 1 Ch. 604.

(*d*) *Old Bushmills Distillery, Ex parte Brett*, [1897] 1 Ir. R. 489. Cf. In the matter of the same company *Ex parte Brydon* and *Ex parte Bank of Ireland*, [1896] 1 Ir. R. 301.

from acquiring a solicitor's lien having priority over the floating charge (*e*), or a subsequent mortgagee of an insurance policy, without notice of such provision, from acquiring priority by giving notice to the insurance company (*f*); or a creditor from attaching and receiving payment of a debt due to the company by obtaining a garnishee order absolute, even with notice of the debenture (*g*); or a person without notice from acquiring a charge upon specific property in priority to the debentures (*h*). Such a provision prevents a subsequent mortgagee with express notice thereof from acquiring priority over the debentures (*i*).

Until a floating security becomes fixed, it constitutes an equitable charge upon the property comprised therein of such a kind as to prevent an execution creditor, by seizure under his judgment which has not been perfected by sale, or a judgment creditor by serving a garnishee order *nisi* obtained by him in respect of his debt (*k*), or a judgment creditor by merely obtaining a garnishee order absolute (*l*), acquiring priority of charge in respect of the goods seized (*m*), and to entitle the debenture holders to an injunction to restrain the company from parting with its assets otherwise than in the ordinary course of its business, *e.g.* where with a view to its ceasing to be a going concern it agrees to sell all its property (*n*). But a distress levied, although not completed by sale, before a floating charge becomes fixed, gives the landlord in respect of the goods seized priority over the debenture holders (*o*). The holders of a floating security on the property of a company are necessary parties to a foreclosure action by a mortgagee of part of such property (*p*). The holder of a debenture secured by a floating charge is entitled to issue a writ claiming the usual relief, although no principal or interest is overdue and the security is not in jeopardy, and may on default being made subsequently obtain the appointment of a receiver and manager (*q*).

(*e*) *Brunton* v. *Electrical Engineering Corporation*, [1892] 1 Ch. 434.

(*f*) *English and Scottish Mercantile Investment Co.* v. *Brunton*, [1892] 2 Q. B. 700.

(*g*) *Robson* v. *Smith*, [1895] 2 Ch. 118; *Robinson* v. *Burnells Co.*, [1904] 2 K. B. 624.

(*h*) *Castell & Brown, Ltd.*, [1898] 1 Ch. 315; *Valletort, &c. Co.*, [1903] 2 Ch. 654; *Standard Rotary Machine Co.* (1907), 95 L. T. 829.

(*i*) *Ex parte Brydon* and *Ex parte Bank of Ireland, supra*; *Cox* v. *Dublin Distillery Co.*, [1906] 1 Ir. R. 446.

(*k*) *Norton* v. *Yates*, [1906] 1 K. B. 112.

(*l*) *Cairney* v. *Back*, [1906] 2 K. B. 746.

(*m*) *Standard Manufacturing Co.*, [1891] 1 Ch. 627, 641; *Opera, Ltd.*, [1891] 3 Ch. 260; *Taunton* v. *Sheriff of Warwickshire*, [1895] 2 Ch. 319; *Davey & Co.* v. *Williamson & Son, Ltd.*, [1898] 2 Q. B. 194; *Simultaneous Colour Printing Syndicate*, [1901] 1 K. B. 771, where there was only an agreement for valuable consideration to issue a debenture containing a floating charge: *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314.

(*n*) *Hubbuck* v. *Helms* (1888), 56 L. J. Ch. 536. Cf. *Vivian & Co.*, [1900] 2 Ch. 654; *Borax Co.* (1901), 70 L. J. Ch. 162.

(*o*) *Roundwood Colliery Co.*, [1897] 1 Ch. 373; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93.

(*p*) *Wallace* v. *Evershed*, [1899] 1 Ch. 891.

(*q*) *Carshalton Park Estate*, [1908] 2 Ch. 62.

A bill of sale or floating charge upon chattels given by a Scotch company is invalid (*r*). The Companies Act, 1908, rquires the registration with the registrar of joint stock companies of all floating charges created by companies governed by the Companies Acts (*s*). A floating charge upon all the undertaking and property of a company, including its uncalled capital, constitutes a charge on moneys recovered by the liquidator in misfeasance proceedings as well as on calls got in by him (*t*).

Upon a floating security which is charged upon all the property or assets of the company becoming a fixed security, it constitutes a charge upon all the property or assets then belonging to the company, and has priority over any subsequent equitable charges and over unsecured creditors (*u*), and over moneys advanced to the liquidator to carry on the business of the company, even although such advances were made with the sanction of the Court in the winding-up, and over the costs of the liquidators other than the costs of realization (*x*), but is subject to all then existing charges and to the payment of debts which by statute have been made payable out of property subject to a floating security in priority to the moneys thereby secured (*y*).

A floating charge created by a company within three months of the commencement of its winding-up, unless it is proved that the company immediately after its creation was solvent, is invalid except to the amount of any cash paid to the company in consideration therefor at or after its creation with interest at the rate of 5 per cent. per annum (*z*). Where in the case of a company registered in England or Ireland, a receiver is appointed on behalf of the holders of any debentures or debenture stock secured by a floating charge, or possession is taken by or on behalf of such holders of any property comprised in or subject to the charge, and the company is not in course of being wound up, then the above-mentioned preferential debts are payable 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 principal or interest under the debentures or debenture stock. Any payments so made are to be recouped as far as may be out of the assets of the company available for payment of the general creditors (*a*).

(*r*) *Robertson* v. *Hall* (1896), 24 Rettie, 120; *Clerk* v. *West Calder Oil Co.* (1882), 9 Rettie, 1017.

(*s*) See *ante*, p. 238.

(*t*) *Anglo-Austrian Printing Union*, [1895] 2 Ch. 891. See also *Regent's Canal Ironworks Co.* (1875), 3 C. D. 411.

(*u*) *Marine Mansions Co.* (1867), 4 Eq. 601; *Panama, &c., Royal Mail Co.* (1870), 5 Ch. 318; *Anglo-American Leather Cloth Co.* (1880), 43 L. T. 43; *General South American Co.* (1876), 2 C. D. 337. See *Re Slobodensky*, [1903] 2 K. B. 517, as to the effect upon debentures of a fraudulent sale of property to a company.

(*x*) *Ex parte Grissell* (1875), 3 C. D. 411.

(*y*) See C. A. 1908, s. 209, as to the debts to which statutory preference has been given, and *post*, p. 499.

(*z*) C. A. 1908, s. 212.

(*a*) *Ibid.* s. 107. In such a case the periods mentioned in s. 209 are to be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid as the case may be.

If the general assets are sufficient, the liquidator must repay to the receiver the amount of the preferential debts paid by him (*b*).

Stamps.

Debenture stock is usually constituted and secured by a trust deed which specifically mortgages the real and leasehold property of the company and creates a floating charge upon the residue of the company's property, both real and personal, whether present or after-acquired, including sometimes the uncalled capital of the company. Before the decision of the Court of Appeal in the *Standard Manufacturing Co.* (*c*), it was the practice to omit the floating charge and instead thereof to issue to the trustees debentures to the amount of the stock to be held by them as collateral security. That practice has now fallen into disuse, as that case has decided that no charge on chattels given by a company governed by the Companies Acts requires registration under the Bills of Sale Acts. When the stock is secured by a trust deed that deed is stamped with *ad valorem* duty at the rate of 2*s.* 6*d.* per cent. on the amount of the stock, unless under the Finance Act, 1899, s. 8, the duty has been paid upon the statement which has to be delivered to the Inland Revenue Commissioners in the case of any company issuing a loan, and the stock certificates issued to holders of the stock under the seal of the company are not stamped. Before that Act directors sometimes, to avoid payment of duty, constituted and secured the stock by a resolution of the board. Since the passing of that Act it is impossible to avoid duty by adopting that plan. Sometimes, to save the expense of a trust deed and the payment of remuneration to the trustees, stock is constituted and secured by a resolution of the board and duty is paid on the statement delivered to the Commissioners. If the stock certificates contain no charge it is clear that neither the original certificates nor those issued upon a transfer of the stock require stamping. It is submitted that it makes no difference if the stock certificates contain a charge on the same property as purports to be charged by the resolution. Before the Act, where *ad valorem* duty had been paid on debentures secured by a trust deed, no *ad valorem* duty was payable on the trust deed, although that contained a charge on the whole or part of the property charged by the debentures. The trust deed was not regarded as a collateral security (*d*). Under the Act no duty is payable on the statement of loan if *ad valorem* duty has been paid on the trust deed or other document securing the loan. On the other hand no duty is payable on the trust deed or document if it has been paid on the statement. It is submitted that it makes no difference

(*b*) *Mannesmann Tube Co.*, [1901] 2 Ch. 93.

(*c*) [1891] 1 Ch. 627.

(*d*) See Alpe's Stamp Duties, 6th ed. p. 174.

in principle whether the charge is contained in the original certificate or any new certificates issued on a transfer of stock, and that the duty having once been paid it cannot be demanded again, and that a certificate issued in exchange for another certificate is not liable to duty as a substituted security, as the original certificate is not chargeable with *ad valorem* duty. Every scrip certificate must bear a penny stamp.

The stamp duty payable in respect of registered debentures is 2*s.* 6*d.* per cent., and bearer debentures 10*s.* per cent. If the debentures are so stamped a trust deed securing the debentures only requires a 10*s.* stamp. In the case of a trust deed securing debenture stock, the duty is usually paid on the deed, and the stock certificates containing no charge do not require stamping. Where a company is bound to pay a bonus on redemption of a debenture, *ad valorem* duty is payable on the amount of the bonus in addition to the amount of the debenture (*e*), but *secus* when the company has an option to redeem upon payment of a bonus (*f*). Where an issue of debenture stock is made for the purpose of providing funds to pay off a prior issue, the trust deed securing the new stock is not a substituted security and so only liable to a duty of 6*d.* per cent., but is chargeable with the full duty of 2*s.* 6*d.* per cent. (*g*). Although a debenture contains no charge it is still liable to duty as a debenture (*h*).

Registration.

The registration of debentures and debenture stock is considered under rules 7, 8, 9, and 10 in Chapter XX. When debentures or debenture stock are only legally transferable by an instrument of transfer duly executed or signed, and by registration thereof in the books of the company, a register of debentures or debenture stock is kept by the company, usually containing the names, addresses, and description of the holders for the time being. Every such register, except when closed, in accordance with the articles, for a period or periods not exceeding thirty days in any year, must be open to the inspection of the registered holders and of any holders of shares, but subject to such reasonable restrictions as the company may in general meeting impose, for at least two hours in each day. Every holder, upon payment of sixpence for every hundred words required to be copied, is entitled to a copy of the whole or any part of the register, or of any trust deed securing the debentures or debenture stock, or, if the trust deed is printed, a print thereof, upon payment of not more than one shilling (*i*).

(*e*) *Rowell* v. *Inland Revenue Commissioners*, [1897] 2 Q. B. 194.

(*f*) *Knight's Deep, Ltd.*, v. *Inland Revenue Commissioners*, [1900] 1 Q. B. 217.

(*g*) *City of London Brewery* v. *Inland Revenue Commissioners*, [1899] 1 Q. B. 121.

(*h*) *British India Steam Navigation Co.* v. *Inland Revenue Commissioners* (1881), 7 Q. B. D. 165.

(*i*) C. A. 1908 s. 102. As to penalty on default see *post*, p. 405.

Issue.

A contract with a company governed by the Companies Acts to take up and pay for any of its debentures or debenture stock can now be enforced by an order for specific performance (*k*). Any damages which are proved to be the direct consequence of the breach of such a contract may be recovered (*l*). No action can be brought on an agreement to purchase debentures or debenture stock containing a charge on land, or any interest therein, unless the agreement or some memorandum thereof is in writing so as to satisfy the Statute of Frauds (*m*). Debenture prospectuses generally state that application for debentures must be accompanied by a remittance, and that if any instalment payable in respect of the debentures is not punctually paid the payments already made may be forfeited. Where debentures or debenture stock are allotted upon the terms that the same shall be paid for by instalments, it is usual to issue bearer scrip certificates to the subscribers to be exchanged for definitive debentures or for stock certificates when all the instalments are paid, and to indorse upon the scrip certificates the payments of the several instalments. The bearer of the scrip certificate, when the instalments are paid, is entitled to have the debentures or stock certificate issued to him. If the instalments are not fully paid before the company goes into liquidation, a holder may safely refuse to pay any further instalments without prejudicing his position as a secured creditor for previous instalments, although the certificate provides that failure to pay any instalment when due shall empower the company to forfeit previous instalments (*n*).

The deposit of debentures (part of a series of registered debentures) sealed in blank without name or date by way of collateral security constitutes an issue (*o*). Formerly debentures which had been paid off by the company could not be reissued (*p*) even although they had been only issued as collateral security (*q*). Now, where debentures have been kept alive for purposes of reissue, the company may reissue debentures redeemed either before or after the 21st December, 1908, or issue other debentures in their place, unless the articles of association or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the first holder of the redeemed debentures or his assigns), and the persons entitled to the

(*k*) C. A. 1908, s. 105.

(*l*) *Western Wagon Co.* v. *West*, [1892] 1 Ch. 271; *South African Territories* v. *Wallington*, [1898] A. C. 309.

(*m*) *Driver* v. *Broad*, [1893] 1 Q. B. 744.

(*n*) *Consolidated Land Co.* (1872), 20 W. R. 855.

(*o*) *Perth Electric Tramways*, [1906] 2 Ch. 216.

(*p*) *George Routledge & Son*, [1904] 2 Ch. 474.

(*q*) *W. Tasker & Son, Ltd.*, [1905] 2 Ch. 587.

reissued debentures have the same rights and priorities as if the debentures had not been previously issued (*r*). Where a company either before or after the 21st December, 1908, has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt whilst the debentures remained so deposited. The reissue of a debenture or the issue of another debenture in its place is to be treated as the issue of a new debenture for the purposes of stamp duty; provided that any person lending money on the security of a debenture reissued which appears to be duly stamped, may give the debenture in evidence in any proceeding for enforcing his security without payment of the stamp duty or any penalty in respect thereof (unless he had notice, or, but for his negligence, might have discovered that his debenture was not duly stamped), but in any such case the company is liable to pay the proper stamp duty and penalty (*r*).

A company incorporated by special Act for purposes of a public nature, and having statutory powers and statutory duties, cannot raise money by the issue of debentures, debenture stock, bonds, or mortgages, unless so authorized by its special Act (*s*). The Companies Clauses Act, 1845, sects. 38—55, contains provisions as to the creation and form of bonds and mortgages, and the rights and remedies of the bondholders and mortgagees. The provisions of this Act apply to all English and Irish joint stock companies of the nature above indicated, incorporated by any special Act passed after the 8th May, 1845, save so far as such provisions are expressly varied or excepted by such Act. This Act does not apply to Scotch joint stock companies, but the Companies Clauses (Scotland) Act, 1845, contains almost identical provisions. The Companies Clauses Act, 1863, Part 3, contains provisions as to the creation and the form of debenture stock, and the rights and remedies of the stockholders. Part 3 of this Act does not apply to any company unless its special Act incorporates the same, and authorizes the creation and issue of debenture stock. This Act is amended by the Companies Clauses Act, 1869. Both these Acts apply to companies registered in England, Scotland, and Ireland. It is necessary to examine the special Act, not only to see the amount which may be borrowed upon mortgages or bonds or debenture stock, but what restrictions are placed upon borrowing, and what consents or formalities are necessary. Any company governed by the Companies Acts can borrow or raise money for the purposes of the

(*r*) C. A. 1908, s. 104. This section is made retrospective, but without prejudice to any judgment or order made before the 7th March, 1907, or any power to issue debentures in the place of any debentures paid off, satisfied, or extinguished, reserved to a company by its debentures or by the securities for the same. See *New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621.

(*s*) *South Yorkshire Rail. Co.* v. *G. N. Rail. Co.* (1853), 3 De G. M. & G. 576.

company by the issue of debentures or redeemable debenture stock, if authorized by its memorandum and articles of association or deed of settlement, and any trading company may do so in the absence of such authority unless prohibited by such memorandum, articles, or deed, but perpetual debenture stock cannot be issued unless expressly authorized by the memorandum of association (*t*). It is therefore necessary to refer to the memorandum and articles, or deed of settlement of the company, in order to ascertain, in the case of a non-trading company, whether the company has power to issue debentures or debenture stock, and, in the case of a trading company, whether the regulations of the company prohibit the issue thereof. If the issue of the debentures or debenture stock is *ultra vires* of the company, such debentures are invalid *ab initio*, and directors are liable in damages for breach of warranty of authority.

Any condition precedent to the exercise of a power to issue debentures or debenture stock must be performed (*u*), except that where the condition precedent is a matter pertaining to the internal management of the company its non-observance does not invalidate the issue (*x*). Where a company has power to issue debentures or debenture stock, they may be issued upon such terms and for such amount and for such purposes as the company may think fit, subject to any restrictions or prohibitions contained in its memorandum or articles of association, or deed of settlement. Sealing debentures without delivery is not sufficient to constitute an issue thereof (*y*). A company must within two months of the allotment of any of its debentures or debenture stock have complete and ready for delivery the debentures and stock certificates unless the conditions of issue otherwise provide (*z*).

A railway company having power to borrow on mortgage or bond has by virtue of sect. 24 of the Railway Companies Act, 1867, power to borrow on debenture stock, although its special Act does not expressly incorporate Part 3 of the Companies Clauses Act, 1863 (*a*).

Priorities.

A mortgage or bond for securing money borrowed by a railway company made in the form contained in schedule C. to the Companies Clauses Act, 1845, comprises the surplus land, as well as the rails and chattels of the company, and is entitled to priority over an elegit sued out against the company by a judgment creditor (*b*), and over judgment

(*t*) *Southern Brazilian Rail. Co.*, [1905] 2 Ch. 78.

(*u*) See *ante*, p. 231.

(*x*) See *ante*, pp. 232, 233.

(*y*) *Mowatt* v. *Castle Steel, &c., Co.* (1886), 34 C. D. 58.

(*z*) C. A. 1908, s. 92. As to penalty on default, see *post*, p. 404.

(*a*) *Re Mersey Rail. Co.*, [1895] 2 Ch. 287.

(*b*) *Legg* v. *Matheson* (1860), 2 Giff. 71; *Wildy* v. *Mid Hants Rail.* (1868), 18 L. T. 73.

creditors (*c*). The priority of mortgages and bonds granted before the creation of debenture stock is preserved by sect. 30 of the Companies Clauses Act, 1863 (*d*). Sect. 24 of this Act, which provides "that the holders of debenture stock shall not as among themselves be entitled to any preference or priority," does not apply as between the holders of issues of debenture stock respectively created under special Acts, but such issues will rank in priority according to the date of the special Act authorizing their creation (*e*).

When debentures, issued by a company governed by the Companies Acts, contain a charge upon property, but nothing is stated as to their ranking *pari passu* in point of charge, they rank in priority in order of time of issue (*f*), even although they are all issued on the same day (*g*). Generally, debenture conditions provide that all the debentures constituting the issue shall rank *pari passu* as a charge upon the property charged by the debentures. When part of an issue of first debentures remains unissued, and then there is another issue of debentures expressed to be subject to the debentures already issued, any of the first debentures issued after the second issue rank in priority to the second debentures (*h*). Prior to the 1st July, 1908, where some of the debentures of a series had been redeemed and then reissued, then in the absence of any debenture condition to the contrary, the reissued debentures did not rank *pari passu* with, but subsequent to the unredeemed debentures (*i*), but now they rank *pari passu* with the unredeemed debentures even although they had been reissued before that date (*k*) provided that the company kept, or purported to keep them alive. If a series of first debentures are not secured by a legal mortgage, and a series of second debentures are secured by a legal mortgage of specific property, then, the first debentures being a floating charge, the second debentures as to the specific property rank in priority to the first debentures.

Transfer.

A bearer debenture has become a negotiable instrument by the *lex mercatoria* (*l*). It is therefore transferable by delivery so as to pass the property therein to a *bonâ fide* holder for value, and entitle him upon delivery thereof to the company, to obtain payment of the principal

(*c*) *Furness* v. *Caterham Rail. Co.* (1859), 27 B. 358.

(*d*) *Burry Port, &c., Rail.* (1885), 54 L. J. Ch. 710.

(*e*) *Mersey Rail. Co.*, [1895] 2 Ch. 287.

(*f*) *James* v. *Boythorpe Colliery Co.* (1890), 2 Meg. 55.

(*g*) *Gartside* v. *Silkstone, &c., Co.* (1882), 21 Ch. D. 762.

(*h*) *Lister* v. *Henry Lister & Sons* (1893), 62 L. J. Ch. 568.

(*i*) *Tasker & Sons*, [1905] 2 Ch. 587; *Russia Petroleum Co.*, [1907] 2 Ch. 540.

(*k*) C. A. 1908, s. 104; *Fitzgerald* v. *Persse*, [1908] 1 Ir. Rep. 279.

(*l*) *Bechuanaland Exploration Co.* v. *London Trading Bank, Ltd.*, [1898] 2 Q. B. 658. Cf. *Goodwin* v. *Robarts* (1876), 1 A. C. 476.

thereby secured when due, and to sue in his own name upon the debenture. This was not the case formerly (*m*), and its negotiability was effected by contract (*n*) contained in the conditions, upon and subject to which it was issued.

A registered debenture is only legally transferable by an instrument of transfer duly executed or signed, and by registration thereof in the books of the company. Registered debenture conditions usually provide that the company shall keep a register of the debentures at its registered office, containing the names, addresses and descriptions of the registered holders, and particulars of the debentures held by them respectively, and that every transfer of the debenture must be in writing under the hand of the registered holder, or his executors or administrators, and that upon delivery at the registered office of the transfer with the prescribed fee, and such evidence of identity and title as the company may reasonably require, the transfer is to be registered, and a note of such registration is to be endorsed on the debenture, and that the company shall be entitled to retain the transfer. When the principal and interest secured by the debenture are to be paid to the registered holder for the time being, without regard to any equities subsisting between the company and the original or any intermediate holder, and the conditions as to transfer are similar to those above mentioned, the liquidator is bound to register the transfer, although the same is made after the commencement of the liquidation and after judgment in a debenture holder's action, but before any notice of a claim of the company against the transferor (*o*). But under different debenture conditions a company may be able to assert equities against a subsequent unregistered holder (*p*), and equities subsisting between the company and a holder can be subsequently enforced against a transferee who holds the debentures in trust for the holder (*q*). A company is entitled to set off a call made on a member against moneys owing to him on registered debentures, although prior to the date of the call he has equitably mortgaged his debentures, if no notice of the mortgage has been given to the company, but not calls made after notice, although made in the winding-up of the company (*r*). The provisions of the Forged Transfers Act, 1891 and 1892 (*s*), and of Order 46, rules 3—14 (*t*), apply to the debentures and debenture stock of any incorporated company, or of any industrial, provident, friendly, benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament, as well as to shares.

The directors before registering a transfer of debentures or debenture

(*m*) *Natal Investment Co.* (1867), 3 Ch. 355.

(*n*) *Imperial Land Co. of Marseilles* (1870), 11 Eq. 478.

(*o*) *Goy & Co.*, [1900] 2 Ch. 149.

(*p*) *Palmer's Decoration Co.*, [1904] 2 Ch. 743.

(*q*) *Brown* v. *Gregory*, [1904] 1 Ch. 627.

(*r*) *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch. 175.

(*s*) See *ante*, p. 189.

(*t*) See *ante*, p. 184.

stock, should take the necessary precautions to ascertain that the transfer is valid, and such precautions will be similar, *mutatis mutandis*, to those which should be taken in reference to transfers of shares (*u*). If the company register a forged transfer of debentures, the true owner can obtain a cancellation of the registration and the delivery up of the debentures (*v*), or if the debentures are subsequently redeemed by the company, and the sums secured by the debentures paid to the transferee, the company is primarily liable to the true owner for the sums so paid, without prejudice to any rights it may have against the transferee (*w*). When one of three trustees is in possession, with the consent of his co-trustees, of debentures registered in their names, the co-trustees are not thereby estopped from claiming the debentures as against a *bonâ fide* purchaser for value from the trustee, he having forged his co-trustees' names to the deed of transfer (*v*).

A company may lawfully refuse to pay the *bonâ fide* transferee for value of a stolen debenture payable to bearer, although such holder had no notice of the theft (*x*).

A mortgage debenture of a company is a thing in action, and therefore an equitable mortgage of a debenture is good as against the trustees in bankruptcy of the registered holder (*y*). The observations made with regard to mortgages of shares apply to mortgages of debentures which are transferable by registration of an instrument of transfer in the company's books (*z*).

Debenture conditions are usually framed so as to give the registered holder for the time being the absolute right to receive the moneys secured by the debentures, and similar conditions are used in the case of debenture stock. The conditions in the case of debentures make the principal money and interest payable to the registered holder without regard to any equities subsisting between the company and the original or any intermediate holder (*a*), and provide that the receipt of the registered holder shall be a good discharge for the moneys secured by the debentures, and that the company shall not be bound to inquire into his title or to take notice of any trust affecting such moneys, or be affected by notice, express or implied, of the right, title, or claim of any other person to such moneys or instrument (*b*). A company is entitled to set off against the registered holder of such debentures a debt due from him to the company, although they have been deposited as security for advances, the debt being due at the date of the deposit, and the company having no

(*u*) See Chap. XVI.

(*v*) *Cottam* v. *Eastern Counties Rail. Co.* (1860), 1 J. & H. 243.

(*w*) Cf. *Barton* v. *L. & N. W. Rail. Co.* (1888), 38 C. D. 144.

(*x*) *Crouch* v. *Crédit Foncier of England* (1873), L. R. 8 Q. B. 374.

(*y*) *Ex parte Rensburg* (1877), 4 C. D. 685; and Bankruptcy Act, 1883, s. 44, sub-s. 2 (iii).

(*z*) See *ante*, p. 182.

(*a*) *Goy & Co.*, [1900] 2 Ch. 149.

(*b*) *Blakely Ordnance Co.* (1867), 3 Ch. 154.

notice thereof (*e*). In the absence of any special conditions the equitable assignee of a debenture takes the debenture subject to any equities subsisting between the company and the original holder, although the assignment was for value, and the assignee had no notice of the circumstances giving rise to such equities, unless the company is estopped from setting up such equities against the assignee (*d*), *e.g.* by registering the transferee as the holder thereof (*e*), by accepting notice of assignment, although it does not register the transfer (*f*), by telling the transferee that registration is unnecessary (*g*), by representing that the debenture is legally transferable if the transferee relies on such representation (*h*), by a judgment previously recovered against the company for interest on the debentures (*i*), by issue to a debenture stock-holder of a stock certificate stating that the person therein named is the registered holder of the amount of stock therein mentioned (*j*).

A company must within two months after the registration of the transfer of any of its debentures or debenture stock complete and have ready for delivery the debentures and stock certificates (*k*).

Redemption.

Debentures of a company become redeemable at the time or upon the happening of any of the events specified in the debentures or debenture conditions, or in the trust deed securing the debentures, but, in any case, upon the commencement of the winding-up of the company. Provision is sometimes made for the redemption of debentures by means of a sinking fund, and to prevent any preference being given to any debenture-holders it is stipulated that the debentures to be redeemed shall be determined by drawings. Frequently an option is given to the company at any time after a specified date to redeem at a slight premium. Unless otherwise agreed, debentures are not redeemable before the date or event specified in the debentures (*l*). It is a question of construction as to when debentures are to be redeemed, and *semble* the prospectus offering the debentures for subscription cannot be looked at for the purpose of

(*c*) *Smith & Co.*, [1901] 1 Ir. R. 73.

(*d*) *Athenæum Life Assurance Co.* v. *Pooley* (1858), 3 De G. & J. 294; *Ex parte Mackenzie* (1869), 7 Eq. 240; *Natal Investment Co.* (1868), 3 Ch. 355; *Christie* v. *Taunton & Co.*, [1893] 2 Ch. 175.

(*e*) *Higgs* v. *Northern Assam Tea Co.* (1869), 4 Ex. 387; *Re Northern Assam Tea Co.* (1870), 10 Eq. 458.

(*f*) *Brunton's Case* (1874), 19 Eq. 302.

(*g*) *Lishman's Claim* (1870), 23 L. T. 40.

(*h*) *Romford Canal Co.* (1883), 24 C. D. 85.

(*i*) *Hulett's Case* (1862), 2 J. & H. 306; *Ex parte Chorley* (1870), 11 Eq. 157.

(*j*) *Robinson* v. *Montgomeryshire Brewery Co.*, [1896] 2 Ch. 841.

(*k*) C. A. 1908, s. 92.

(*l*) *Hooper* v. *Western Counties Telephone Co.* (1892), 68 L. T. 591.

varying the contract contained in the debentures (*m*). The word "redeemable," as used in debentures, implies an option, and not an obligation to redeem (*m*). If debentures are made payable at a particular place, they must be presented for payment at such place before there can be default in payment (*n*). The principal money becomes due at the commencement of the winding-up of the company, although the stipulated time for payment has not arrived (*o*). But unless so provided the holder is not entitled to any premium although the company has power to redeem the debentures at a premium at any time (*p*).

Rights and Remedies.

A holder of mortgages, debentures, or debenture stock of a company incorporated for purposes of a public nature, and having statutory powers and duties, whether incorporated by a special Act or by Charter, or under the Companies Acts, cannot obtain from the Court an order for the sale of the undertaking of the company (*q*) or the appointment of a manager thereof (*q*). An order may be obtained for the appointment of a receiver of the tolls or sums charged by the mortgages, debentures, or debenture stock, without prejudice to the right to recover by action the principal and interest in arrear upon the mortgages or debentures, or the interest on the debenture stock. Debenture stock being perpetual, no question arises as to the recovery of any principal moneys. Such mortgages or debenture stock, or debentures, are not interests in land within the meaning of the Mortmain Acts (*r*). Where principal or interest is in arrear, an order may be obtained, under the Companies Act, 1908, for the winding-up of a company other than a railway company (*s*). The remedies of a holder of debentures or debenture stock issued by a company governed by the Companies Acts in respect of his debentures or stock, may be divided into (1) those which he or his trustees may enforce without the intervention of the Court, and (2) those which can only be enforced by the Court. Where a trust deed is executed to secure debentures or debenture stock, it usually contains a legal or equitable mortgage of specific parts of the company's property, and a floating charge on the residue of the company's property, whether present or after-acquired,

(*m*) *Chicago and North West Granaries Co.*, [1898] 1 Ch. 263.

(*n*) *Thorn* v. *City Rice Mills* (1889), 40 C. D. 357.

(*o*) *Hodson* v. *Tea Co.* (1880), 14 C. D. 859; *Wallace* v. *Universal Automatic Machine Co.*, [1894] 2 Ch. 547.

(*p*) *Barcelona Tramways Co.* (1905), Farwell, J., *Ex. rel.* Ed.

(*q*) *Gardner* v. *L. C. & D. Rail. Co.* (1866), 2 Ch. 201; *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 C. D. 399; *Marshall* v. *S. Staffordshire Tramways Co.*, [1895] 2 Ch. 36, disapproving of *Bartlett* v. *West Metropolitan Tramways Co.*, [1894] 2 Ch. 286.

(*r*) *Re Mitchell* (1877), 6 C. D. 655; *Holdsworth* v. *Davenport* (1876), 3 C. D. 185; *Attree* v. *Hawe* (1877), 9 C. D. 337.

(*s*) *Barton-upon-Humber and District Waterworks Co.* (1889), 42 C. D. 585; *Re Portsmouth Tramways Co.*, [1892] 2 Ch. 362. See *post*, p. 417.

with or without a floating charge on its capital for the time being uncalled. It also confers upon the trustees a trust or power, upon the security becoming enforceable, to enter into possession and carry on the business of the company, to sell and realize the assets of the company, and apply the proceeds in or towards payment *pari passu* to the holders of the debentures or stock, of first, the interest in arrear and then the principal, and, usually, a power to appoint a receiver and manager of the undertaking and assets of the company, with full powers to carry on the business of the company, to raise money, and realize its assets. Compensation payable under the Licensing Act, 1904, in respect of licensed houses comprised in the trust deed is payable to the trustees (*t*). A trustee can exercise his power or trust for sale, although an order has been made for winding up the company. And the liquidator cannot obtain an injunction to restrain such sale except on the usual terms of paying the amount due on the debentures, or, if the amount is not agreed, paying the amount claimed into Court in a redemption action (*u*). Where debentures are not secured by a trust deed, debenture conditions sometimes give a debenture holder power to appoint a receiver and manager in specified events. The payment of the principal moneys and interest secured by the debentures may also be guaranteed by some other company or person. In the absence of any agreement to the contrary a holder of debentures or debenture stock is entitled to the appointment by the Court of a receiver or a receiver and manager, if his security is in jeopardy, or the company has made default in payment of the principal or interest, or the company parts with the whole, or substantially the whole, of its undertaking and assets otherwise than in the ordinary course of business, and ceases to be a going concern. He may also sue for the recovery of his principal or interest if in arrear, or present a petition for the winding-up of the company, or may enforce his security by obtaining an order for sale, or, in some instances, for foreclosure, and where the debentures or stock are guaranteed may enforce the guarantee. The passing of a resolution for voluntary winding-up does not prevent a debenture holder from commencing proceedings to enforce his security, and the Court will not, upon the application of the liquidator, restrain proceedings in the action (*x*). Where a compulsory order or a supervision order has been made, a debenture holder's action cannot be commenced or proceeded with except with the leave of the winding-up Court, but such leave is granted as a matter of course unless the same relief is given to him in the winding-up as he would obtain in the action (*y*).

(*t*) *Law Guarantee, &c., Society* v. *Mitcham and Cheam Brewery*, [1906] 2 Ch. 98; *Noakes* v. *Noakes*, [1907] 1 Ch. 64. As to the application of the moneys so paid, see *Dawson* v. *Braimes, &c., Breweries*, [1907] 2 Ch. 359; and *Bentley's Yorkshire Breweries*, [1909] 2 Ch. 609.

(*u*) *Longdendale Cotton Spinning Co.* (1878), 8 C. D. 150.

(*x*) *Longdendale Cotton Spinning Co.* (1878), 8 C. D. 150.

(*y*) *David Lloyd & Co.* (1877), 6 C. D. 339.

The right of a debenture holder to prove in a winding-up in case his security is insufficient is dealt with in Chapter XXXIII. Although the debenture does not so provide, the principal money, if not paid on the appointed day, will carry interest at the rate agreed on (*z*). Interest payable on debentures, although payable half-yearly, accrues *de die in diem* (*a*). The right of debenture holders to prove for interest accruing due in a winding-up is dealt with in Chapter XXXIII. (*b*), but if their security is sufficient, they are entitled to be paid interest out of the moneys arising from the realization of their security, although such interest accrues due subsequently to the commencement of the winding-up. In the administration by the Court of the trusts of a debenture trust deed, which provides that the proceeds arising from the realization of the security shall be applied first in payment of interest, the right to receive interest in full is not lost, although the principal is repaid first (*c*). If the debenture holder has obtained a judgment for the amount of his principal, he is only entitled to interest from the date of the judgment at the rate of 4 per cent. per annum (*d*). The right to recover interest on debenture stock issued under Part 3 of the Companies Clauses Act, 1863, is not barred for twenty years (*e*). Debenture or debenture stock conditions, or trust deeds securing debentures or debenture stock, frequently give power to a specified majority to bind a dissentient minority of the holders of the debentures or debenture stock to accept some modification or compromise of their rights as such holders. A bank holding debentures as security for an overdraft may vote in respect of the face value of the debentures (*f*). Thus debenture holders have been compelled to accept fully paid shares for their debentures (*g*), to agree to the creation of a charge having priority over the debentures (*h*). The rights of holders of debenture stock or debentures may be modified by a scheme sanctioned under section 120 of the Companies Act, 1908 (*i*), or by a special Act. Under the Supreme Court Rules, Order XVI. r. 9a, the Court has power, in an action to administer the trusts of a deed securing debentures or debenture stock, to approve a compromise and bind absent debenture holders if satisfied that the compromise is for their benefit, and that to serve the absent holders would cause unreasonable expense or delay, but so that they are not to be bound

(*z*) *Price* v. *Great Western Rail. Co.* (1847), 16 M. & W. 244.

(*a*) *Re Rogers' Trusts* (1860), 1 Dr. & S. 338.

(*b*) See *post*, p. 491.

(*c*) *Calgary, &c., Co.*, [1908] 2 Ch. 652.

(*d*) *European Central Rail. Co.* (1876), 4 C. D. 33.

(*e*) *Cornwall Minerals Rail. Co.*, [1897] 2 Ch. 74.

(*f*) *Kent Colleries* (1907), 23 T. L. R. 559.

(*g*) *Mercantile Investment Co.* v. *River Plate Trust Co.*, [1894] 1 Ch. 578; *Sneath* v. *Valley Gold Co.*, [1893] 1 Ch. 477.

(*h*) *Follit* v. *Eddystone Granite Quarries*, [1892] 3 Ch. 75. Cf. *Hay* v. *Swedish, &c., Rail. Co.* (1889), 5 T. L. R. 460; *Dominion of Canada Co.* (1886), 55 L. T. 347.

(*i*) See *post*, p. 528.

if the order has been obtained by fraud or non-disclosure of material facts. Only non-assenting persons can be so bound, but dissentients are not bound and are entitled to payment in full (*k*). Although the order approving the compromise does not limit any time within which absent persons must come in under the scheme or be excluded from the benefit thereof, the Court can subsequently make an order to that effect, but preserving to them their charge on the property comprised in the trust deed (*l*). The rights of holders of the stock of an insolvent railway company may be modified by an arrangement sanctioned under the Railway Companies Act, 1867.

I.—*Receivers.*

Where mortgages have been granted by a company governed by the Companies Clauses Act, 1845, and its special Act authorizes the mortgagees to enforce the payment of arrears of principal or interest due on such mortgages by the appointment of a receiver, two justices may appoint a receiver of the tolls or sums liable for the payment thereof (*m*). Such a mortgagee is not entitled to a receiver of the purchase-moneys of surplus lands of the company or of the rents and profits thereof (*n*). An application for a receiver, or, in Scotland, a judicial factor, in the case of debenture stock issued under the Companies Clauses Act, 1863, can only be made by stockholders holding the sum prescribed by the special Act, or if no such sum is prescribed, one-tenth of the aggregate amount the company is authorized to raise by mortgages, bonds, and debenture stock, or the sum of 10,000*l.*, whichever sum is smaller (*o*).

In the case of companies governed by the Companies Acts, the appointment of a receiver or a receiver and manager by the Court may be obtained upon an originating summons, but it is generally obtained by motion in an action. The originating summons or writ, in addition to claiming the appointment of a receiver and manager, claims to have the debentures enforced by foreclosure or sale, an account of what is due to the debenture holders upon the security of the debentures, and an inquiry as to what property is comprised in or charged by the debentures. The necessary parties to such an action are the company and a debenture holder or debenture holders representing the debentures or classes of debentures (*p*). If a debenture holder is plaintiff, as is usually the case, he sues on behalf of himself and all other holders of the same class, and if he is the holder of a puisne debenture, it is not necessary unless a redemption is claimed as against prior incumbrancers to make them parties to the action. If there is a trust deed securing the

(*k*) *Collingham* v. *Sloper*, [1894] 3 Ch. 716.
(*l*) *Ibid.*, [1904] A. C. 159.
(*m*) Sects. 53 and 54.
(*n*) *Gardner* v. *L. C. & D. Rail. Co.* (1867), 2 Ch. 201.
(*o*) Sect. 25.
(*p*) *Wilcox & Co.*, [1903] W. N. 64.

debentures, the trustees must be made parties to the action, and the relief claimed must include a claim that the trusts of the deed be carried into execution under the direction of the Court. Where a debenture holder is sued in a representative capacity under R. S. C., Order XVI. r. 9, an order should be obtained authorizing him to defend in that capacity (*q*). Where this is done every member of the class is bound by the proceedings in the action except in the case of a compromise under R. S. C., Order XVI. r. 9a, where dissentient shareholders are not bound (*r*), and non-assenting or absent shareholders are not bound if the order has been obtained by fraud or non-disclosure of material facts. If any debenture holder objects to being represented by the plaintiff or by any defendant appointed to represent his class, he is entitled to apply in the action and be added as a defendant, but at his own risk as to costs (*s*).

The appointment will be made where at the time of making the order (*t*) principal (*u*) or interest (*x*) is in arrear, or, if neither is in arrear, where the security is in jeopardy (*y*). The appointment has been made where the company has sold the whole or substantially the whole of its undertaking and assets otherwise than in the ordinary course of business, and has ceased to be a going concern (*z*). Where a business is being carried on by the company which it is advisable should be continued in the interests of the debenture holders for the more beneficial realization of their security, the Court will appoint a receiver and manager even where the charge does not in terms include the goodwill of the business but includes all the "property" of the company (*a*). In order to obtain the appointment of a manager, it is necessary to make a special case for it by affidavit made in support of the application, and a manager is only appointed for a limited period, and if an extension of time is required it must be applied for before the period expires (*b*). Where, however, no business is being carried on, or it is not in the interests of the debenture holders to continue a business, a receiver only will be appointed. The Court will not, upon the application of a holder of the

(*q*) *Fairfield Shipbuilding Co.* v. *London, &c., Steamship Co.*, W. N. (1895) 64.

(*r*) *Collingham* v. *Sloper*, [1894] 3 Ch. 716.

(*s*) *Watson* v. *Cave* (1881), 17 C. D. 19; *Fraser* v. *Cooper* (1882), 21 C. D. 718; *Debenture Corporation* v. *Murietta* (1892), 8 T. L. R. 496.

(*t*) *Carshalton Park Estate*, [1908] 2 Ch. 62, where at the date of the issue of the writ default had not been made.

(*u*) *Hopkins* v. *Worcester and Birmingham Canal Proprietors* (1868), 6 Eq. 437.

(*x*) *Bissill* v. *Bradford Tramway Co.*, W. N. (1891) 51.

(*y*) *McMahon* v. *North Kent Ironworks Co.*, [1891] 2 Ch. 148; *Thorn* v. *Nine Reefs* (1892), 67 L. T. 93; *Victoria Steamboats*, [1897] 1 Ch. 158; *London Pressed Hinge Co.*, [1905] 1 Ch. 576.

(*z*) *Hubbuck* v. *Helms* (1888), 56 L. J. Ch. 536.

(*a*) *Peek* v. *Trinsmaran Iron Co.* (1876), 2 C. D. 115; *Makins* v. *Percy Ibotson & Sons*, [1891] 1 Ch. 133; *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574; *Leas Hotel Co.*, [1902] 1 Ch. 332.

(*b*) *Day* v. *Sykes* (1886), 55 L. T. 763.

debenture stock, mortgages, or debentures of a company incorporated for purposes of a public nature and having statutory powers and statutory duties, whether incorporated by special Act (*c*) or under the Companies Acts (*d*), appoint a manager of the undertaking of the company, but only a receiver.

There is jurisdiction to appoint a receiver of land out of the jurisdiction (*e*), but until what is necessary has been done in accordance with foreign law to put the receiver in possession of such property, no one, whether a British subject or a foreigner, can, by taking proceedings in a foreign country with reference to such property, be guilty of contempt of Court, by interfering with the receiver's possession or otherwise (*f*).

The person appointed receiver is usually the person nominated by the plaintiff, and the present practice is to make such appointment on the hearing of the motion, and not to refer it to Chambers to decide who is to be the receiver. Where, however, the notice of motion does not ask for the appointment of any particular person, or an affidavit of fitness is not forthcoming, an order will be made for the appointment of a receiver, but it will be referred to Chambers to determine the particular person to be appointed. The present practice is to insert in the order appointing a receiver, a direction that the receiver do forthwith, out of any assets coming to his hand, pay the debts of the company which have priority over the claim of the debenture holders, under the Companies Act, 1908, and that the receiver be allowed all such payments in his accounts (*g*). The appointment of a receiver is made conditional upon his giving security, the amount and nature whereof is settled by the Judge in Chambers. If it is important that the receiver should be at liberty to act at once, *e.g.* in order to convert a floating security into a fixed security, or to take possession of the company's assets, application is usually made for that purpose, and an immediate appointment is made upon the plaintiff undertaking to be personally answerable, pending the completion of the security, for all the liabilities of the receiver which would be covered by the security when completed (*g*). Where such an undertaking is not given, the appointment of the receiver is conditional and takes effect only upon his giving security to the satisfaction of the Judge in Chambers. Therefore any disposition by the company of any of its assets subject to the debentures, pending the completion of the security, does not constitute a contempt of Court (*h*). If, however, a receiver is appointed with power to take possession of the property

(*c*) *Gardner* v. *L. C. & D. Rail. Co.* (1867), 2 Ch. 201; *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 C. D. 399.

(*d*) *Marshall* v. *S. Staffordshire Tramways Co.*, [1895] 2 Ch. 36; disapproving *Bartlett* v. *West Metropolitan Tramways Co.*, [1893] 3 Ch. 437.

(*e*) *Mercantile Investment Co.* v. *River Plate Trust Co.*, [1892] 2 Ch. 303.

(*f*) *Maudslay, Sons and Field*, [1900] 1 Ch. 602.

(*g*) Stirling, J., [1900] W. N. 58.

(*h*) See *ante*, p. 260.

charged, but the order does not direct security to be given, the appointment takes effect on the making of the order (*i*). Where an application is made to the Court to appoint a receiver on behalf of the debenture holders of the company, after a winding-up order has been made, the official receiver may be so appointed (*k*). It is the practice in such cases to appoint the official receiver a receiver on behalf of the debenture holders for the purpose of saving expense (*l*); but there is a grave objection to this course being taken, because the interests of the company and of the debenture holders are generally conflicting, and it is more convenient that the same person should not hold both offices. As a rule, the liquidator of a company will not be appointed in the place of a receiver appointed under a power by the debenture holders or their trustees (*m*); but he will be appointed in the place of a receiver appointed by the Court (*n*), unless the assets are of an unusual character, in which case the official receiver may be appointed receiver of part of the assets, leaving the receiver originally appointed to receive the other assets (*o*). The liquidator cannot, however, obtain the discharge of the receiver, unless it is with a view to his being appointed in his place as receiver (*p*).

Premiums paid by a receiver to a guarantee society for joining in his security will be allowed to him in his accounts if appointed without remuneration, but not if he is to receive remuneration (*q*). It has been already pointed out that the appointment of a receiver, or receiver and manager in the case of property subject to a floating charge, converts the floating charge into a fixed charge (*r*). The appointment of a receiver and manager operates as a notice of dismissal to the servants of the company (*s*), but they do not thereby become his servants (*t*). A receiver appointed by the Court is an officer of the Court, and any interference with him as such receiver is a contempt of Court and is punishable with imprisonment or by the infliction of a fine (*u*); even although the order is erroneous (*x*), and the person seizing goods in the hands of the receiver is the sheriff on behalf of an execution creditor (*y*). Both the creditor and the sheriff, if they knew of the appointment of the receiver, commit

(*i*) *Morrison* v. *Skerne Ironworks* (1889), 60 L. T. 588.

(*k*) C. (W. Up) A. 1890, s. 4 (6).

(*l*) *Wilmott* v. *London Celluloid Co.* (1885), 52 L. T. 642; *Joshua Stubbs, Ltd.*, [1891] 1 Ch. 475.

(*m*) *Joshua Stubbs, Ltd., supra*; *Pound, Son and Hutchings* (1889), 42 C. D. 402.

(*n*) *Perry* v. *Oriental Hotels* (1870), 5 Ch. 420; *Campbell* v. *Compagnie de Bellegarde* (1876), 2 C. D. 181; *Tottenham* v. *Swansea Zinc Ore Co.* (1884), 53 L. J. Ch. 776; *Bartlett* v. *Northumberland Avenue Co.* (1886), 53 L. T. 611.

(*o*) *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108.

(*p*) *Strong* v. *Carlyle Press*, [1893] 1 Ch. 268.

(*q*) *Harris* v. *Sleep*, [1897] 2 Ch. 80.

(*r*) See *ante*, p. 259.

(*s*) *Reid* v. *Explosives Co.* (1887), 19 Q. B. D. 264.

(*t*) *Marriage, Neave & Co.*, [1896] 2 Ch. 663.

(*u*) *Helmore* v. *Smith* (No. 2) (1886), 35 C. D. 449.

(*x*) *Ames* v. *Birkenhead Docks* (1855), 20 B. 332.

(*y*) *Russell* v. *East Anglian Rail.* (1850), 3 Mac. & G. 104.

a contempt in such a case (*z*). No action can be commenced against a receiver in respect of anything done by him as receiver, unless the leave of the Court is previously obtained (*zz*). If a third person claims to be entitled to property in the possession of a receiver, he should apply to the Court in the action in which the receiver was appointed, either to be examined *pro interesse suo*, or for an order directing the receiver to deliver the property to him, or put him in possession thereof (*a*), and a landlord if he wishes to distrain upon goods in the receiver's possession must also obtain leave to do so. A mortgagee of property who is not a party to the action in which a receiver has been appointed, and who has not taken possession of the property, is not entitled to rents of the property paid to the receiver (*b*). There is, however, no jurisdiction in a debenture stock-holder's action to adjudicate upon a summons taken out by a person not a party to the action, asking that the receiver appointed under the Companies Clauses Act, 1863, sects. 23 and 24, should be directed to pay certain expenses, although by the order appointing him, he is directed to pay all expenses proper and necessary for the maintenance, management and working of the undertaking of the company, and he could properly pay the expenses claimed by the summons (*c*). A receiver so appointed is, however, bound to pay all such working expenses before making any payment to the stock holders, and such expenses include rent payable in respect of an easement to run trains over land (*d*), and also instalments due and to become due in respect of a purchase of rolling stock upon the terms that the same should not become the property of the railway company until all the instalments had been paid (*e*).

The duties of the receiver are to collect, get in, and realize the property subject to the charge, except that if any part of such property consists of uncalled capital, and the company is in liquidation, the liquidator is the proper person to make the calls and to take proceedings to enforce the same, he paying over the proceeds of such calls to the receiver (*f*). The receiver should take no important step in discharge of his duties, except under the direction of the Court (*g*), and the plaintiff in the action, and not the receiver, is the proper person to make the

(*z*) *Lane* v. *Sterne* (1862), 3 Giff. 629.

(*zz*) See note (*x*) on p. 278; and *Maidstone Palace of Varieties*, [1909] 2 Ch. 283.

(*a*) *Russell* v. *East Anglian Rail.* (1850), 3 Mac. & G. 104.

(*b*) *Ex parte Norwich Life Assurance Society* (1895), 13 R. 48.

(*c*) *Brocklebank* v. *East London Rail. Co.* (1879), 48 L. J. Ch. 729.

(*d*) *G. E. Rail. Co.* v. *East London Rail. Co.* (1881), 44 L. T. 903.

(*e*) *Eastern and Midland Rail. Co.* (1890), 45 C. D. 367.

(*f*) *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch. 175; *Fowler* v. *Broad's Patent Night Light Co.*, [1893] 1 Ch. 724; *Harrison* v. *St. Etienne Brewery Co.*, W. N. (1893) 108; but in a proper case the receiver may be allowed to use the liquidator's name for getting in the calls upon giving him a proper indemnity: *Westminster Syndicate* (1909), 99 L. T. 924.

(*g*) See *British Power Traction Co.*, [1906] 1 Ch. 497; [1907] 1 Ch. 528; *Glasdir Copper Mines*, [1906] 1 Ch. 365; *W. C. Horne & Sons*, [1906] 1 Ch. 271.

application (*h*). Such directions are obtained in Chambers generally on the application of the plaintiff, but sometimes by the defendant, the receiver not being entitled to make the application in his own name. A receiver and manager appointed by the Court is personally liable upon the contracts made by him in that capacity subject to his right to be indemnified out of the property subject to the debentures (*i*) against all debts, liabilities, and expenses properly incurred and, *semble*, they are properly incurred when they are incurred *bonâ fide* in the ordinary course of business (*j*). But a receiver is not liable, by reason of his having taken possession of wagons or other property let to the company on a hiring agreement, to pay rent to the lessor (*k*). Where leaseholds were mortgaged by sub-demise to the trustees for the debenture holders, the Court refused to order the receiver to pay the rent during the time he was in occupation, although the application was made upon the ground that the Court had jurisdiction to order its officers to do what was just (*l*). Neither the plaintiff nor any other debenture holder is personally liable in respect of the receiver's contracts.

The Court frequently empowers a receiver and manager to borrow money for the purpose of carrying on the business of the company, or preserving its property and to secure it by creating a charge having priority to the charge created by the debentures (*m*), and for his own protection he should never borrow without the sanction of the Court (*j*).

In a case in which such a borrowing was authorized, but the receivers and managers expended, not only the moneys so borrowed, but further sums in completing contracts entered into by the company, it was held that such sums had priority over the moneys so borrowed as well as over the debentures (*n*). In another case where the assets were insufficient, the order of priority of payment was declared to be as follows:—(1) working expenses; (2) costs of realization of the property; (3) plaintiff's costs of action; (4) moneys raised by a charge in priority to the debenture holders in pursuance of an order of the Court; (5) the debentures; (6) moneys raised by the receiver upon a charge not sanctioned by the Court, but purporting to be a first charge on the company's assets and applied in preservation of property (*o*). Liberty to a receiver to raise money by a charge having priority over the debentures in order to preserve property in his possession will only be granted in cases where special urgency is shown, unless all the parties interested in such property are before the Court (*p*). Where a receiver is authorized to borrow to a fixed amount,

(*h*) *Parker* v. *Dunn* (1845), 8 B. 497.

(*i*) *Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265; *Burt* v. *Bull*, [1895] 1 Q. B. 276.

(*j*) See note (*g*) on p. 279.

(*k*) *Hay* v. *Swedish, &c., Rail. Co.* (1891), 8 T. L. R. 775.

(*l*) *Hand* v. *Blow*, [1901] 2 Ch. 721.

(*m*) *Greenwood* v. *Algeciras Rail. Co.*, [1894] 2 Ch. 205.

(*n*) *Strapp* v. *Bull*, [1895] 2 Ch. 1.

(*o*) *Latham* v. *Greenwich Ferry Co.* (1895), 72 L. T. 790.

(*p*) *Securities, &c., Corporation* v. *Brighton Alhambra* (1893), 62 L. J. Ch. 566.

and he has borrowed a part of that amount and repaid it, his original borrowing power is not diminished (*q*).

A receiver or a receiver and manager may be appointed by debenture holders or their trustees if so empowered by the debentures or trust deed. Trust deeds for securing debentures usually empower the trustees to appoint a receiver upon the happening of certain events therein specified, and sometimes a similar power is conferred by debentures where there is no trust deed. Provision is usually made that the person appointed receiver shall be the agent of the company, and that the company shall alone be answerable for his acts, contracts and defaults, and where this is the case neither the trustees nor the debenture holders are personally liable in respect of contracts entered into by the receiver, even although after his appointment the company has gone into liquidation (*r*). When no such provision is made the debenture holders or trustees making the appointment are personally liable upon contracts made by him (*s*). Until the company goes into liquidation, the receiver so appointed, unlike a receiver appointed by the Court (*t*), is not personally liable upon contracts which he enters into as such receiver (*u*) unless he agrees to be so liable ; but after the company goes into liquidation, *semble* he would be personally bound by any contracts entered into by him (*x*) ; or if he contracted in the name of the company he would be liable for breach of warranty of authority. The receiver so liable where the contracts are proper contracts is entitled to be indemnified out of the property subject to the security. In a trust deed the power of appointment is generally conferred upon the trustees, but where the power is contained in debentures it is sometimes conferred upon a particular debenture holder, or upon each debenture holder, or upon any debenture holder with the consent of a specified number of debenture holders. Where a receiver has been so appointed, the Court will not, if the appointment is valid, appoint another receiver (*y*). Where such a power is given to one or more debenture holders, it is a discretionary power in the nature of a trust, and if the appointment is made not for the benefit of the debenture holders, but with a view to the benefit of the company or third persons, such appointment is void (*z*). Where a trust deed or debenture gives power to the trustees or the person making the appointment to fix the remuneration of the receiver, then, if such power is exercised in good faith, the amount cannot be questioned

(*q*) *Milward* v. *Avill* (1897), 4 Mans. 403.

(*r*) *Gosling* v. *Gaskell*, [1897] A. C. 575 ; disapproving the dictum of Lord Esher in *Owen & Co.* v. *Cronk*, [1895] 1 Q. B. D. 265, 272, that the receiver is the agent of the trustees.

(*s*) *Robinson Printing Co.* v. *Chic*, [1905] 2 Ch. 123.

(*t*) *Burt* v. *Bull*, [1895] 1 Q. B. 276.

(*u*) *Owen & Co.* v. *Cronk*, *supra*.

(*x*) *Gosling* v. *Gaskell*, [1897] A. C. 575.

(*y*) *Joshua Stubbs*, [1891] 1 Ch. 475.

(*z*) *Maskelyne British Typewriter*, [1898] 1 Ch. 133.

by the company or by any subsequent class of debenture holders (*a*). A liquidator cannot apply in the winding-up of the company to fix the remuneration of the receiver, but if he has improperly paid himself remuneration the liquidator should by action recover the amount so paid (*b*).

The power to appoint a receiver can be exercised after the company goes into liquidation, but if a compulsory or supervision order has been made, the receiver must apply in the winding-up for leave to take possession of the company's property, which he will obtain as a matter of course (*c*). If uncalled capital is included in the security, the liquidator is the proper person to get it in, and what he receives, less the expenses of making and enforcing the call, is paid to the receiver. The Court could authorize the receiver to get in the calls in the name of the company, and this is sometimes done (*cc*).

The person who obtains an order for the appointment of a receiver or manager or makes an appointment must give notice thereof to the registrar of joint stock companies within seven days after the date of the order or appointment, and the registrar on payment of the prescribed fee enters the appointment on the register of mortgages and charges (*d*).

II.—*Sale and Foreclosure.*

Where the principal is due and default has been made in payment, a debenture holder is entitled to commence an action claiming to enforce the debentures by foreclosure or sale, unless his right to sue is qualified by the trust deed or conditions, *e.g.* where his right is conditional upon his giving notice to the trustees of the deed to protect the debenture holders, and upon their neglecting to do so for a certain period (*e*). If debentures or debenture stock are secured by a trust deed, and the security thereby created has become enforceable, the Court will, in an action brought for that purpose, make an order for administration by the Court of the trusts of the deed, and grant the ordinary relief given in an action for enforcing debentures. In such an action, where the objects for which the moneys were raised by the issue of debentures cannot be carried into effect, and any part of the funds remain in the hands of the trustees, the Court will, on the application even of a minority of the debenture holders, order the unspent portion of the funds to be distributed among the debenture holders after payment of expenses of saving and realizing the property charged and costs (*f*). Special

(*a*) *Hemp Yarn and Cordage Co.* v. *Nelson* (1897), C. A. *ex rel. cd.*

(*b*) *Vimbos, Ltd.*, [1900] 1 Ch. 470.

(*c*) *Henry Pound, Son and Hutchins* (1889), 42 C. D. 402.

(*cc*) See *ante*, p. 279.

(*d*) C. A. 1908, s. 94. As to penalty on default, see *post*, p. 404.

(*e*) *Rogers & Co.* v. *British and Colonial Association* (1899), 68 L. J. Q. B. 14.

(*f*) *Collingham* v. *Sloper*, [1893] 2 Ch. 96; *National Bolivian Navigation Co.* v. *Wilson* (1880), 5 A. C. 176.

inquiries are sometimes ordered, *e.g.* as to determining priorities between claims of debenture holders. Under an inquiry directed by the judgment as to the property charged by the debentures, the master may certify what uncalled capital, if subject to the security, is due from the several shareholders notwithstanding that no calls can actually be made in such an action; and where the plaintiff is himself a shareholder and is found indebted in a sum of uncalled capital, he being a party to the action is bound by that finding unless varied by the judge (*g*).

Where an order is made in a debenture holder's action for the sale of property charged by the debentures, the sale must be carried out under the direction of the Court, and the purchase-money paid into Court to the credit of the action. Usually a sale is not made until after judgment has been obtained in the action, and notice has been given to all the debenture holders by circular or letter or by advertisement. The judge in person, where he is of opinion there must eventually be a sale, may direct a sale before judgment, and also after judgment before all the persons interested are ascertained whether served or not (*h*). The Court or a judge has power also to authorize a sale to be carried out by laying proposals before the Judge in Chambers for his sanction, or by proceedings altogether out of Court if he is satisfied by evidence that all the persons interested in the property to be sold are before the Court or are bound by the order for sale; and every order authorizing the said proceedings altogether out of Court is to be prefaced by a declaration that the judge is so satisfied, and a statement of the evidence upon which such declaration is made (*i*). The order for sale out of Court generally requires that the reserved bidding and the auctioneer's remuneration shall be fixed by the master, and that the purchase-money be paid directly into Court.

The question has arisen whether an order for a sale out of Court can be made under the joint operation of these rules before judgment and such a sale has been ordered.

For some time there was a diversity of practice with regard to the form of the judgment in debenture holders' actions, but a form was settled by the judges to be used in ordinary cases (*k*).

An order for foreclosure of the property subject to the debentures may be made where all the debenture holders are before the Court (*l*), but not otherwise (*m*), and may be granted upon an originating summons (*n*). A judgment should give liberty to the defendant at any

(*g*) *Madeley* v. *Ross, Sleeman & Co.*, [1897] 1 Ch. 505.

(*h*) R. S. C. Ord. 51, r. 1b; *Crigglestone Coal Co.*, [1906] 1 Ch. 523.

(*i*) R. S. C. Ord. 51, r. 1a.

(*k*) See W. N. (1899) 229, as varied by [1900] W. N. 58.

(*l*) *Sadler* v. *Worley*, [1894] 2 Ch. 170.

(*m*) *Continental Oxygen Co.*, [1897] 1 Ch. 511.

(*n*) *Oldrey* v. *Union Works* (1895), 72 L. T. 627.

time before foreclosure absolute to apply to the Judge in Chambers for payment and transfer to the plaintiff on account of the moneys due to him of any money or securities in Court to the credit of the action, or in the hands of the receiver (*o*). A plaintiff not having notice of any claim and not being required to proceed with the judgment by any other debenture holder may discontinue his action (*p*).

III.—*Personal Judgment.*

A personal judgment against a company is rarely asked for in a debenture holder's action because usually all the property and uncalled capital of the company is covered by the security, but there is no reason why, in the case of a sole debenture holder, such relief should not be obtained if it is required. In one case the plaintiff suing on behalf of himself and all other holders of mortgage bonds in the form given in Schedule C. to the Companies Clauses Act, 1845, applied for judgment for the total amount of the bonds, but North, J., only made a declaration that the debenture holders were entitled to stand in the position of judgment creditors for that amount and interest (*q*).

IV.—*Costs.*

In an action by a debenture holder against the company and the trustee of a deed to secure the debenture holders where the fund realized was insufficient, the costs and other expenses were ordered to be paid out of the fund in the following order:—(1) The plaintiff's costs of the realization of the property, including the costs of an abortive attempt to sell; (2) the balance due to the receiver and manager, including his remuneration and his costs and expenses; (3) the costs, charges and expenses of the trustees of the deed; (4) the plaintiff's costs of the suit (*r*). When trustees and the company being defendants are represented by the same solicitor, the trustees will be entitled to full costs, although the separate costs of the company will be disallowed (*s*). Trustees are not entitled to payment of their remuneration out of the proceeds of the realization of the security unless it is charged on the property comprised therein (*t*). The plaintiff, where the debentures do not rank *pari passu*, is entitled to his costs even where in the event nothing is payable in respect of his debentures (*u*). A plaintiff in a debenture holder's action is only entitled to party and party costs if the security is sufficient (*x*), but is entitled to

(*o*) *Cumming* v. *Metcalfe's London Hydro* (1895), 2 Mans. 418.

(*p*) *Alpha Co.*, [1903] 1 Ch. 203.

(*q*) *Hope* v. *Croydon and Norwood Tramways* (1887), 34 C. D. 730.

(*r*) *Batten* v. *Wedgwood Coal Co.* (1885), 28 C. D. 317; *London United Breweries*, [1907] 2 Ch. 511.

(*s*) *Mortgage Insurance Corp.* v. *Canadian Agricultural Co.*, [1901] 2 Ch. 377.

(*t*) *Accles, Ltd.* (1902) W. N. 164.

(*u*) *Carrick* v. *Wigan Tramways Co.*, W. N. (1893) 98.

(*x*) *Queen's Hotel Co., Ltd., Cardiff*, [1900] 1 Ch. 792.

solicitor and client costs when the assets are insufficient to pay the debenture holders in full (*y*). The defendant company is not entitled to costs unless the action fails, nor in an action by a first debenture holder in which second debenture holders are defendants are they entitled to costs; they must look to the surplus (if any) (*z*). Costs of realization by a liquidator of property comprised in the security may be retained by him, but not the cost of the winding-up (*a*).

(*y*) *Smith* v. *Lubbock*, [1901] 2 Ch. 357; *Smith* v. *Law Guarantee, &c., Society*, [1904] 2 Ch. 569.

(*z*) *Clapton Engineering Co.* v. *Boddington & Co.*, [1904] W. N. 28.

(*a*) *Marine Mansions Co.* (1867), 4 Eq. 601; *Perry Oriental Hotels* (1871), 12 Eq. 127; *Regent's Canal Ironworks* (1875), 3 Ch. D. 411.

BORROWING AND DEBENTURES.

CANADIAN NOTES.

To enable a corporation to borrow, it must be given power to borrow by its constitution. Under the present Ontario Act, it would appear that the power to borrow will depend largely upon the objects specified in its Letters Patent. The power may be express or implied, and it will be implied where the objects of the company are such that borrowing may fairly be regarded as incidental to them. This is the case with a trading company. It is obvious that such a company must have an implied power as incidental to its business. See Palmer's Co. Law, 5th ed. 231; *Walmsley* v. *Rent Guarantee Co.*, 29 Gr. 484.

Necessity for Bye-law.

Sect. 49 of the former Ontario Act provided that if authorized by bye-law passed by the directors and sanctioned by a vote of not less than two-thirds in value of the shareholders, directors of the company might borrow money. The phraseology of the Act gave rise to the contention that there was no power to borrow or create a mortgage without such a bye-law; even if there was an inherent power in a company, it must be exercised under the statute, otherwise it was *ultra vires*. The weight of opinion, however, seemed to be in favour of the view that a company might validly borrow money and create a valid mortgage where no bye-law had been passed, and that the lack of a bye-law was an irregularity only and that outsiders were not affected with notice of such irregularity. See *Sheppard* v. *Bonanza Nickel Co.*, 25 O. R. 305; *MacEdwards* v. *Ogilvie*, 4 Man. 6; *McKain* v. *Canadian Birkbeck Co.*, 7 O. L. R. 341; *Trusts and Guarantee Co.* v. *Abbott Mitchell Co.*, 11 O. L. R. 403.

Following the rule in the *Royal British Bank* v. *Turquand*, it was laid down in the *MacEdwards' Case* that an outsider must be taken to have notice of all provisions of the Companies Act under which the company is incorporated, and it might be also that he

must be taken to have notice of the contents of the Letters Patent as he could become acquainted with them by searching in the office of the proper department, but further than that he could not be expected to go. See *Thomas* v. *Walker*, 16 O. W. R. 751.

The difficulty as to the necessity of a bye-law would appear to be removed by the present Ontario Act. The power of a company to borrow will depend apparently upon its nature and objects, and it can no longer be contended that its powers are conditional upon passage of a bye-law. Failure to pass a bye-law and procure its ratification is an irregularity only. If borrowing bye-laws are enacted by the directors of the company they do not take effect until ratified by the shareholders. See sects. 73 and 74 and 8 Edw. VII. ch. 43, sect. 1, sub-sect. 6.

In *Hammond* v. *Bank of Ottawa*, 15 O. W. R. 536, Sutherland, J., set aside a mortgage made by a company to a bank on the ground that no bye-law was passed authorizing the mortgage. The company was indebted to the bank in the sum of $6100. A bye-law was passed under sect. 73 of the Ontario Companies Act, but it was held that this section applied only to borrowing and not to giving security for an existing debt, and in any case that the bye-law was not ratified by the shareholders as required by sect. 74. The Court of Appeal, however, held (1 O. W. N. 99), 22 O. L. R. 73, that the incorrect recital in the bye-law did not prevent it from having effect under sect. 76, which does not require ratification by the shareholders. A failure to refer to all the powers enabling them to do an act will not render a bye-law nugatory. However, the defendants were entitled to assume that everything necessary to the valid execution of the mortgage had been properly done.

See also *Commercial Rubber Co.* v. *St. Jerome*, Q. B. 17, K. B. 274, as to the duty of the company to cure an irregularity in a charge or mortgage by giving a valid one instead of the irregular one.

In *Barthels* v. *Winnipeg Cigar Co.*, 2 Alta. L. R. 21, it was held that sect. 98 of the Companies Ordinance relating to the powers of a company to borrow and mortgage applies only to mortgages and other securities to secure money borrowed, and does not restrict the implied powers of a trading company to give security for existing debts.

General Principles.

In practice, a general borrowing bye-law is usually passed and ratified, and it would be obviously impracticable to go through the

necessary forms in respect to each loan or act of borrowing or purchase on credit. To secure loans, the directors may charge all or any of the real or personal property, rights, and powers, undertaking franchises, as well as the book debts and unpaid calls of the corporation.

It should be noted that the Act refers to borrowing by a corporation, which is defined to include companies with or without share capital. At the same time it requires ratification by two-thirds in value of the shareholders. This may possibly cause difficulties in regard to borrowing powers on the part of corporations not having share capital. By the Amending Act of 1908 the words "or members" have, however, been added.

For a discussion of the possibility of creating mortgage on the powers, franchises and rights of a company, see *Bickford* v. *Grant Junction Ry. Co.*, 1 S. C. R. 696; *Whiteside* v. *Bell Chamber*, 22 C. P. 241; *Peto* v. *Welland Ry. Co.*, 9 Gr. 455.

The *Bickford's Case* may be regarded as authority for the proposition that a corporation *primâ facie* has power to mortgage its property and no enabling power is requisite to confer it, and that if a company's rights in this respect are limited, it must be by force of some disability in the statute or other instrument creating it. See also *Waterous Engine* v. *Town of Palmerston* (1892), 21 S. C. R. 556; *Bernardin* v. *North Dufferin* (1891), 19 S. C. R. 581; *McArthur* v. *Town of Portage La Prairie* (1893), 9 M. R. 588; *Lincoln Paper Mills* v. *St. Catherines Ry. Co.* (1890), 19 O. R. 106; *Galt* v. *Erie Ry. Co.* (1868), 14 Gr. 499; *Rockwood Agricultural Society* (1899), 20 C. L. T. 25.

It has been held that a building society if authorized by its rules may borrow and may charge its assets with the repayment of the loan. *Re Farmer's Loan Co.*, 30 O. R. 337.

Where the directors have power to borrow, the president and managing director are by virtue of their offices *primâ facie* proper officers to execute mortgage, and a mortgage having common seal attached and executed by president and managing director is properly executed. *Canadian Bank of Commerce* v. *Smith*, 17 W. L. R. 135.

Where a company has power to purchase anything it may purchase it on credit, and may bind itself by covenant to pay the purchase-money and give a mortgage to secure it. *Sheppard* v. *Bonanza Nickel Co.*, 25 O. R. 306.

Persons dealing with a company are affected with notice of a public Act, under which it is incorporated, and where a corporation

is prohibited from buying on credit, there is no remedy against either the company or against the directors upon an implied warranty. *Struthers* v. *MacKenzie*, 28 O. R. 381. See also as to warehouse receipts given to a bank, *Trusts and Guarantee Co.* v. *Abbott*, 11 O. L. R. 403; *Merchants Bank* v. *Hancock*, 6 O. R. 285; *Greenstreet* v. *Paris*, 21 Gr. 229. It should be noted that while under sect. 17 of the Ontario Companies Act very broad incidental powers are conferred and may be exercised by the directors of the company in their discretion, the power of borrowing is not one of them.

Where borrowing powers have been regularly vested in the directors, the shareholders cannot by passing a new resolution limit them. *Cann* v. *Eakins*, 23 N. S. R. 475.

Land sold to the company may remain liable under a vendor's lien for unpaid balance of purchase-money. *Peto* v. *Welland Ry. Co.*, 9 Gr. 455; *Lincoln* v. *St. Catherines Ry. Co.*, 19 O. R. 106; and the company may buy chattel property on the basis that a lien is to be created or reserved. *Bickford* v. *Grand Junction Ry. Co.*, *supra*.

It has been contended that two-thirds in value fixed by statute is to be computed upon the total amount which has been called and paid, but this is not the correct meaning to be attributed to the words of the statute. The measure of value of the stock for voting purposes is not determinable by a reference to what has been paid upon it. It is clear that in the Companies Act the legislature contemplates the power to vote before any stock whatever has been paid up, and the shareholder shall be entitled to as many votes as he has shares in the company, provided that he is not in arrears in respect of calls. *Purdon* v. *Ontario Loan and Debenture Co.*, 22 O. R. 597.

Irregular Borrowing.

The distinction between borrowing which is *ultra vires* and that which is merely irregular must always be borne in mind, and it may be repeated that where a company by its constitution has only a limited power of borrowing, third parties dealing with the company and lending it money are bound to make inquiries. *Struthers* v. *MacKenzie*, 28 O. R. 381.

As to borrowing merely irregular, the rule established by authority is that where the proposed dealing is not inconsistent with the constitution of the company the party borrowing need not

inquire into the regularity of the internal proceedings: it is to be assumed that all is being done in due course, and the disclosure afterwards that such was not the case will not avail to displace or nullify a completed instrument or transaction. *Per* Boyd, C., in *Shepherd* v. *Bonanza Nickel Co.*, 25 O. R. 305; *McKain* v. *Canadian Birkbeck Co.*, 7 O. L. R. 341; *Brock* v. *Toronto Ry. Co.*, 17 Gr. 425.

Debentures.

The term debenture is applied generally to a security for money providing for payment of a certain specified sum to the owner or bearer with interest in the meantime. *Bank of Toronto* v. *Cobourg Ry. Co.*, 7 O. R. 1.

Power to Create.

Section 73 of the Ontario Act gives the directors express power to mortgage or pledge any of the real or personal property of the company to secure any liability of the company and it should be noted that the present Ontario Act requires a "duplicate original" of the charge, mortgage or other instrument to secure bonds, to be filed in the office of the Provincial Secretary.

It does not, however, as in the case of the Chattel Mortgage Act, go on to provide that the charge shall be invalid if not registered, nor is any penalty imposed for failure to register. The Chattel Mortgage Act also provides for registration of the trust mortgage to secure debentures, and the provisions of the Registry Act must be regarded as well.

Negotiability.

As to debentures payable to bearer, see *Geddes* v. *Toronto St. Ry. Co.*, 14 C. P. 513; *Gott* v. *Gott*, 9 Gr. 165; *Trust and Loan Co.* v. *Hamilton*, 7 G. P. 98; *Young* v. *McNider*, 25 S. C. R. 272; *Parish* v. *McFarlane*, 14 S. C. R. 738.

Other Cases.

Quære as to the power of a company to re-issue debentures which have been deposited in blank and subsequently redeemed by the company. The former sect. 49 of the old Companies Act gave an express power to pledge debentures of the company. In the

revision of 1907 this was omitted, but restored by the amending Act of 1908.

Inasmuch as debentures may be issued at a discount there is no objection to issuing them by way of security for an advance at less than their par value. In such a case the holder is entitled to interest, and in the event of insolvency, to dividends upon the full amount of his security. *Johnston* v. *Wade*, 11 O. W. R. 598.

Debenture Stock.

Debenture stock is borrowed capital consolidated into one mass for the sake of convenience.

It is usually in England created by a trust deed, though sect. 73 appears to provide for its creation by bye-law. It is usually only redeemable on a winding up or in default of payment of interest. Debenture stock certificates commonly bear coupons as in the case of debentures. The trust deed creating the stock is itself a security by way of charge on the assets. The stock certificates may be transferred in the same manner as a debenture. In the case of debenture stock, however, a certificate is usually transferred in any amount, and a single certificate is issued for the aggregate amount of the person's holdings if desired.

Debenture stock while commonly perpetual or irredeemable may be terminable or redeemable at a given time. Debenture stock holders are not in any sense shareholders of the company, and have no votes or any part in the control of its affairs so long as their securities are not in default.

Floating Charge.

A floating charge may be created upon the property both present and future of the company. *Johnston* v. *Wade*, 11 O. W. R. 598. A clause in a debenture, such as "the company hereby charges all its assets real and personal of every kind and description including its uncalled capital," is sufficient to create a floating charge. *Ibid.*

It is an equitable charge on the assets for the time being of a going concern; it attaches to the subject charged in the varying condition it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking ceases to be a going concern. *Johnston* v. *Wade*, *supra.*

A company having created a floating charge may, notwithstanding, create specific mortgages ranking in priority to it, and specific mortgages are not affected by notice of the floating charge. *Johnston* v. *Wade*, *supra*.

A floating security may be said to cease to float and become a specific charge whenever the business ceases to be a going concern, as, for instance, when the company executes an assignment for the benefit of its creditors or a winding-up order was made. The document may, of course, be drawn so that the charge shall cease to float upon the contingency of an execution being issued or the principal and interest falling in arrears. *Johnston* v. *Wade*, 11 O. W. R. 598.

The word "undertaking" necessarily infers that the company will go on, and that the debenture holder cannot interfere until either the interest was due or unpaid or until the time has arrived for the payment of his principal, and that the principal was unpaid. *Phelps* v. *St. Catherines Ry. Co.*, 19 O. R. 506.

So long as a company is a going concern bond holders whose bonds are a general charge on the undertaking have no right, even though interest is in arrears, to seize, take or sell or foreclose any part of the property of the company, but their remedy is to appoint a receiver. *Phelps* v. *St. Catherines Ry. Co.*, 19 O. R. 501.

The words "guaranteed by the capital and assets of the company invested in mortgages on real estate" have been held to be sufficient to create a general charge. *Re Farmers Loan*, 30 O. R. 337.

Registration of Debentures.

Section 78 of the Ontario Act provides that a duplicate original of the charge, mortgage or other instrument of hypothecation shall be filed forthwith in the office of the provincial secretary. It does not, however, as in case of the Chattel Mortgage Act, go on to provide that the charge shall be invalid if not registered, nor is any penalty imposed for failure to register. The Chattel Mortgage Act also provides for registration of the trust mortgage to secure debentures. The question has recently been decided as to whether a floating charge must be registered under the Chattel Mortgage Act. It has been held in affect that a floating charge is not within the scope of the Chattel Mortgage Act and that it need not be registered. *Johnston* v. *Wade*, 11 O. W. R. 598.

Debenture Holders' Rights.

The trustee can proceed to enforce his rights by action, but a more common method is for the individual debenture holder to bring an action on behalf of himself and all other debenture holders against the trustee and the company, although he may sue on his own behalf, and join all other debenture holders as defendants. The relief sought in the action is commonly the appointment of a receiver and manager and for a sale of the property covered by the trust mortgage. *Fellows* v. *Ottawa Gas*, 19 C. P. 174. As to appointment of a receiver, see *Smith* v. *Port Dover R. Co.*, 12 Ont. App. 288.

CHAPTER XXII.

CREDITORS

THE position of a creditor of a limited company differs materially from that of a creditor of an unlimited company, of a partnership, or of an individual who is *sui juris*. The members of an unlimited company are, in a winding-up, jointly and severally liable in respect of all the debts and liabilities of the company. The members of a partnership are jointly liable in respect of all the debts and liabilities of the partnership, and in the case of the administration by the Court of the estate of a deceased partner, such estate is severally liable therefor. But the only fund to which the creditors of a limited company can look for payment of their debts are the assets of the company including, in the case of a company limited by shares, its uncalled capital, and, in the case of a company limited by guarantee, the amount which the members respectively undertake to contribute to the assets of the company in the event of the same being wound up. In the case of a limited company where the liability of its directors, managers, or managing directors is unlimited (*a*), they are jointly and severally liable for its debts and liabilities. The liability of the members of a bank of issue registered under the Companies Act, 1908, as a limited company is, in respect of its notes, unlimited (*b*). An unsecured creditor of a company governed by the Companies Acts cannot, except in a winding-up, make its uncalled capital available for the payment of his debt, but an unsecured creditor of a company governed by the Companies Clauses Act, 1845, may do so under certain circumstances (*c*). An unsecured creditor of a company cannot prevent the company from dealing with its assets in any manner it may think proper, and he has no remedy against its directors for negligence in conducting its business (*d*), and they are not trustees for the creditors of the company (*e*). Nor can he obtain an injunction to restrain any disposition of the property of the company which is *ultra*

(*a*) C. A. 1908, s. 60.

(*b*) *Ibid.* s. 251.

(*c*) See *post*, p. 288.

(*d*) *Wilson* v. *Lord Bury* (1880), 5 Q. B. D. 518.

(*e*) *Pool, Jackson and White's Case* (1878), 9 C. D. 322; *Wood's Ships Co.* (1890), 2 Meg. 164.

vires of the company (*f*). If, however, the company seeks to alter its powers under the provisions of the Companies Act, 1908, the rights of unsecured creditors are fully protected (*g*). It appears to be the policy of the Companies Act to preserve the subscribed capital of a company limited by shares as the fund to which creditors may look for payment of their debts. For example, paid-up capital cannot be returned to shareholders while the company is a going concern either by paying dividends thereout (*h*), purchasing its own shares (*i*), or in any other manner (*k*); nor can the liability on shares be diminished except in pursuance of the Companies Act, 1908, and by that Act the rights of creditors are fully protected (*l*). However, having regard to the fact that capital may be lost without any part of it having been returned to shareholders, and that most companies issue debentures or debenture stock constituting a charge on all their property and assets, persons lending money to a company or supplying goods on credit should, before doing so, either take security or exercise caution.

An unsecured creditor of a company whose debt is due can sue the company and obtain judgment for the amount of his debt, or if the company is insolvent, present a petition for a winding-up order. A creditor who has obtained judgment for the amount of his debt against the company can enforce that judgment (1) by a writ of *fi. fa.*; (2) by a writ of elegit; (3) by attachment of debts due to the company; or (4) by obtaining equitable execution by means of a receiver appointed by the Court. Under a writ of *fi. fa.* the company's goods, chattels, and moneys, and various securities belonging to the company, may be taken in execution by the sheriff. If the property so taken in execution is subject to a floating charge in favour of debenture holders, such charge has priority over the charge created in favour of the judgment creditor by seizure of the property unless the seizure has been perfected by sale before the debenture holders take any steps by interpleader or otherwise to protect their rights (*m*). Under a writ of elegit the real estate belonging to a company can be taken in execution for the purpose of satisfying the judgment debt, but, generally speaking, if the interest of the company in the real estate is only equitable, it cannot be taken in execution. Where, however, the company has land or other interests in property which cannot be taken in execution under a writ of *fi. fa.* or elegit, a judgment creditor can obtain from the Court the appointment of a receiver of the interest of the company in the property, and in this way make them available for the payment of the judgment debt. The property of the company which can be taken in equitable execution includes equities

(*f*) *Mills* v. *Northern Rail. of Buenos Ayres* (1870), 5 Ch. 621.
(*g*) See *ante*, p. 19.
(*h*) See *ante*, pp. 36–39.
(*i*) See *ante*, pp. 39, 40.
(*k*) See *ante*, p. 42.
(*l*) See *ante*, p. 52.
(*m*) See *ante*, p. 261.

of redemption, funds in Court, reversionary interests and the income of trust funds. A landlord of property demised to a company in addition to the remedies to which he is entitled as an unsecured creditor, is entitled to his common law remedy of distress upon the goods and chattels upon the demised premises, and any distress so levied, even although not completed by sale, has priority over a floating security (*n*).

A judgment creditor of a company governed by the Companies Clauses Acts can (where the company has no goods which can be taken in execution) by leave of the Court issue execution against any of the members of the company for any amount not exceeding the amount remaining due on his shares, or the amount of the judgment debt (*o*).

Various attempts have been made by the legislature to give protection to persons dealing with companies. In order that such persons may obtain information with regard to any companies registered under the Companies Acts, each of such companies is required to furnish certain returns and give certain notices to the registrar of joint stock companies, and to file certain documents in the registry of joint stock companies. A file of such returns, notices and documents is kept in the registry with respect to every company registered under the Companies Acts, and every person may, upon the payment of one shilling for each inspection, inspect such file. He may also obtain a certificate of the incorporation of any company, or a certified copy of or extract from any other document filed upon payment of the prescribed fees (*p*).

The principal returns, notices and documents to be furnished, given and filed are the following:—

The memorandum and articles of association of the company (*q*).

In the case of a company having a share capital (*r*)—

A. An annual list stating the names, addresses and occupations of all persons who on the fourteenth day after the first or only ordinary meeting in each year are members of the company, and of all persons who have ceased to be members since the date of the last return, or (in the case of the first return) of the incorporation of the company and the number of shares or amounts of stock held by each of such present members on the said day and specifying the shares and stock transferred

(*n*) See *ante*, p. 261.

(*o*) See *ante*, p. 162.

(*p*) C. A. 1908, s. 243.

(*q*) *Ibid.* s. 15.

(*r*) *Ibid.* s. 26, and Form E in Schedule 3 to the C. A. 1908. This list and summary must be signed by the manager or secretary of the company, s. 26 (4). As to penalty on default, see *post*, p. 401. In order to comply with this section the list and summary must be substantially accurate: *Briton, &c., Life Assn.* (1888), 39 C. D. 61. The word "year" means a calendar year, the period of time between the 1st of January and the 31st December, both days inclusive: *Gibson* v. *Barton* (1875), 10 Q. B. 329. See *post*, p. 293, as to a creditor's right to inspect and take copies of this list and summary as well as of the register of members. Banking companies must add a list of all their places of business. See note to Form E, *supra*.

by such present members and past members respectively during the said period and the dates of registration of the transfers.

B. An annual return or summary specifying the following particulars :—

(1) The amount of the share capital of the company and the number of shares into which it is divided ;

(2) The number of shares taken from the commencement of the company to the date of the return distinguishing between those issued for cash and those issued as fully paid or partly paid, and in the latter case the amount credited as paid on each share, or, if the shares have been converted into stock, similar particulars with regard to the stock ;

(3) The amount of calls made on each share ;

(4) The total amount of calls received, including payments on application and allotment ;

(5) The total amount of calls unpaid ;

(6) The total number of shares forfeited and amount paid thereon ;

(7) The total amount paid for commission in respect of any shares, debentures or debenture stock or allowed as discount in respect of any debentures or debenture stock since the date of the last return.

(8) The total amount of shares or stock for which share warrants are outstanding at the date of the return and the total amount of share warrants issued and surrendered respectively since such date, and the number of shares or amount of stock comprised in each warrant ;

(9) The amounts of profits which shareholders have requested the company to retain instead of returning them under the Companies Act, 1908, sect. 40 ;

(10) 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 would be required if the company had been registered in England) to be registered with the registrar of companies under the Act, or which would have been required to be registered if created after the 1st July, 1908 (*t*) ;

(11) The names and addresses of the persons who are the directors of the company at the date of the return ;

(12) A statement in the form of a balance sheet (except in the case of a private company (*u*) or of an assurance company (*uu*) sending to the registrar a copy of its accounts and balance sheet in accordance with sect. 7 of the Assurance Companies

(*t*) See *ante*, p. 238.

(*u*) As to what is a private company, see *ante*, p. 7.

(*uu*) As to what is an assurance company, see *post*, p. 296.

Act, 1909), audited by the company's auditors, containing a summary of its share capital, liabilities and assets, giving particulars disclosing the general nature of the liabilities 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.

Notice of consolidation of shares or of conversion of shares into stock, or reconversion of stock into shares specifying the shares so consolidated, divided or converted, or the stock reconverted (*x*).

Notice of any increase of capital (*y*).

In the case of a company not limited by shares, notice of an increase in the number of members (*y*).

Notice of rectification of the register of members directed by the Court (*z*).

Notice of the situation of the registered office of the company, and of any change therein (*a*).

A copy of the register to be kept at the company's registered office containing the names and addresses and occupations of its directors or managers, and a notice of any change that takes place among such directors and managers (*b*).

A copy of every special or extraordinary resolution (*c*).

A copy of any order for winding-up (*d*).

Notice of an order for the dissolution of the company (*e*).

A return stating the date of the holding of the final meeting of a company in voluntary liquidation (*f*).

An office copy of an order deferring the date of the dissolution of a company in voluntary liquidation (*g*).

An office copy of an order declaring the dissolution of a company void (*h*).

In the case of joint stock companies, before registering under Part 7 of the Companies Act, 1908 (*i*).

(1) A list showing the names, addresses and occupations of the members of the company, and the number and distinguishing numbers, if any, of the shares and stock held by each member;

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company;

(3) A statement in the case of a company to be registered as a

(*x*) C. A. 1908, s. 42.
(*y*) *Ibid.* s. 44.
(*z*) *Ibid.* s. 32.
(*a*) *Ibid.* s. 62.
(*b*) *Ibid.* s. 75.
(*c*) *Ibid.* s. 70.
(*d*) *Ibid.* s. 143.
(*e*) *Ibid.* s. 172.
(*f*) *Ibid.* s. 195 (3).
(*g*) *Ibid.* s. 195 (5).
(*h*) *Ibid.* s. 223.
(*i*) *Ibid.* s. 252.

limited company specifying (i) 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; (ii) the number of shares taken and the amount paid on each share; (iii) the name of the company with the addition of the word "limited" as the last word thereof; and (iv) in addition, in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

In the case of companies not being joint stock companies, before registering under Part 7 of the Companies Act, 1908 (*k*).

A list showing the addresses and occupations of its directors or managers, and a copy of the Act, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating it, or, if to be limited by guarantee, of the resolution declaring the amount of the guarantee.

In the case of all companies governed by the Companies Acts, unless otherwise stated—

The order of the Court confirming a reduction of the capital of a company and the minute approved by the Court (*l*).

The memorandum as to reduction of paid-up capital made in pursuance of sect. 40 of the Companies Act, 1908 (*m*).

Any contract by which it has determined, while sect. 25 of the Companies Act, 1867, was in force, that any share was to be held otherwise than subject to the payment of the whole amount thereof in cash.

Notice of the situation of the office where a colonial register is kept, and of any change therein, and of the discontinuance of such office if discontinued (*n*).

An office copy of every order made confirming an alteration by a company of the object clauses of its memorandum of association or the substitution of a memorandum and articles of association for a deed of settlement, and a printed copy of the memorandum of association, or deed of settlement as altered, or of the substituted memorandum and articles of association (*o*).

Statements at the prescribed intervals in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation where the winding-up of the company is not concluded within one year after its commencement (*p*).

The list of the persons who have consented to be directors of a

(*k*) *Ibid.* s. 253.
(*l*) *Ibid.* s. 51.
(*m*) *Ibid.* s. 40 (2).
(*n*) *Ibid.* s. 34.
(*o*) *Ibid.* ss. 9 and 264.
(*p*) *Ibid.* s. 224.

company (other than a private company (*r*)) which has to be delivered to the registrar on the application for registration (*q*).

The written and signed consents of persons named as directors in the articles of association or prospectus of a company which invites the public to subscribe for its shares or in any statement filed in lieu of prospectus (*q*).

A contract by such persons to take from the company and pay for their qualification shares (if any), unless they have subscribed the memorandum of association therefor (*q*).

A statutory declaration of compliance with sect. 87 of the Companies Act, 1908, except in the case of a private company (*r*) or of a company registered before the 1st January, 1901, or of a company registered before the 1st July, 1908, which does not issue a prospectus inviting the public to subscribe for its shares.

A return stating— (*s*)

(1) The number and nominal amount of the shares allotted by companies limited by shares;

(2) The names, addresses and descriptions of the allottees;

(3) The amount (if any) paid or due and payable on each share; and

(4) The number and nominal amount of any shares allotted as fully or partly paid up for a consideration other than cash, and the amount credited as paid on each share and the consideration for which they have been allotted.

The contracts in writing or written particulars of verbal contracts duly stamped providing for the allotment of the last-mentioned shares and constituting the title of the allottee to the allotment (*s*).

Prospectuses and statements in lieu of prospectuses containing the particulars prescribed by sect. 81 of the Companies Act, 1908 (*t*).

A copy of the statutory report to be laid before the statutory meeting of every company limited by shares, which is registered after the 31st December, 1900 (*u*).

The prescribed particulars of mortgages or charges required to be registered by sect. 93 of the Companies Act, 1908 (*x*).

Notices of the appointment of a receiver or manager of the property of a company and abstracts of their receipts and payments (*y*).

The Companies Acts contain other provisions for the protection of creditors and other persons dealing with companies governed by those

(*q*) *Ibid.* s. 72.
(*r*) As to what is a private company, see *ante*, p. 7.
(*s*) C. A. 1908, s. 88.
(*t*) *Ibid.* ss. 80 and 82.
(*u*) *Ibid.* s. 65.
(*x*) See *ante*, p. 238.
(*y*) C. A. 1908, ss. 94 and 95.

Acts. Every limited company must paint or affix, and keep painted or affixed, its name on 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, and must have its name engraven in legible characters on its seal, and mentioned in legible characters in all notices, advertisements, and other official publications of the company, and 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 of parcels, invoices, receipts and letters of credit of the company (*z*).

In addition to the provisions of the Companies Act, 1908, as to registration of mortgages and charges, every company governed by the Companies Acts is bound to keep at its registered office a copy of every such mortgage and charge (*a*), and every limited company is bound to keep a register of all mortgages and charges specifically affecting property of the company, and such copies and register may be inspected by any creditor of the company at all reasonable times on payment of a fee not exceeding one shilling for each inspection (*b*). Every limited banking company, and every insurance company, and deposit, provident, or benefit society (other than an insurance company which complies with the provisions of the Life Assurance Companies Acts, 1870 to 1872 (*bb*), as to annual statements) must, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the prescribed form as to its capital and liabilities and assets, and put up a copy thereof in a conspicuous place in its registered office, and in every branch office or place where the business of the company is carried on, and every member and creditor of any such company is entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence (*c*). If any company governed by the Companies Acts carries on business for more than six months after the number of members is reduced below seven (or in the case of a private company (*d*)), two, every member cognizant of such fact is severally liable for all debts of the company contracted after the expiration of six months and while he remains a member (*e*). The Companies Act, 1908, also requires public notice to be given by advertisement in the Gazette of any special or extraordinary resolution for winding-up a company voluntarily (*f*), and of the time, place, and object of the final meeting to be held in the case of a voluntary winding-up (*g*). Any banking company existing on the 7th August, 1862,

(*z*) C. A. 1908, s. 63. See *ante*, p. 227, and *post*, pp. 303, 403.

(*a*) *Ibid.* s. 93 (9). See *ante*, p. 248.

(*b*) *Ibid.* ss. 100 and 101.

(*bb*) See now Assurance Companies Act, 1909, and *post*, p. 305.

(*c*) C. A. 1908, s. 108 and Form C. in the First Schedule to this Act. As to penalty on default, see *post*, p. 405.

(*d*) As to what is a private company, see *ante*, p. 7.

(*e*) C. A. 1908, s. 115.

(*f*) *Ibid.* s. 185.

(*g*) *Ibid.* s. 195.

proposing to register with limited liability must give thirty days' notice to all its customers (*h*).

In order to ensure compliance with the foregoing requirements of the Companies Act, 1908, penalties are in nearly every case prescribed for non-compliance therewith, and a table containing a list of such penalties will be found at p. 401.

In all matters relating to the winding-up of a company including the mode of winding-up and the appointment of liquidators the Court may have regard to the wishes of its creditors as proved by sufficient evidence, and may, if it thinks expedient, direct meetings to be convened for the purpose of ascertaining their wishes, regard being had to the value of the debts due to each creditor (*i*). All dispositions of the property of a company, and every transfer of shares or alteration in the status of members made between the commencement of the winding-up and the order for winding-up compulsorily or under supervision are, unless the Court otherwise orders, void (*k*), and in a voluntary winding-up all transfers of shares, except transfers made to or with the sanction of the liquidator or alteration in the status of members after the commencement of the winding-up, are void (*l*).

Any attachment, sequestration, distress or execution put in force against the estate or effects of a company registered in England or Ireland after the commencement of a winding-up by the Court or subject to its supervision is void unless the Court otherwise orders, and in a voluntary winding-up may be restrained (*m*). Any fraudulent preference of the creditors of a company made within three months of the commencement of the winding-up is invalid (*n*). Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void (*n*), but the Deeds of Arrangement Act, 1887, does not apply to companies (*o*).

The rights of a creditor of a company governed by the Companies Acts, after the commencement of a winding-up, are shortly as follows:—

To obtain an injunction at any time after the presentation of a petition for winding-up the company, and before an order is made restraining further proceedings in any action, or proceeding against the company (*p*).

To apply by motion to the Court to stay the winding-up (*q*);

To prove in the winding-up of the company (*r*);

(*h*) *Ibid.* s. 256.

(*i*) *Ibid.* ss. 145, 158, 188, 201 and 219. See *post*, pp. 444, 465.

(*k*) *Ibid.* s. 205. See *post*, p. 447.

(*l*) *Ibid.* s. 205. See *post*, p. 447.

(*m*) *Ibid.* ss. 211, 265, 266, 270, 271. See *post*, pp. 422, 509. As to companies registered in Scotland, see s. 213.

(*n*) C. A. 1908, s. 210. See *post*, p. 448.

(*o*) *Rileys, Ltd.*, [1903] 2 Ch. 590.

(*p*) C. A. 1908, s. 140. See *post*, p. 422.

(*q*) *Ibid.* s. 144. See *post*, p. 427.

(*r*) *Ibid.* s. 206. See *post*, p. 480.

To appeal against an arrangement made under the Companies Act, 1908, s. 191 (*s*);

To obtain a compulsory or supervision order for the winding-up of the company, although there is a pending voluntary winding-up, if his rights are prejudiced by the continuance thereof (*t*);

To obtain an order for the inspection of the company's books and papers (*u*);

To receive notices of, and attend and vote at meetings of the creditors of the company, with regard to the appointment of a liquidator in the place of the official receiver, or in the place of or jointly with a liquidator appointed by the company and the appointment of a committee of inspection to act with the liquidator (*x*).

To be eligible for election as a member of the committee of inspection (*y*);

To inspect by himself or his agent, at all reasonable times on payment of the prescribed fee, the statement of the affairs of the company required to be made by the Companies Act, 1908, s. 147 (*z*);

To take part, by solicitor or counsel or in person, in the public examination of any persons directed to be examined under the Companies Act, 1908, s. 175.

To institute proceedings for misfeasance under the Companies Act, 1908, s. 215.

To inspect the liquidator's "Record Book" containing minutes of the meetings of creditors, contributories, and committee of inspection, and showing the manner in which he is conducting the liquidation (*a*);

In conjunction with other creditors representing one-tenth in value of the creditors, to request the liquidator to convene meetings of creditors to ascertain their wishes (*b*);

In a voluntary winding-up to apply to the Court, to determine any question arising in the winding-up or to exercise as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise in a winding-up by the Court (*c*);

To attend proceedings in Chambers in the winding-up of a company (*d*);

To apply to the Court with respect to the exercise, or proposed

(*s*) *Ibid.* s. 191.
(*t*) *Ibid.* s. 197. See *post*, p. 437.
(*u*) *Ibid.* ss. 221 and 193. See *post*, p. 450.
(*x*) *Ibid.* ss. 152 and 188. See *post*, p. 418.
(*y*) *Ibid.* s. 152.
(*z*) *Ibid.* s. 147.
(*a*) *Ibid.* s. 156; C. (W. U.) Rules, 1909, r. 166.
(*b*) *Ibid.* s. 158.
(*c*) *Ibid.* s. 193.
(*d*) C. (W. U.) Rules, 1909, r. 152.

exercise, by the liquidator of the powers conferred upon him by sect. 215 of the Companies (Consolidation) Act, 1908.

The rights of creditors are modified by the winding-up of the company. Thus, after the presentation of a petition for a winding-up order or a supervision order, they may be restrained from taking any further proceeding in any action, or proceeding against the company (*e*), and after such an order has been made, no action or other proceeding can be proceeded with by a creditor against the company, except with the leave of the Court and subject to such terms as the Court may impose (*f*), and certain debts become preferential debts (*g*).

The rights of a creditor may be modified in the winding-up by any compromise arrangement entered into between the company and its creditors, under sects. 120 or 191 of the Companies Act, 1908.

The Assurance Companies Act, 1909, sects. 1 and 2, provide that every assurance company, whether established before or after the commencement of that Act or within or without the United Kingdom, who carries on within the United Kingdom the business of life assurance, fire insurance, accident insurance, employers' liability insurance or bond investment, shall deposit and keep deposited in court the sum of £20,000 as respects each class of business, and that the Registrar of Joint Stock Companies shall not issue a certificate of incorporation of such a company until the deposit has been made. A company registered under the Companies Acts which transacts business of any such class in any part of the world is for the above purpose to be deemed to be a company transacting such business within the United Kingdom. This Act applies to all persons or bodies of persons, whether corporate or unincorporated, not being registered under the Acts relating to Friendly Societies or to Trade Unions. By sect. 19 of the Act, sect. 274 of the Companies Act, 1908 (which contains provisions as to companies incorporated outside the United Kingdom), applies to every assurance company constituted outside the United Kingdom which carries on assurance business whether incorporated or not (*h*).

(*e*) C. A. 1908, s. 140. See *post*, p. 422.
(*f*) *Ibid.* s. 142. See *post*, p. 422.
(*g*) *Ibid.* s. 209. See *post*, p. 499.
(*h*) See *ante*, p. 8.

CHAPTER XXIII.

THE ACQUISITION, HOLDING AND ALIENATION OF PROPERTY.

THE powers of a company incorporated in the United Kingdom to acquire, hold, and dispose of property depend to some extent upon the nature of the company's undertaking. For this purpose companies may be divided into two classes, viz., companies (for the sake of brevity called public companies) incorporated by special Act of Parliament for purposes of a public nature, and invested with statutory powers, such as the power to take land compulsorily; and companies other than public companies. The rule of law applicable to the first class is as follows:

1. A public company can only acquire and hold such land as is required for the purposes of its undertaking, and cannot dispose of any land so held.

Thus a railway company cannot acquire land not required for the purposes of its railway, but for the purpose of carrying out an agreement with another owner of land (*a*). Provided that the company acts with the *bonâ fide* object of using the lands for the purposes authorized by the Act, and not for any collateral object, it is for the company to determine what lands are required for the purposes of its undertaking (*b*), and it cannot be restrained from using it for such purposes, although such user, apart from the Act authorizing it, would have been actionable (*c*). Where a public company has taken more land than is required for the purposes of its undertaking, it must sell its superfluous land within the period prescribed by its special Act, or, if no period be prescribed, within ten years after the expiration of the time limited by such Act for the completion of the works, or, in default, the superfluous land then remaining unsold will vest in and become the property of the owners of the lands adjoining thereto (*d*). Except where the superfluous lands are situate within a

(*a*) *Lord Carington* v. *Wycombe Rail. Co.* (1868), 3 Ch. 377.

(*b*) *Stockton and Darlington Rail. Co.* (1860), 9 H. L. Cas. 246.

(*c*) *L. B. & S. Rail. Co.* v. *Truman* (1885), 11 A. C. 45.

(*d*) Lands Clauses Act, 1845, s. 127.

town, or are built upon or used for building purposes, first the owners of the lands from which they were originally severed, and then the adjoining owners, have a right of pre-emption upon the sale of such superfluous lands (*e*). Upon any sale of superfluous lands the company cannot retain any interest in the land sold (*f*), but can impose for its benefit restrictive conditions upon the purchaser (*g*). Land may, however, be used for other purposes in addition to the purposes of the undertaking (*h*). A public company cannot alienate any land which is required for the purposes of its undertaking (*i*), nor grant any easement over it which is inconsistent with the purposes for which the land is required. Thus a railway company, unless authorized by its special Act, cannot grant the right of building over its line upon girders placed across it (*k*), or a right of way under an arch (which with other arches supports a railway) of such a nature as to prevent the company using such arch for the purpose of the railway (*l*).

A public company can, however, grant an easement over its land which is not inconsistent with the objects of its incorporation. Thus, a canal company may dedicate part of its land used as a towing-path as a public footpath (*m*); but it cannot grant rights of taking water from its canals (*n*). The company may retain land not wanted for the time being if there is a reasonable expectation of soon using it (*o*).

2. A public company cannot, unless authorized by a special Act, sell its undertaking; nor can it sell any part of its property if such sale is inconsistent with the purposes of its undertaking.

A railway company can, however, sell the whole or part of its rolling stock to raise money for the purposes of its undertaking, but so that such sale is not made for the purpose of paying debts ranking after debentures (*p*); and may let on hire part of its surplus rolling stock to a company whose line is connected with its own line, and whose working

(*e*) *Ibid.* s. 128.

(*f*) *L. & S. W. Rail. Co.* v. *Gomm* (1882), 20 C. D. 562.

(*g*) *Higgins's Contract* (1882), 21 C. D. 95. Cf. *Bird* v. *Eggleton* (1885), 29 C. D. 1012.

(*h*) *Dover Harbour* v. *S. E. Rail. Co.* (1852), 21 L. J. Ch. 886.

(*i*) *Llanelly Rail., &c., Co.* v. *South Wales Rail. Co.* (1850), 14 Q. B. 902; *Hobbs* v. *Midland Rail. Co.* (1882), 20 C. D. 418.

(*k*) *Metropolitan Rail. Co. and Cosh* (1880), 13 C. D. 607.

(*l*) *Mulliner* v. *Midland Rail Co.* (1879), 11 C. D. 611.

(*m*) *Grand Junction Canal Co.* v. *Petty* (1888), 21 Q. B. D. 273.

(*n*) *Staffordshire, &c., Canal* v. *Birmingham Canal* (1866), L. R. 1 H. L. 254; *Rochdale Canal Co.* v. *Radcliffe* (1852), 18 Q. B. 287.

(*o*) *Hooper* v. *Bourne* (1880), 5 A. C. 1; *Betts* v. *G. E. Rail. Co.* (1878), 3 Ex. D. 182.

(*p*) *Yorkshire Rail. Wagon Co.* v. *Maclure* (1882), 21 C. D. 309; *Cornwall Minerals Rail. Co.* (1882), 48 L. T. 41.

benefits the letting company (*q*). It cannot, however, sell rolling stock manufactured by itself to other companies (*r*). A public company cannot, unless so authorized by a special Act, transfer or delegate any of its statutory powers (*s*). As to the power of a public company to mortgage its property, see *ante*, p. 231.

3. A public company cannot, unless authorized by a special Act, acquire or hold shares in any other company (*t*).
4. The power of a company incorporated by royal charter to acquire (subject as to land to the provisions of the Mortmain and Charitable Uses Act, 1888, s. 2 (*u*), hold and sell property is not limited to the powers for these purposes expressly, or by necessary implication, conferred upon it by the terms of its incorporation (*x*).
5. A company governed by the Companies Acts may, if so authorized by its regulations, acquire, hold and dispose of any kind of property except its own shares.

The Companies Act, 1908, gives express power to any company registered thereunder to hold land (sect. 16), except a company formed for promoting art, science, religion, charity, or any like object not involving the acquisition of gain by the company or its individual members, which, without the license of the Board of Trade, cannot hold more than two acres (sect. 19). A company may hold and deal with the shares of another company if so authorized by its regulations (*y*); but not otherwise (*z*); nor can it purchase it own shares unless the reduction of capital thereby effected is made in accordance with the provisions of the Act relating to

(*q*) *Att.-Gen.* v. *G. E. Rail. Co.* (1879), 11 C. D. 449.

(*r*) *Att.-Gen.* v. *L. & N. W. Rail. Co.*, cited in argument, *ibid.* at p. 470, 11 C. D.

(*s*) *G. N. Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 9 Ha. 306; *Att.-Gen.* v. *G. E. Rail. Co.*, *supra*, per James, L.J., 467.

(*t*) *Salomons* v. *Laing* (1850), 12 B. 339; *G. W. Rail. Co.* v. *Metropolitan Rail. Co.* (1863), 32 L. J. Ch. 382.

(*u*) See *post*, p. 303.

(*x*) *Baroness Wenlock* v. *River Dee Company* (1887), 36 Ch. D. at p. 685.

(*y*) *Contract Corporation* (1867), 3 Ch. 105; *Peruvian Railways* (1869), 20 L. T. 96; *Financial Corporation* (1880), 28 W. R. 760; *Royal Bank of India* (1869), 4 Ch. 252. As to what words are a sufficient authority, see *Financial Corporation*, *supra*.

(*z*) *British National Life Assurance Association* (1878), 8 C. D. 679; *Lands Allotment Co.*, [1894] 1 Ch. 616.

reduction of capital (*a*). A colliery company has an implied power to sell its real estate (*b*).

6. A company governed by the Companies Acts may, if so authorized by its regulations, sell the whole or any part of its undertaking and assets for cash, shares, debentures or other valuable consideration, provided that the sale is not part of a scheme for evading the provision of sect. 192 of the Companies Act, 1908.

Even without express authority a company may sell (*c*) or lease (*d*) all its assets, real and personal, provided that the sale or lease be not inconsistent with the objects for which the company was constituted (*e*). A sale of all the undertaking and assets of a company, even if authorized by its regulations, is invalid if it is part of a scheme for evading the provisions of sect. 192 of the Companies Act, 1908 (*f*). Decisions which have been based on the validity of such a sale are now of no importance (*g*). It is submitted that such sales are not void, and may be confirmed by a special resolution passed in pursuance of sect. 192 (*h*). On a sale of all the undertaking and assets of a company all the consideration must come under the control of the company. Therefore a sale in consideration, *inter alia*, of the purchaser procuring a waiver by some shareholders of the company of their rights therein is *ultra vires* of the company (*i*). Under a power to transfer and sell the business of the company, or purchase or amalgamate with the business of any other company of a like nature, a shareholder cannot be compelled to become a member of a new company with more extended objects, nor *semble*, of any company (*k*). Where all the powers of the company are vested in the directors subject

(*a*) *Ante*, p. 49.

(*b*) *Kingsbury Collieries*, [1907] 2 Ch. 259.

(*c*) *Wilson* v. *Miers* (1861), 10 C. B. N. S. 348.

(*d*) *Featherstonehaugh* v. *Lee Moor, &c., Co.* (1865), 1 Eq. 318.

(*e*) *Gregory* v. *Patchett* (1864), 33 B. 595.

(*f*) *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743, following *Manners* v. *St. Davids, &c., Mines*, [1904] 2 Ch. 593, and approving *Bisgood* v. *Nile Valley*, [1906] 1 Ch. 747.

(*g*) *Doughty* v. *Lomagunda Reefs*, [1902] 2 Ch. 837; *Booth* v. *New Africander Co.*, [1903] 1 Ch. 295, so far as it decided that the sale was good; and *Fuller* v. *White Feather Reward*, [1906] 1 Ch. 747. It is submitted that the decision in *Cotton* v. *Imperial Investment Corporation*, [1892] 3 Ch. 454, and *New Zealand, &c., Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622, are not inconsistent with the *ratio decidendo* in *Bisgood* v. *Henderson's Transvaal Estates Co.*, *supra*.

(*h*) See *Irrigation Company of France, Ex parte* Fox (1871), 6 Ch. 176.

(*i*) *Holt* v. *Sydney, &c., Coal Co.* (1893), 69 L. T. 132.

(*k*) *Ex parte Bagshaw* (1867), 4 Eq. 341. Cf. *Dougan's Case* (1873), 8 Ch. 540.

to such regulations as may be made by extraordinary resolution, they may lawfully refuse to carry out a sale sanctioned by a simple majority (*l*). *Ad valorem* stamp duty is payable in respect of a conveyance executed abroad if it operates on property situate in the United Kingdom (*m*). The power of a company to mortgage or charge its undertaking and assets is treated of in Chapter XX.

7. In the absence of any express authority in that behalf, a company can only acquire and hold such property as is reasonably necessary for the purposes of its undertaking, including therein any investments representing for the time being the surplus assets of the company.

This rule is merely another form of the rule that the funds of a company cannot be applied to objects or purposes unauthorized by the terms of its incorporation (*n*).

The question often arises, how surplus funds ought to be invested; and it is submitted that the following rule correctly states the law on this point:—

8. The surplus funds of a company may, unless otherwise provided by its regulations, be invested in any securities, or kept on deposit at the company's bank, provided that in making such investment or deposit the directors act in good faith.

No doubt, for some purposes, the money of a company in the hands of its directors is considered to be trust-money; but it is conceived that where directors have moneys in their hands which for the time being they cannot use in the business of the company, they are not bound by the same rules as express trustees who have no specific power of investment given to them, but that the directors may invest upon such securities as they deem proper, and will not be liable for depreciation in the value of such securities, unless they have acted with gross negligence. If, however, the regulations of the company direct that any surplus funds shall be invested on specified securities only, they will commit a breach of trust if they invest in unauthorized securities.

(*l*) *Automatic Self-Cleansing Filter Co.* v. *Cunninghame*, [1906] 2 Ch. 34.

(*m*) *Inland Revenue Commissioners* v. *Maple & Co.*, [1908] A. C. 27.

(*n*) *Ante*, p. 34.

Frequently the regulations of the company provide that, before declaring a dividend, a part of the profits shall be retained as a reserve fund. Difficulties sometimes arise where there is a direction that the reserve fund shall be set apart and invested on specified securities, because a reserve fund may often be more usefully employed in the business of the company, and a reduction of the working capital by locking it up in investments may injure the company. It seems better to allow the directors a discretion either to invest or use for the company's business the whole or any part of the reserve fund.

It would not, in the absence of any power for that purpose, be right for directors to lend money on personal security, and if they do it they commit a breach of trust (*o*). But the borrower of the money cannot resist payment of the loan on the ground that it was illegal to lend it (*p*). Where a company has a paramount lien on all the shares held by any shareholder for all his debts to the company, a loan by the company to him is a loan upon security (*q*).

A building society registered under the Building Societies Act, 1874, may, if its rules permit, invest its surplus funds on real or leasehold securities, in the public funds, parliamentary stock or securities, stocks or securities guaranteed by Parliament, or, if a terminating society, with other societies registered under the Act, or in or upon any security in which trustees are authorized by law to invest (*r*). Even if authorized by it rules, a building society cannot advance money on any other security, *e.g.* on the security of the members' shares (*s*).

A society registered under the Industrial and Provident Societies Act, 1893, may, if its rules do not direct otherwise, invest its funds in the purchase of land of any tenure, or shares of other societies registered under that Act or the Building Societies Acts, or of any limited liability company registered under the Companies Acts or incorporated by Act of Parliament or by charter; and in or upon any security in which trustees are authorized by law to invest, and in or upon securities (other than bearer securities) authorized by or under any Act of Parliament of any local authority, and in or upon any security authorized by its rules (sects. 36 and 38).

Directors who are parties to an investment of the funds of a company in an unauthorized manner commit a breach of trust (*s*).

(*o*) *Ernest* v. *Croysdill* (1860), 29 L. J. Ch. 580; *Ramskill* v. *Edwards* (1885), 31 C. D. 100.

(*p*) *Coltman* v. *Coltman* (1881), 19 C. D. 64.

(*q*) *National Bank of Wales*, [1899] 2 Ch. 629.

(*r*) Building Societies Acts, 1874, s. 25; 1894, s. 17.

(*s*) *Cullerne* v. *London, &c., Building Society* (1890), 25 Q. B. D. 485.

Companies incorporated outside the United Kingdom are subject, as to land in England, to the provisions of the Mortmain and Charitable Uses Act, 1888, under which land cannot be assured to or for the benefit of or acquired by or on behalf of any corporation in mortmain otherwise than under the authority of a licence from the Crown or of a statute for the time being in force, and if otherwise assured to a corporation is liable to forfeiture (sect. 2).

HOLDING LANDS.

CANADIAN NOTES.

Under the provisions of sect. 19 of the Ontario Act a corporation cannot hold any land not required for actual use and occupation or held by way of security or not within any city or town or within one mile of the limits of any city or town for more than seven years or after it has ceased to be required for the ordinary purposes of the corporation. Forfeiture to the Crown is the penalty for non-compliance.

Any *bonâ fide* agreement to sell land is sufficient to prevent a forfeiture where the sale has not been carried out owing to the default of the purchaser. *London and Canadian Loan Co.* v. *Graham*, 6 O. R. 329.

As a conveyance of land to a corporation not empowered by statute to hold lands is voidable only and not void under the Statute of Mortmain, the lands can be forfeited by the Crown only. And where a corporation is empowered by statute to hold land for a definite period, only the Crown can take advantage of it, and the company can convey their defeasible title. *Beecher* v. *Woods*, 16 C. P. 29. And it is not a defence in an action of ejectment that the lands were acquired by the plaintiff from the corporation after the period fixed by statute. *McDiarmid* v. *Hughes*, 16 O. R. 570.

Mortmain Dominion Licence.

It would seem that the Dominion Parliament has power to enact that a licence from the Crown shall not be necessary to enable corporations to hold lands within the Dominion and a Dominion Act enabling a Quebec corporation to hold lands in Ontario would operate as a licence. *McDiarmid* v. *Hughes*, 16 O. R. 570.

The will of the majority of the shareholders is the will of the company and whatever the company has power to do a majority

of the shareholders may cause to be done against the will of a minority unless, of course, there is some express provision to the contrary which is applicable to the particular company. *Davidson* v. *Grange*, [1854] 4 Gr. 377. The majority must proceed regularly and with *bona fides*, see *Burland* v. *Earle*, [1902] A. C. 83.

Nevertheless, if the question is as to acts which involve the abandonment of the enterprise or a departure from the statute as to the objects of the company they must be manifestly in the interest of all the shareholders in order that the minority may be bound by the majority. *Amyot* v. *Dom. Cotton Mills Co.* Q. R. 36, S. C. 35.

An outsider must be taken to have notice of all the provisions of the Companies Act under which the company is incorporated and it may be also that he must be taken to have notice of the contents of the Letters Patent as he can become acquainted with their contents by searching in the proper office. Further than this, he cannot be expected to go. *McEdwards* v. *Ogilvie*, 4 Man. 6; *Sheppard* v. *Bonanza Nickel Co.*, 25 O. R. 305; *McKain* v. *Canadian Birbeck*, 7 O. L. R. 241; *Trust and Guarantee Co.* v. *Abbott Mitchell Co.*, 11 O. L. R. 403.

The Court will not interfere to prevent the doing of an act by a company which would be legal if sanctioned by a majority of the shareholders, if that sanction can afterwards be obtained. *Purdon* v. *Ontario Loan and Debenture Co.*, [1892] 22 O. R. 597.

CHAPTER XXIV.

ACCOUNTS, AUDITORS AND DIVIDENDS.

It is the duty of the directors to see that proper accounts of the company are kept, and that the provisions of any statute and of the company's regulations with regard to accounts and the auditing of accounts are observed. Where any commission or discount has been paid or allowed on the issue of a company's shares, debentures, or debenture stock the amount thereof or so much thereof as has not been written off must be stated in every balance sheet of a company governed by the Companies Act, 1908 (*a*). Directors would act prudently if they only wrote off the amount out of profits and not out of an estimated increase in the value of capital assets. The statements of account and balance sheets should be made out in the prescribed manner, and the directors should properly instruct the auditor, or, at all events, direct him, to report on the accounts and balance sheet in the manner required by statute and by the regulations of the company, and they should not rest content, without proper inquiry and verification (*b*), with the accounts prepared by the manager or secretary of the company, even although he has been appointed to that office by the articles. Holders of preference shares, debentures, and debenture stock of a company registered after the 30th June, 1908, other than a private company (*c*) have the same right to receive and inspect balance sheets, auditors' and other reports as are possessed by holders of ordinary shares of the company (*d*).

Directors should never recommend dividends to be paid unless a proper profit and loss account, showing profits sufficient to pay the dividends, has been prepared. If, without such an account, directors recommend and pay dividends, and such payment is questioned in any legal proceeding, the burden of proof lies upon them to show that the dividends were not paid out of capital, and, if unable to do so they will

(*a*) C. A. 1908, s. 90.

(*b*) *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787; *Oxford Building Society* (1886), 35 C. D. 502; *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238.

(*c*) See *ante*, *p.* 7.

(*d*) C. A. 1908, s. 114.

be ordered to make good to the company the payments so made (*e*). In *Rance's Case* the directors of a marine assurance company, without preparing a profit and loss account, and upon a balance sheet showing only receipts and payments on account of capital, with receipts and payments on account of revenue, and without making any allowance for outstanding risks, declared a bonus upon the shares. In *Leeds Estate Co.* v. *Shepherd*, the accounts, which were prepared by the manager of the company, did not include a profit and loss account, and the assets of the company were fraudulently overestimated so as to show an apparent excess of assets over the capital and liabilities of the company, and such excess was treated as profits.

The Companies Clauses Act, 1845 (sects. 101—108), contains provisions as to the election, qualification, powers, and duties of auditors; and the Regulation of Railways Act, 1868 (sects. 3—5), makes it compulsory on every company incorporated for constructing, maintaining, or working railways in the United Kingdom to keep its accounts in the form prescribed in the 1st Schedule to that Act, and makes any person liable to fine or imprisonment, or to a fine of 50*l.*, who signs such accounts knowing them to be false. An auditor appointed under the Companies Clauses Act, 1845, is entitled without the consent of his co-auditor to employ under sect. 108 an accountant to assist him (*f*); but he is not entitled to recover any remuneration other than that fixed upon at a general meeting of the company (*g*).

The Assurance Companies Act, 1909 (see *ante*, p. 296), provides that annual revenue and profit and loss accounts, balance sheets and statement of assurance business, and a quinquennial actuarial report and abstract, shall be prepared in the forms scheduled to the Act, and printed copies sent to shareholders or policy holders applying therefor (sects. 4—8).

The Companies Act, 1908 (sects. 112 and 113), contains certain provisions with regard to auditors of all companies governed by that Act. So far as articles of association are inconsistent with these provisions such articles are abrogated or are *ultra vires* (*h*). The Act provides that every company shall at each annual general meeting (*k*) appoint an auditor or auditors to hold office until the next general meeting and fix their remuneration. If default is made in making an appointment, the Board of Trade may, on the application of any member of the company, appoint an auditor for the current year and fix his remuneration. The first auditors may be appointed by the directors before the statutory meeting (*i*) to hold office until the first annual general meeting (*k*), unless previously

(*e*) *Rance's Case* (1870), 6 Ch. 104; *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787, 805; *Municipal Freehold Land Co.* v. *Pollington*, *supra*; *Re Sharpe*, [1892] 1 Ch. 154.

(*f*) *Steel* v. *Sutton Gas Co.* (1883), 12 Q. B. D. 68.

(*g*) *Page* v. *Eastern and Midland Rail.* (1884), 1 Cab. & El. 280.

(*h*) *Newton* v. *Small Arms Co.*, [1906] 2 Ch. 378.

(*i*) See C. A. 1908 s. 65.

(*k*) See C. A. 1908, s. 64.

removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors. No director or officer of the company can be appointed its auditor. The directors may fill any casual vacancy, and until a casual vacancy is filled up the surviving or continuing auditor may act. The directors may fix the remuneration of any auditor appointed by them. A person other than a retiring auditor is not capable of being appointed auditor at an annual general meeting (*l*) unless notice of an intention to nominate that person for such office has been given by a shareholder to the company not less than fourteen days before the meeting, and the company must send a copy of any such notice to the retiring auditor, and 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 meeting. Provided that, if after a notice of the intention to nominate an auditor has been so given, an annual general meeting (*l*) is called for a date fourteen days or less after the notice has been given the notice is deemed to have been properly given for the purpose thereof, and the notice to be sent or given by the company may be sent or given at the same time as the notice of the meeting.

Section 113 provides that every auditor has a right of access at all times to the books, accounts and vouchers of the company, and the directors and officers of the company are bound to give him such information and explanation as may be necessary for the performance of his duties. The auditors have to 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 report must 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 therein 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 explanation given to them, and as shown by the books of the company.

The balance sheet must be signed on behalf of the board by two of the directors of the company or by the sole director. In the case of a banking company registered after the 15th August, 1879, the balance sheet must be signed by the secretary or manager, if any, and by at least three directors, or if there are less than three by both of them; if the company has branch banks beyond the limits of Europe it is sufficient if the auditor is allowed access to such copies of, and extracts from the books and accounts of any such branch as have been sent to the head office of the company within the United Kingdom. The auditor's report must be attached to the balance sheet, or there must be inserted at the foot of the balance sheet a reference to the report, and the report must

(*l*) See C. A. 1908, s. 64.

be read before the company in general meeting, and be open to inspection by any shareholder, and he is entitled to be furnished with a copy of the balance sheet and auditor's report at a charge not exceeding sixpence for every hundred words (*m*). The company and every director, manager, secretary, or other officer of the company who is knowingly a party to the issue, circulation or publication of any copy of a balance sheet not signed or not having a copy of the auditor's report attached thereto or referred to therein as is required by sect. 113 is liable to a fine not exceeding 50*l*.

The provisions of the Companies Act, 1908 (sects. 112 and 113), as to auditors are somewhat similar to the provisions of the Companies Act, 1879, sect. 7 (now repealed), with regard to auditors of banking companies. It was decided that auditors of banking companies appointed under sect. 7 of the Act of 1879, and referred to in their articles as officers of the company (*n*), and auditors of other companies governed by the Companies Acts, whose articles were similar to sect. 7 of the Act of 1879 (*o*), were officers of the company within the meaning of sect. 10 of the Companies (Winding-up) Act, 1890. Therefore the auditors of all companies governed by the Companies Act, 1908, are officers within the meaning of sect. 215 of the Act of 1908, which corresponds with sect. 10 of the repealed Act of 1890.

Generally, articles of association contain provisions as to auditors. Frequently they are merely an embodiment of the statutory provisions before mentioned. It is sufficient for articles of association to provide that auditors shall be appointed, and their rights, powers, and duties regulated in accordance with sects. 112 and 113 of the Act of 1908, or any statutory modification thereof for the time being in force (*p*). In any event care should be taken that no article should be inserted which is inconsistent with these statutory provisions.

The Board of Trade may prescribe regulations for the annual auditing of accounts of assurance companies (see *ante*, p. 296) not subject to audit in accordance with the provisions of the Companies Act, 1908, or the Companies Clauses Act, 1845, relating to audit.

Auditors are not bound to verify valuations of the stock in trade of the company; but if from an examination of the books they are able to discover that certain of the assets appear to be of a fictitious value, it would be their duty to report that fact to the company. For example, a large book debt may be carried forward from year to year without any interest having been paid upon it or any satisfactory explanation as to

(*m*) It is submitted that the auditor's report would not be conclusive upon the question as to whether or not a dividend had been paid out of capital. Cf. *Bloxam v. Metropolitan Rail. Co.* (1868), 3 Ch. 337.

(*n*) *London and General Bank*, [1895] 2 Ch. 166.

(*o*) *Kingston Cotton Mill*, [1896] 1 Ch. 6.

(*p*) See Table A, Art. 109.

why such debt has not been collected, or the auditors may know that the debtor is a bankrupt. It is no part of the duty of auditors to take stock, and they are justified in relying upon the manager's certificates as to the amount and value of the stock in trade, although it is subsequently discovered that they were wilfully false, and they are not liable for dividends wrongfully paid on accounts prepared by them on the footing of the certificates being true (*s*). It is the duty of the auditor of a company in auditing its accounts not to confine himself to verifying the arithmetical accuracy of the balance sheet, but to inquire into its substantial accuracy, and to ascertain that it contains the particulars required by the articles of association, and is properly drawn up so as to contain a true and correct representation of the state of the company's affairs as shown by the books of the company. Where an auditor fails to discharge this duty, and upon the faith of the balance sheets dividends are declared and paid otherwise than out of profits available for the payment of such dividends, and also directors' fees and bonuses are paid, which would not otherwise have been payable, he is liable in damages to the company for the amounts so paid, but he may plead the Statute of Limitations in any proceedings taken by the company against him for damages for negligence in the performance of his duty towards the company (*t*). Auditors may also incur criminal liability as in the well-known case of the auditors of Dumbell's Bank in the Isle of Man. If an auditor, in any return, certificate, report, balance sheet or other document required to be made by or for the purposes of certain sections of the Companies Act, 1908, wilfully make a statement false in any material particular knowing it to be false, he is guilty of a misdemeanour and is liable, on conviction on indictment, to imprisonment for two years, and on summary conviction to imprisonment for four months, in either case with or without hard labour, and to a fine in lieu of or in addition to imprisonment, such fine in case of a summary conviction not to exceed 100*l.* (*u*). The only sections specially applying to auditors are sect. 65 (certificates as to correctness of statutory reports) and sect. 113 (certificates and reports as to accounts and balance sheets).

Every prospectus offering to the public for subscription or purchase any shares or debentures or debenture stock of a company governed by the Companies Acts must, *inter alia*, state the names and addresses of its auditors (if any) (*x*), and so must the report to be submitted to the statutory meeting in accordance with sect. 65 of that Act, and they are bound to certify the correctness of such report so far as it contains the particulars required by that section with regard to the shares allotted, to

(*s*) *Kingston Cotton Mill* (No. 2), [1896] 2 Ch. 279.

(*t*) *Leeds Estate Co.* v. *Shepherd*, *supra*. In *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238, the secretary was held liable for negligence in preparing balance sheets.

(*u*) C. A. 1908, s. 281.

(*x*) *Ibid.* s. 81, sub-s. 1 (*l*).

the cash received in respect of such shares, and to the receipts and payments of the company on capital account. It is the duty of directors to communicate to all the shareholders any part of the report of the auditors which materially affects the company's accounts (*y*).

Having regard to the serious liabilities which directors incur in paying dividends out of capital, even though they act in perfect good faith (*z*), it is of importance to discover, if possible, the true principle upon which profits available for dividend should be ascertained. There are two ways of arriving at the profits made by a trading company during any particular period—(1) by deducting the aggregate amount of the paid-up capital and liabilities from the value of the assets, and (2) by deducting the expenses and losses properly chargeable to revenue from the receipts in respect of revenue, treating in either case the balance as profits. The first-mentioned method of ascertaining profits is clearly inapplicable to companies like railway, tramway, canal, water, and gas companies where the capital is fixed capital as distinguished from circulating capital, and it is submitted that this plan ought not to be adopted by directors in the case of any company, although, unless its regulations otherwise provide, it is competent for them to do so (*a*), because it makes the profits depend partly upon the fluctuation in the value of the assets of the company. Thus, it might be that by reason of a temporary increase in the value of the principal assets of the company an excess of assets over liabilities and capital would be shown, although on the trading of the year no profits were in fact made. The following simple supposititious case will make the writer's meaning clearer.

A colliery company was formed at the end of 1905, and bought its mines for a sum (80,000*l.*) proportioned to the then price of coal. By reason of an increase in the price of coal the colliery could, at the end of 1906, have been sold for 100,000*l.* During that year no profits or losses were made on the working of the colliery; but the balance sheet, prepared according to the first plan, showed for the year 1906 the following result:—

Dr. *Capital and Liabilities.*	£	*Property and Assets.*	£	£ Cr.
Capital fully paid up	100,000	Value of mines—		
		Purchased for	80,000	
Balance available for dividend,		Increase in value ..	20,000	
&c.	20,000			100,000
		Stock		10,000
		Plant		5,000
		Debts		3,000
		Cash		2,000
	£120,000			£120,000

(*y*) *Lawless* v. *Anglo-Egyptian Co.* (1869), L. R. 4 Q. B. 262.

(*z*) See *post*, p. 342.

(*a*) *Lubbock* v. *British Bank of South Africa*, [1892] 2 Ch. 198.

In this way a balance of 20,000*l.* available for dividend was shown, although no profits were made. 20,000*l.* was borrowed and divided among the shareholders in the payment of a dividend of 20 per cent. for the year. At the end of 1907, by reason of a fall in the price of coal, the value of the collieries fell to 80,000*l.* The business of the year was profitable, and showed that the receipts on account of revenue exceeded the expenses, losses, depreciation, &c., chargeable to revenue by 20,000*l.*, which was applied in repaying the sum borrowed for dividend.

The balance sheet for 1907 was as follows :—

Dr. *Capital and Liabilities.*	£	*Property and Assets.*	Cr. £
Capital fully paid up	100,000	Value of mines	80,000
		Stock	10,000
		Plant	5,000
		Debts	3,000
		Cash	2,000
	£100,000		£100,000

Here we have the result that owing to the adoption of the first plan of ascertaining profits there is no balance available for dividend, although the year's working has been successful.

It is submitted that the second plan is the proper way to ascertain profits, viz. to keep separate capital and revenue or profit and loss accounts, and to disregard any rise in the value of the assets of the company in estimating profits. If the accounts of the colliery company had been kept on that footing the two balance sheets would have shown the following results :—

Balance Sheet for year ending 31*st December*, 1906.

Dr. *Capital and Liabilities.*	£	*Property and Assets.*	Cr. £
Capital fully paid up	100,000	By purchase of mines	80,000
		Stock	10,000
		Plant	5,000
		Debts	3,000
		Cash	2,000
	£100,000		£100,000

Balance Sheet for year ending 31*st December*, 1907.

Dr. *Capital and Liabilities.*	£	*Property and Assets.*	Cr. £
To capital fully paid up	100,000	By purchase of mines	80,000
Balance available for dividend.	20,000	Investments representing net profits on the year's trading .	20,000
		Stock	10,000
		Plant	5,000
		Debts	3,000
		Cash	2,000
	£120,000		£120,000

To make the above illustration clearer, the stock, plant, debts, and cash have been kept at the same figures. These examples show how undesirable it is to adopt the first plan of ascertaining profits. The dividend of 20 per cent. for the year 1906 would probably have sent up the price of the shares, and persons buying the shares at the beginning of 1907 at a premium would, at the beginning of 1908, have found that the profits made in 1907 had been absorbed in paying a dividend for 1906. Thus, they would be deprived of any dividend, and find their shares depreciated in value.

With regard to companies governed by the Companies Acts either of the two principles may be adopted, unless the company's regulations otherwise provide, so that profits may be ascertained by deducting the total amount of the paid-up capital and liabilities of a company from the value of its assets (*b*), or by deducting the expenses and losses properly chargeable to revenue from the receipts in respect of revenue (*c*). If the first plan is adopted, any increase in the value of the goodwill of the company's business cannot be treated as an asset (*d*); and it must be remembered that the Court never authorizes persons who are in a fiduciary position to indulge in sanguine speculations as to the value of assets (*e*). In *Stringer's Case* (*b*) there was apparently no profit and loss account, and the profits were determined by deducting the capital and liabilities from the estimated value of the assets. This value was not eventually realized; but as the directors, acting honestly and reasonably, had placed a fair value upon the assets, it was held they were not liable in respect of a dividend which was only payable upon the assumption that their valuation was correct. In *Binney* v. *Ince Hall Coal Co.* (*b*) it is said that a company, in order to ascertain its net profits, is to put a value on all its assets of whatever nature, and deducting therefrom all its liabilities, including therein the amount of contributed capital, the surplus, if any, remaining will be net profits. In *Lubbock* v. *British Bank of South America* (*b*) a banking company sold part of its undertaking at such a price as left a balance of 205,000*l.* remaining after deducting the liabilities and paid-up capital of the company from the value of its assets, including the purchase-money, and such balance was held to be available for dividends. In *Bishop* v. *Smyrna and Cassaba Rail.* (*b*) debentures

(*b*) *Stringer's Case* (1869), 4 Ch. 475; *Binney* v. *Ince Hall Colliery Co.* (1866), 35 L. J. Ch. 363; *Lubbock* v. *British Bank of South Africa*, [1892] 2 Ch. 198; *Bishop* v. *Smyrna and Cassaba Rail. Co.*, [1895] 2 Ch. 596.

(*c*) *Lee* v. *Neuchâtel Asphalte Co.* (1889), 41 C. D. 1; *Bolton* v. *Natal Land Co.*, [1892] 2 Ch. 124; *Verner* v. *General and Commercial Investment Trust*, [1894] 2 Ch. 239; *Wilmer* v. *McNamara*, [1895] 2 Ch. 245.

(*d*) See *Turquand* v. *Marshall* (1869), 4 Ch. 384.

(*e*) See observations of James, V.-C., in *Salisbury* v. *Metropolitan Rail. Co.* (1870), 22 L. T. 839; and *Foster* v. *New Trinidad Lake Asphalte Co.*, [1901] 1 Ch. 208.

were valued for the purpose of estimating the value of the company's assets, and the depreciation in value made good out of revenue. In a subsequent year the debentures appreciated in value, and it was decided that such appreciation could be properly treated as profits. Articles of association may, however, prevent this plan being resorted to, as was the case in *Bridgewater Navigation Co.* (*g*). There the articles provided (*inter alia*) that no dividends should be paid except out of the profits of the company as shown upon the balance sheet, and that the net profits of each year should belong to the shareholders. Under a power in the articles, preference shares were issued entitling the holders to receive a fixed dividend of 5 per cent. By the Manchester Ship Canal Company Act it was enacted that the Navigation Company should sell to the Canal Company its undertaking for a specified sum, which left a large surplus after payment of liabilities and return of paid-up capital. It was contended on behalf of the ordinary shareholders that this surplus was profit, to which they were solely entitled after payment thereout of the preferential dividend; but it was held that the surplus was not profit within the meaning of the articles already cited, or, in other words, that it was not profit available for dividends.

In *Lee* v. *Neuchâtel Co.* (*h*), Lindley and Lopes, L.JJ., were both of opinion that the profits of a company ought not to be arrived at by deducting the amount of its liabilities and paid-up capital from the value of the assets of the company. Lopes, L.J., there said that the capital and revenue accounts were distinct and separate accounts, and, for the purpose of determining profits, accretions to and diminutions of the capital of the company were to be disregarded; that dividends should be paid out of profits arising from the excess of ordinary receipts over expenses properly chargeable to revenue account; and that, if the contrary view be adopted, it might be successfully contended that where, owing to extraneous circumstances, the capital was increased in value, that increase might be dealt with as revenue or profits, and go to increase the dividend, which was contrary to all practice and to principal. Both judges were of opinion that, in the case of companies formed to work concessions and mines and other wasting property, dividends might be paid out of revenue without replacing the capital assets lost by working or effluxion of time but this opinion was only an *obiter dictum* as the capital assets had increased in value, and it is submitted is erroneous (*i*).

Where no revenue or profit and loss account is kept, but the profits are arrived at by deducting the liabilities and paid-up capital from the assets, it is obvious that great facilities are afforded for fraud. Thus, cases

(*g*) (1888), 39 C. D. 1; affirmed by the House of Lords (1889), 14 A. C. 525. See also same case, W. N. (1890), 215, where other questions as to profits were decided by North, J.

(*h*) (1889), 41 C. D. 1.

(*i*) See *Bond* v. *Barrow Hæmatite Co.*, [1902] 1 Ch. 353, 367.

have been known in which, in order to show a profit, a percentage has been added to a previous valuation of the assets, without any real increase in their value (*k*). Even where the assets are not fraudulently over-valued, there is a tendency to take a sanguine view of the value of the assets, and thus increase the dividend. If dividends are only paid out of the profits earned upon the year's trading, and proper allowance is made for depreciation, directors cannot incur any liability. For the protection both of shareholders and directors, it seems desirable that the regulations of a company should provide for the keeping of a profit and loss account, and that no dividends should be paid except out of the net profits shown by such account, although it is not necessary, and sometimes not desirable, that the regulations of the company should provide for the publication of the profit and loss account. The writer submits that the following is a safe working rule for directors to follow, viz., that no sum should be treated as net profit unless it forms part of the excess of receipts on account of revenue over expenses and losses properly chargeable to revenue.

Supposing separate capital and revenue accounts are kept by a company, and dividends are only paid out of trading profits, the question arises whether any loss of capital must be made good out of revenue before profits can be divided. There are several ways in which capital may be lost. (1) By the expenditure on revenue account exceeding the receipts on revenue account. (2) By plant or machinery of the company falling into disrepair or becoming obsolete, no allowance being made out of revenue for depreciation. (3) If the capital is invested in the purchase of mines, brick fields, leaseholds, patents, or concessions for a limited period, or in other wasting securities, it is obvious that by working the mines or brickfields, or by the lapse of time in the case of leaseholds, patents, and concessions, these assets of the company diminish in value, and will eventually be valueless. (4) Capital may be lost in other cases, *e.g.* where property has been destroyed by fire, or there is a permanent depreciation in its value.

It is submitted that as a matter of business, apart from any legal obligation, losses of capital in cases (1), (2) and (3) should be made good out of revenue, but in case (4) should not be made good out of revenue.

(1) and (2). There would seem to be little doubt that upon principle this loss of capital should be made good out of revenue, and that dividends should only be payable out of the balance left after this has been done; In *Davison* v. *Gillies* (*l*) the London Tramways company was restrained, by an interlocutory order made perpetual by consent, from payment of a dividend on ordinary shares on the ground that there had been a serious

(*k*) *Oxford Building Society* (1886), 35 C. D. 502; *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787.

(*l*) (1881), 16 C. D. 347, n.

loss of capital by reason of dividends having for many years been paid without any sum having been set aside in accordance with the company's articles for repairs, depreciation and renewals, and that the profits available for dividend in any year could only be ascertained after a proper sum had been so set aside, or had been applied in repairs and renewals. In that case Sir George Jessel, M.R., said (*m*): "A tramway company lays down a new tramway. Of course the ordinary wear and tear of the rails and sleepers, and so on, causes a sum of money to be required from year to year in repairs. It may or may not be desirable to do the repairs all at once, but if at the end of the first year the line of tramway is still in so good a state of repair that it requires nothing to be laid out on it for repairs in that year, still, before you can ascertain the net profits, a sum of money ought to be set aside as representing the amount in which the wear and tear of the lines has, I may say, so far depreciated it in value, as that that sum will be required for the next year or next two years. Take the case of a warehouse. Supposing a warehouse keeper having a new warehouse should find at the end of the year that he had no occasion to spend money in repairs, but thought that by reason of the usual wear and tear of the warehouse it was 1,000*l.* worse than it was at the beginning of the year, he would set aside 1,000*l.* for a repair or renewal or depreciation fund before he estimated any profits, because although that sum is not required to be paid in that year, still it is the sum of money which is lost, so to say, out of capital and which must be replaced. I should think no commercial man would doubt that this is the right course —that he must not calculate net profits until he has provided for all the ordinary repairs and wear and tear occasioned by his business. In many businesses there is a regular sum or proportion of some kind set aside for this purpose. Shipowners, I believe, generally reckon so much a year for depreciation of a ship as it gets older. Experience tells them how much they ought to set aside; and whether the ship is repaired in one year or another makes no difference in estimating the profits, because they know a certain sum must be set aside each year to meet the extra repairs of the ship as it becomes older. There are very many other businesses in which the same thing is done." The same judge, however, in the case of the same company (*n*) subsequently decided that dividends could be paid on non-cumulative preference shares out of the net profits of one year before the loss of capital arising from depreciation in previous years had been made good. The preference shareholders were entitled to receive a preferential dividend of 6 per cent. per annum "dependent upon the profits of the particular year only." A preference shareholder, suing on behalf of himself and all other preference shareholders, claimed (amongst other things) a declaration that preference shareholders were entitled to a dividend of six per cent. for the year ending 31st December, 1879.

(*m*) Page 348. (*n*) *Dent* v. *London Tramways Co.* (1880), 16 C. D. 344.

It was admitted that sufficient profits had been made during that year, after restoring the capital of the company to the position it was in on the 1st January, 1879, to pay such dividend, but that there had been a loss of capital of over 114,000*l.*, caused by the company having for eight years paid dividends without making proper allowances for wear and tear of their tramway lines, and it was contended by the company, which had been restrained from paying a dividend in the case of *Davison* v. *Gillies* (*o*), that the preference shareholders were not entitled to receive any dividend until the loss of capital had been made good. Sir George Jessel, M.R., held, that, looking at the terms of issue, the preference shareholders were entitled to receive the dividend for 1879.

Porter, M.R. (Ireland), in considering *Dent* v. *London Tramways Co.* (*p*), said :—"I am by no means so clear that the decision is right, and I guard myself from appearing to decide that anything can be profits for payment of dividend to preference shareholders which would not be profits available for ordinary shareholders if there were no preference shares" (*q*) ; but in the case before him he, while declaring that the rolling-stock of a railway company is part of its capital, refused to restrain the payment of a dividend to shareholders until deficiencies in rolling stock had been supplied, because it was not proved that capital as a whole had been lost, or that capital, even as represented by rolling-stock, had been diminished in value (*r*).

(3) Some judges have considered that losses of capital under this head need not be made good out of revenue before net profits can be ascertained (*s*), but the prudent course in the case of wasting property like mines and concessions is to form a sinking fund, so that when the mine is exhausted or the concession has expired the sums expended in their purchase may be made good out of the sinking fund. Unless some such plan be adopted injustice is done between different classes of shareholders. Thus, suppose without making any allowance for a sinking fund, the profits so ascertained are never more than enough to pay a preferential dividend to shareholders who are not entitled to any preference in the distribution of the surplus assets in the winding-up of the company, then at the expiration of the term of the concession (assuming that to be the only asset) there will be nothing left to divide between the shareholders, as the preference shareholders will have received the capital of the company in dividends.

(4) The more difficult question to decide is, whether a loss in any

(*o*) (1880), 16 C. D. 347.
(*p*) *Supra.*
(*q*) *Kehoe* v. *Waterford Railway* (1888), 21 L. R. Ir. 240.
(*r*) *Kehoe* v. *Waterford Railway* (1888), 21 L. R. 221, 238.
(*s*) *Lambert* v. *Neuchâtel Asphalte Co.* (1882), 51 L. J. Ch. 882 ; *Lee* v. *Neuchâtel Asphalte Co.* (1889), 41 C. D. 1. But see *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 367.

particular year properly chargeable to capital must be made good out of the revenue of that year before the net profits for that period can be ascertained. If the true system of determining the profits of a business is to deduct its liabilities from its assets, then it is clear that until the loss of capital has been made good out of revenue, there can be no profits at all. It is submitted that the proper mode of ascertaining profits is to disregard accretions to capital and losses of capital other than capital expended in earning revenue, and to treat as profit the excess of receipts on account of revenue over expenditure and losses chargeable to revenue (*t*). Where, however, a part of the undertaking of a company is sold, *e.g.* in the case of a banking company a branch bank, the profits on such sale are properly carried to the profit and loss account (*u*). It was at one time held that the payment of a dividend out of profits before making good losses of capital did not infringe the rule that a limited company cannot return any of its capital to its shareholders (*v*); but when the last-mentioned case was heard on appeal by the House of Lords (*x*) the opinions expressed in deciding the case were of such a nature that directors in case of capital losses would act unwisely in paying any dividends until the losses have been made good out of profits, or the reduction of the capital by the amount of such losses has been sanctioned by the Court. *À fortiori* would this be so in the case of revenue losses made in preceding years (*y*). Where a company has paid capital charges out of revenue, it can, in a subsequent year, recoup the revenue account out of capital, and may, if necessary, use its borrowing powers to raise fresh capital for that purpose (*z*); although it cannot unless so authorized by its regulations declare a dividend payable in preference shares representing the amount of profits absorbed for capital purposes (*a*).

In the case of trust companies the question arises, whether dividends can be paid out of profits without first making good any depreciation in the market price of the securities held by such companies. Where the business of these companies does not consist in buying and selling securities, but in investing their share and loan capital, and obtaining their profits out of the income arising from such investments, after deducting expenses and interest on amounts borrowed, it is not necessary

(*t*) *Bolton* v. *Natal and Land Colonization Co.*, [1892] 2 Ch. 124; *Verner* v. *General and Commercial Investment Trust*, [1894] 2 Ch. 239. Cf. *Wilmer* v. *McNamara & Co.*, [1895] 2 Ch. 245; *Foster* v. *New Trinidad Lake Asphalte Co.*, [1901] 1 Ch. 208.

(*u*) *Lubbock* v. *British Bank of South America*, [1892] 2 Ch. 198. Cf. *Foster* v. *New Trinidad Co.*, *supra*.

(*v*) See cases cited above in note (*t*), and *National Bank of Wales*, [1899] 2 Ch. 629.

(*x*) *Dovey* v. *Cory*, [1901] A. C. 477. See also *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353.

(*y*) It is not safe now to rely on *Dent* v. *London Tramways Co.* (1881), 16 C. D. 344.

(*z*) *Mills* v. *Northern Rail. of Buenos Ayres* (1870), 5 Ch. 621.

(*a*) *Hoole* v. *Great Western Rail. Co.* (1867), 3 Ch. 262.

for such companies to apply any part of their profits in making good any temporary depreciation in the value of their investments (*b*). If, however, losses are made in the realization of any securities, then such losses should be debited to revenue, giving credit for any profit arising on realization of other securities.

The question occasionally arises whether interest on unproductive capital can be charged to capital account. For example, suppose a limited company is formed to construct a foreign railway, and the contract price for the construction of the railway is to be paid in cash, which is to be raised by the issue of shares and debentures. Then until the railway or part of it is completed it can earn no revenue, and consequently dividends upon the shares and interest on the debentures, if paid at all, must be paid out of capital. The case of *The Alexandra Palace Co.* (*c*) decided that it was *ultra vires* to pay interest in such a case on the share capital. It was clear that interest could be paid upon loans out of capital; but in two cases of companies incorporated by special Act of Parliament conflicting decisions were given as to whether or not the part of capital so applied must be made good out of profits before any dividend could be paid on the share capital (*d*). In the case of a company governed by the Companies Acts, Warrington, J., decided that interest upon debenture stock issued to raise the money required for electrifying a tramway could properly be charged to capital account (*e*).

But under sect. 91 of the Companies Act, 1908, interest on the amount paid up on shares of companies governed by the Companies Acts may be paid out of capital provided that

(1) the shares are issued to raise money 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;

(2) the payment is authorized by the articles of association or by a special resolution and has the previous sanction of the Board of Trade;

(3) the payment is to be made only for such period as is determined by the Board of Trade, which can in no case extend beyond the end of the half year next after the half year during which the works or buildings have been completed or the plant provided;

(4) the rate of interest does not exceed 4 per cent. per annum or such lower rate as may for the time being be prescribed by order in council.

The Board may before giving its sanction direct an inquiry at the

(*b*) *Verner* v. *General and Commercial Investment Trust*, [1894] 2 Ch. 239.

(*c*) (1882), 21 C. D. 149.

(*d*) *Bloxam* v. *Metropolitan Rail. Co.* (1868), 3 Ch. 337; and *Bardwell* v. *Sheffield Waterworks Co.* (1872), 14 Eq. 517.

(*e*) *Hinds* v. *Buenos Ayres Grand National Tramways*, [1906] 2 Ch. 654.

expense of the company and require the company to give security for such expense. The company's accounts must show the capital on which, and the rate at which, interest has been paid during the period covered by the accounts. The above provision do not affect companies to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies. The payment of interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Sometimes capital is indirectly returned to shareholders as in cases where the vendor to a company has guaranteed a certain dividend upon the shares of the company for a term of years and the dividend is not earned and the amount of the purchase-money has been increased for the purpose of enabling him to pay the dividend. If the intention to do so was too transparent, no doubt it would be prevented (*g*). In cases where a dividend has been guaranteed the question has arisen whether in a winding-up the guarantee fund belongs to the shareholder or is available for the payment of creditors. In *Stuart's Trusts* (*h*) it was decided that the guarantee fund was available for the payment of creditors because the articles provided that no dividends should be paid except out of profits, but that payments out of the guarantee fund should be considered profits. In *Gelly Deg Colliery Co.* (*i*) and *Ex parte Jegon* (*j*), where there was no such provision in the articles, it was decided that the guarantee was payable to the company as trustee for its shareholders and formed no part of the assets of the company. The discontinuance by a company of a considerable part of its business, which has been carried on at a loss, does not discharge a vendor from his guarantee to pay interest (*k*).

The following are the principal rules with regard to the payment of dividends:—

1. No dividend can be paid out of capital, by a company governed by the Companies Acts, or by a company incorporated by special Act of Parliament, unless such Act expressly authorizes such payment.

This rule is not the same as the proposition that dividends may only be paid out of profits (*l*), although Table A and articles of association usually contain an express provision that no dividends shall be paid except out of profits. Dividends paid upon shares which are the subject of a settle-

(*g*) See observations of Brett, L.J., in *Ex parte Jegon* (1879), 12 C. D. at page 508.

(*h*) (1876), 4 C. D. 213.

(*i*) (1878), 38 L. T. 440.

(*j*) *Supra*, followed in *Richardson* v. *English Spelter Co.* (1885), 1 T. L. R. 249.

(*k*) *Brown & Co.* v. *Brown* (1877), 36 L. T. 272.

(*l*) *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. p. 365.

ment may, in some cases, as between a tenant for life and the remaindermen, be regarded as corpus, instead of income to which the tenant for life is entitled (*m*), and where, as is frequently the case, shares are offered to shareholders for subscription at less than their market value in proportion to their share holdings, trustees are justified, although they have no power to hold such shares, to take up and sell such shares as speedily as possible, or to sell their "rights," and the profit made is corpus and not income (*n*).

2. The manner in which profits are to be ascertained and divided is a question of internal management (*o*).

Therefore either of the plans of ascertaining profits referred to on p. 311, *ante*, may be adopted by the regulations of the company or by the company in general meeting, unless the mode of ascertaining profits is prescribed by statute. Even where net profits have been made, regard must be had by the directors to the articles or regulations of the company, to ascertain out of what kind of profits dividends may be paid, and whether, before payment of dividends, any sum must be set aside as a reserve fund.

There are different classes of net profit. Thus, there are "profits earned"; "realized profits" or "profits in hand," which are profits earned and actually received in money's worth; and "estimated profits," which, if they differ from profits earned, appear to be the same as anticipated profits, that is, profits that have not yet been earned. If dividends are only payable out of realized profits, such profits only as have been actually received either in money or money's worth are available for dividends, estimated profits must be disregarded (*p*).

In the absence of any restriction in the regulations of a company, dividends can be paid out of profits which have been earned, although not actually received, provided that there is reasonable ground for believing that such profits are secured and will ultimately be realized. It is not necessary that there should be actually cash in hand, representing profits, in order that a dividend may be paid, and the company may borrow money wherewith to pay the dividend (*q*). Thus, in *The Liquidator of Glasgow Bank* v. *Mackinnon* (*r*), where the interest for a number of years

(*m*) *Bouch* v. *Sproule* (1887), 12 A. C. 385. Cf. *Re Alsbury* (1890), 45 C. D. 237; *Re Armitage*, [1893] 3 Ch. 337; *Re Northage* (1891), 60 L. J. Ch. 488; *Re Piercy*, [1907] 1 Ch. 289.

(*n*) *Re Pugh, Banting* v. *Pugh*, W. N. (1887) 143.

(*o*) *Stevens* v. *South Devon Rail. Co.* (1851), 9 Ha. 313; *Lambert* v. *Neuchâtel Asphalte Co.* (1882), 51 L. J. Ch. 882; *Youl* v. *G. W. Rail. Co.* (1869), 20 L. T. 74.

(*p*) *Oxford Building Society* (1886), 35 C. D. 502.

(*q*) *Stringer's Case* (1869), 4 Ch. 475; *Mills* v. *Northern Rail. of Buenos Ayres* (1872), 5 Ch. 621.

(*r*) (1882), 9 Rettie, 535.

on certain advances made to an American railway company was not paid, but was, with further advances from time to time, secured by the bonds of the railway company, and the interest was in each year placed to the credit of the profit and loss account, it was held that such interest was available for payment of dividends. The Lord President of the Court of Session, in giving judgment upon this point, made some valuable observations. He said (*s*): "If no dividend could be paid, except out of cash in hand or in the bank, representing profits or interest actually received, it is obvious that the business of such a company could not be carried on, and the existing shareholders of the company would have good reason to complain that they were deprived of their just share of the profits actually earned and well secured, because these profits could not be converted into cash before the balance sheet of the year was struck. . . . If the unpaid profits are fully secured, they become a part of the capital of the company, as a *surrogatum* for the cash of equal amount taken from the floating capital and paid as dividend [in respect of such profits], and thus the capital is not diminished, but a certain part of the floating balance of capital becomes invested in the securities which the company hold for the earned but unpaid profits in question." It is obvious that the same remark holds good if the moneys for payment of the dividend have been borrowed.

3. Where there is only one class of shareholders, the majority can determine, unless the regulations of the company otherwise provide, whether or not profits shall be divided amongst them (*t*).

If, however, the articles of association provide that profits exceeding a certain per centage shall be divided, it must be done, unless the articles are altered by special resolution. Where directors intend to pay a dividend to the prejudice of a particular class of shareholders, an injunction can be obtained restraining the payment of such dividend (*u*) and the application for an injunction may be made without waiting until there are funds available for the payment of such dividend (*x*).

4. Where a depreciation in the value of some of the company's investments has been debited to revenue

(*s*) Page 579.

(*t*) *Stevens* v. *South Devon Rail. Co.* (1851), 9 Ha. 313; *Lambert* v. *Neuchâtel Asphalte Co.* (1882), 51 L. J. Ch. 882.

(*u*) *Henry* v. *Great Northern Rail. Co.* (1857), 1 De G. & J. 606, 4 K. & J. 1; *Durlacher* v. *Hotchkiss Ordnance Co.* (1887), 3 T. L. R. 807.

(*x*) *Sturge* v. *Eastern Union Rail. Co.* (1855), 7 De G. M. & G. 158.

account, an increase in the value may be treated as profits (*y*).

The holders of debentures constituting a floating charge on the property of a company formed for working a wasting property cannot obtain an injunction to restrain the payment of a dividend on the ground that no proper allowance has been made for depreciation (*z*).

5. Directors may pay interim dividends if so authorized by the regulations of the company.

Before paying an interim dividend directors should satisfy themselves that there are undivided net profits sufficient for that purpose, but in order to obtain an injunction to restrain the payment of an interim dividend the applicant must prove that such profits do not exist (*a*). The payment of an interim dividend to ordinary shareholders at a rate exceeding that authorized by the articles of association will be restrained on the application of a preference shareholder suing on behalf of himself and the other preference shareholders (*b*). Directors may postpone the payment of an interim dividend resolved upon by the Board or rescind the resolution (*c*).

6. Any condition precedent to the declaration of dividend should be complied with.

As a rule no dividend except an interim dividend can be paid unless it is recommended by directors and declared by the company in general meeting, even although it is a fixed cumulative preference dividend (*d*). Under a company's articles it was held that a dividend could only be declared at an annual general meeting, to which accounts made up to the prescribed date and reports thereon were submitted (*e*).

7. Unless the regulations of a company otherwise provide, dividends can only be paid in cash (*f*).

(*y*) *Bishop* v. *Smyrna and Cassaba Rail. Co.*, [1895] 2 Ch. 596.

(*z*) *Bosanquet* v. *St. John d'el Ray Mining Co.* (1897), 77 L. T. 206.

(*a*) *Lever* v. *Land Securities Co.* (1891), 8 T. L. R. 94.

(*b*) *Durlacher* v. *Hotchkiss Ordnance Co.* (1887), 3 T. L. R. 807.

(*c*) *Lagunas Co.* v. *Schroeder* (1901), 85 L. T. 22.

(*d*) *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353.

(*e*) *Nicholson* v. *Rhodesia Trading Co.*, [1897] 1 Ch. 434.

(*f*) *Hoole* v. *Great Western Rail. Co.* (1867), 3 Ch. 262; *Wood* v. *Odessa Waterworks* (1889), 42 C. D. 636; where injunctions were granted to restrain the directors from paying dividends—in the one case in shares, and in the other case in bonds.

8. Directors in paying dividends out of capital act *ultra vires* of the company (*g*), and are guilty of a breach of trust (*h*).

A dividend cannot be regarded as having been paid out of capital if after payment thereof the excess of the value of the assets over the liabilities of the company is not less than its paid-up capital. In the case of a company which estimates its profits by deducting the expenses and losses properly chargeable to revenue from the receipts in respect of revenue and the net profits for the period in respect whereof the dividend is paid are not less than the amount of the dividend, it is doubtful whether this is or is not a payment out of capital if paid-up capital has been lost in previous years in trading or by depreciation in the value of fixed capital, or by working wasting property, or otherwise (*i*).

9. Dividends must be paid to the members of a company in accordance with their rights thereto under its regulations, and in default of any such regulations in proportion to the number and nominal amounts of their shares (*k*).

A preference dividend may be either cumulative or non-cumulative (*l*). In the former case the ordinary shares cannot receive any dividend until the preferential dividend has been paid for every year; while, in the latter case, ordinary shares may, if the profits in any one year exceed the preferential dividend, receive a dividend, although in past years the preference shares have not received their full dividends. Unless otherwise provided, a preference dividend is cumulative (*m*). Where articles provide that the holders of preference shares shall be entitled out of the net profits of each year to a preference dividend at a specified rate per annum, the dividend is non-cumulative (*n*). In some cases the articles are ambiguous, and in those cases it is a question of the construction of the particular article (*o*). Draft articles cannot be looked at for the purpose of construction (*o*). Dividends at a fixed rate cannot be paid

(*g*) *Ante*, p. 36.

(*h*) *Post*, p. 342.

(*i*) See *Dovey* v. *Cory*, [1901] A. C. 477; *Bond* v. *Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 352.

(*k*) *Oakbank Oil Co.* v. *Crum* (1882), 8 A. C. 65; *Wilkinson* v. *Cummins* (1853), 11 Ha. 337, where more was paid up on some of the shares than on others but the dividend was paid in proportion to the nominal amounts of the shares and not to the amounts paid up.

(*l*) Preference stock issued under the Companies Clauses Act, 1863, is non-cumulative. See s. 14.

(*m*) *Webb* v. *Earl* (1875), 20 Eq. 556; *Henry* v. *G. N. Rail. Co.* (1857), 1 De G. & J. 606.

(*n*) *Staples* v. *Eastman's Photographic Materials Co.*, [1896] 2 Ch. 303.

(*o*) *Adair* v. *Old Bushmills Distillery Co.*, [1908] W. N. 24.

free of income tax unless the articles so provide (*p*). Colonial income tax cannot be deducted from a fixed preferential dividend payable by a company governed by the Companies Acts to shareholders domiciled in England (*q*). Where the holders of cumulative preference shares are entitled whenever the profits admit of a specified dividend being paid on the whole amount of the paid-up capital to participate in any increased dividend, the arrears of dividends on the ordinary shares, as well as those on the preference shares, must be paid before there can be any surplus available for an increase of dividend (*r*). Articles of association determine whether directors, after paying a dividend on ordinary shares, can set aside part of the remaining profits as a reserve fund before paying a dividend on the deferred shares (*s*).

Articles of association usually provide that dividends shall be paid in proportion to the amount paid up or credited as paid up on the shares; and sect. 39 (3) of the Companies Act, 1908, permits articles to be altered so as to authorize such a payment in cases where a larger amount is paid up on some of the shares (*t*). The right to receive a dividend which has been declared may be barred by lapse of time, and the Statute of Limitations begins to run from the time the dividend is payable (*u*). Some articles of association give the company power to forfeit a dividend remaining unclaimed for a certain time, but the London Stock Exchange will not grant a quotation to such a company.

(*p*) *Ashton Gas Co.* v. *A.-G.*, [1906] A. C. 10.

(*q*) *Spiller* v. *Turner*, [1897] 1 Ch. 911.

(*r*) *Allen* v. *Londonderry and Enniskillen Rail. Co.* (1877), 25 W. R. 524.

(*s*) *Fisher* v. *Black and White Publishing Co.*, [1901] 1 Ch. 174.

(*t*) As to the effect of the corresponding section of the C. A. 1867, viz. s. 24 (3), see *Oakbank Co.* v. *Crum*, *supra*.

(*u*) *Severn and Wye Rail. Co.*, [1896] 1 Ch. 559. The time is twenty years in the case of a company governed by the C. A. 1908; Artizans Land Corporation, [1904] 1 Ch. 796. Cf. *Milne* v. *Arizona Copper Co.* (1899), 1 Fras. 928.

CHAPTER XXV.

MEETINGS OF SHAREHOLDERS.

The business of a company is conducted by its directors, subject to the general control of the company. The company being a legal person only, provision is made by statute or its regulations as to the mode in which its will is to be ascertained and expressed. It is obviously impracticable to require the consent of all the members of a company to validate acts which cannot be done by its agents, and therefore the regulations of a company provide for convening and holding meetings of its members, and determine what majority shall be sufficient to pass resolutions, the voting power of each shareholder, and how the votes are to be taken. In the absence of any statutory provision, or any regulation of the company, a majority of the shareholders are entitled to act in the name of the company (*a*). General meetings are divisible into two classes, viz. ordinary and extraordinary.

An ordinary general meeting is one which must by statute or the regulations of the company be held periodically. Under the Companies Clauses Act, 1845, s. 66, meetings of a company must be held at the periods prescribed by its special Act, or, if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by order of a general meeting. Under the Companies Act, 1908, s. 64, a general meeting must be held at least once in every calendar year, that is, in every year ending the 31st December (*b*), and not more than fifteen months after the holding of the last preceding meeting, and if default is made the Court may, on the application of any member, call or direct the calling of a general meeting (*c*).

An extraordinary general meeting is any meeting other than an ordinary general meeting. The regulations of a company usually provide that certain routine business may be transacted at an ordinary meeting, but that no other business can be transacted at such meeting, or any

(*a*) *York Tramways Co.* v. *Willows* (1881), 8 Q. B. D. 698, per Brett, L.J.

(*b*) *Gibson* v. *Barton* (1875), L. R. 10 Q. B. 329.

(*c*) As to penalty on default, see *post*, p. 403.

business at an extraordinary meeting without special notice thereof. The first meeting of a company must be held, in the case of a company incorporated by special Act, within the time therein prescribed, or if no time be prescribed, within one month after the passing of the Act (*d*): and in the case of a company limited by shares incorporated under the Companies Acts after the 31st December, 1900, a meeting (called the statutory meeting) must be held within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business (*e*). In order to insure disclosure to shareholders of the transactions of the company from the date of its incorporation, the Companies Act, 1908, s. 65, provides that the directors of every such company other than a private company (*f*) must at least seven days before the day on which the statutory meeting is held, forward to every member of the company a report called the statutory report, certified by at least two directors of the company, or where there are less than two directors by the sole director and manager, stating—

(1) the total number of shares allotted, 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 so paid up, and in either case the consideration for which they have been alloted;

(2) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid;

(3) an abstract of the receipts and payments of the company on account of its capital, whether from shares, debentures or debenture stock, 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, debentures, debenture stock, 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;

(4) the names, addresses and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and

(5) 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.

The report, 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 to the company on capital account, must be certified as correct by the auditors (if any) of the company. Forthwith, after the sending

(*d*) Companies Clauses Act, 1845, s. 66.

(*e*) C. A. 1908, s. 65. See *ante*, p. 33, as to the date at which a company is entitled to commence business.

(*f*) As to what is a private company, see *ante*, p. 7.

of the report to the members, the directors are bound to cause a copy thereof, certified as aforesaid, to be filed with the registrar. The directors of all companies limited by shares and incorporated after the 31st December, 1900, including private companies (*ff*), are to have a list prepared showing the names, descriptions and addresses of the members and the number of the shares held by them respectively, and such list is to be produced at the commencement of the meeting and remain open and accessible to any member during the continuance thereof. The members are to be at liberty to discuss at the meeting any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed. The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting is to have the same powers as an original meeting. If default is made in filing such report as aforesaid, or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding-up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up (*g*) or give directions for the report being filed or a meeting being held, or make such other order as may be just (*h*), and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default (*i*).

The following are the principal rules with respect to meetings of the company :—

1. Every meeting of a company must be properly convened by a notice complying with the provisions made in that behalf by statute or by its regulations.

It is therefore important, before sending out notices of meeting, to ascertain what are the regulations of a company or the requirements of any statute with respect to notices. It is desirable that the notice of an extraordinary general meeting should set out the resolution to be proposed thereat, and, if it is not an ordinary resolution, the nature of such resolution, whether special or extraordinary.

(1) The notice must be unconditional unless otherwise provided.

(*ff*) See note (*f*) on p. 325.
(*g*) C. A. 1908 ss. 129, 137.
(*h*) *Ibid.* s. 65 (9).
(*i*) *Ibid.* s. 141 (2).

A notice that a meeting will be held to confirm certain resolutions as special resolutions if they shall be duly passed at a preceding meeting of which notice was thereby given, is bad (*k*); but separate notices need not be given if notice of the second meeting is not made conditional upon the resolutions being passed at the first meeting (*l*), or if the articles of association authorize the giving of a conditional notice (*m*).

(2) The notice must contain the prescribed particulars.

The notice must specify the place, day, and hour of the meeting, and must give particulars of all special business intended to be transacted at the meeting (*n*). And, as to this, it must be remembered that all business is "special," except such as is expressly directed by statute or by the regulations of the company to be done at an ordinary meeting of the company.

With regard to companies governed by the Companies Clauses Act, 1845, it is provided by sect. 67 of that Act that "no matters except such as are appointed by this or the special Act to be done at an ordinary meeting shall be transacted at any such meeting unless special notice of such matters have been given." And the only business appointed to be done at an ordinary meeting by this Act appears to be the following, namely:—

(i) The election of directors in the place of those retiring, or, in the case of the first meeting of the company, in the place of those appointed by the special Act (sect. 83).

(ii) The election of auditors (sect. 101).

NOTE.—The above business can only be transacted at the first ordinary meeting in each year.

(iii) The consideration of the balance-sheet and the auditors' report thereon (sect. 118).

(iv) The declaration of a dividend (sect. 120).

And sect. 69 of the Act provides that no extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened (*n*). In the case, therefore, of an extraordinary meeting, notice of all the business intended to be transacted thereat must be clearly given; but in the case of an ordinary meeting, though it is perhaps desirable that the notice should state all the business intended to be transacted, it is not necessary that it should state any of the business appointed to be done by the Act at an ordinary meeting. And it is

(*k*) *Alexander* v. *Simpson* (1889), 43 C. D. 139.

(*l*) *Jenner Institute* (1899), 15 T. L. R. 394; *Espuela Land and Cattle Co.*, W. N. (1900), 139.

(*m*) *North of England S. S. Co.*, [1905] 2 Ch. 15.

(*n*) See Companies Clauses Act, 1845, s. 71; *Kaye* v. *Croydon Tramways Co.*, [1898] 1 Ch. 358.

submitted that sect. 91, which enacts that certain powers of the company shall be exercised only at a general meeting, is merely restrictive of the powers of directors, and does not preclude the necessity of notice being given of the business mentioned in the section, including, *inter alia*, the remuneration of directors (*p*). And, *semble*, if the remuneration is for the past services of the directors, the notice should expressly mention that fact (*p*).

With regard to companies governed by the Companies Acts, the articles of association prescribe what business can be transacted at an ordinary meeting. And in most of these companies it is not necessary, although desirable, that a notice convening an ordinary general meeting should state that the business includes the declaration of dividends; the election of directors or auditors; voting their remuneration; and the consideration of the accounts and reports presented by the directors.

But, unless by statute or by the regulations of the company it is otherwise provided, specific notice must be given of all business which is intended to be transacted at an ordinary or extraordinary meeting; and all business transacted at a meeting of which the necessary notice is not given is invalid (*q*). But the want of notice of some of the business does not invalidate the other business done at the same meeting of which specific notice has been given (*r*). A notice of a proposed resolution to substitute new articles of association for those contained in Table A., and offering inspection of such articles, is good (*s*), provided that the notice calls attention to any important alteration (*t*). Directors of a company, who, in pursuance of a power given by statute or its regulations to shareholders, are duly requested to call a meeting for certain objects, should not exclude from the notice convening the meeting any objects which can be effected in a legal way (*u*). The notice should not be misleading, or otherwise the Court may restrain the holding of the meeting so convened (*x*), or hold that the resolutions passed at the meeting are invalid (*y*). Sufficient notice may sometimes be given in the director's report, sent out with the notice convening the meeting, when the business of receiving the report is mentioned in the notice (*z*).

(3) The interval between the giving of a notice of a meeting

(*p*) *Hutton* v. *West Cork Rail. Co.* (1883), 23 C. D. 654, per Fry, L. J., at p. 659, and Baggallay, L. J., at p. 679.

(*q*) *Lawes' Case* (1852), 1 De G. M. & G. 421; *Tiessen* v. *Henderson*, [1899] 1 Ch. 861.

(*r*) *Re British Sugar Co.* (1857), 3 K. & J. 408.

(*s*) *Young* v. *South African Syndicate*, [1896] 2 Ch. 268.

(*t*) *Normandy* v. *Ind Coope & Co.*, [1908] 1 Ch. 84.

(*u*) *Isle of Wight Rail. Co.* v. *Tahourdin* (1884), 25 C. D. 320.

(*x*) *Jackson* v. *Munster Bank* (1884), 13 L. R. Ir. 118.

(*y*) *Teede & Bishop, Ltd.* (1901), 84 L. T. 561.

(*z*) *Boschoek Proprietary Co.* v. *Fuke* [1906] 1 Ch. 148, 164.

and the holding of the meeting must be not less than the prescribed period.

By the Companies Clauses Act, 1845, s. 71, 14 days' notice is required, and this has been held to mean 14 clear days (*a*).

With regard to companies governed by the Companies Acts, the articles of association generally provide for the length of notice to be given. But in default of any such regulation, sect. 67 of the Companies Act, 1908, provides, that a meeting may be called by 7 days' notice, in writing, served on every member in the manner in which notices are required to be served by Table A. (Arts. 49 and 110—114). Directors will be restrained from fixing a particular day for a meeting for the purpose of preventing certain shareholders from exercising their voting powers (*b*).

(4) The notice must be given in the prescribed way.

Under the Companies Clauses Act, 1845, sects. 71, 138, the notice must be given by advertisement in the newspaper prescribed by the special Act, or, if there be no such newspaper, in a newspaper circulating in the district where the company's principal place of business is situated. It is not enough to advertise in a London newspaper a notice of a meeting of a company whose principal place of business is at Swansea, unless it is proved that such newspaper circulates in Swansea (*c*). The notice should be signed by two directors, or by the treasurer or secretary. (Sect. 139.)

As to companies governed by the Companies Acts, the articles of association of the company prescribe the method of giving notice. And, in default of any such regulation, sect. 67 of the Companies Act, 1908, provides that notices may be served in the manner required by Table A., viz. either personally or by prepaid letter, posted to a member at his registered address, or (if he has no registered address within the United Kingdom) to the address within it supplied by him to the company for that purpose (Art. 110), or (if none) by a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company (Art. 111); and that in case of joint holders of a share, the notice may be given to the joint holder named first in the register in respect of the share (Art. 112) (*d*). Where a notice is to be given to "members" by serving it on any "member" either personally or by sending it prepaid by post to such "member" at his registered address, a notice so sent to a deceased member at his

(*a*) *R.* v. *Justices of Shropshire* (1838), 8 A. & E. 173; *R.* v. *Aberdare Canal Co.* (1850), 14 Q. B. 854; *Adey* v. *Hill* (1846), 4 C. B. 38.

(*b*) *Cannon* v. *Trask* (1875), 20 Eq. 669.

(*c*) *Swansea Dock Co.* v. *Levien* (1851), 20 L. J. Ex. 447.

(*d*) See Arts. 110-114.

registered address binds his executors or administrators until they are registered in his place (*e*). Notice may also be given in default of any regulation to persons entitled to a share in consequence of the death or bankruptcy of a member by posting it to them in a prepaid letter addressed to them by name, or in their representative capacity at the address, if any, in the United Kingdom supplied for that purpose by such persons, or until such address has been supplied by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred (Art. 113).

(5) The notice must be given to the prescribed persons.

Articles of association usually provide to whom notices shall be given (see Table A., Art. 114).

(6) The notice must be given by the prescribed persons.

Usually, directors are the persons empowered to convene meetings, although power is given to shareholders by statute (*f*), and often by the regulations of companies, to request directors to convene a meeting, and in default to do so themselves. A meeting summoned in pursuance of a resolution of the board is valid, although the notice convening the board meeting was irregular (*g*), but a meeting summoned by the secretary without the authority of a resolution of the board is invalid (*h*), unless ratified by the board before the meeting is held. The ratification may be either before or after the date prior to which the notice ought to have been given (*i*).

By the Companies Clauses Act, 1845, sect. 70, and the Companies Act, 1908, sect. 66, the shareholders are empowered to request the directors to call an extraordinary general meeting, and in default of their so doing the shareholders can call such a meeting. In the case of companies to which the Companies Clauses Act, 1845, sect. 70, is applicable, that section provides that when the number of shareholders or amount of shares is not prescribed, shareholders not being less than twenty in number and holding not less than one-tenth of the capital of the company may make such request. Sect. 66 of the Companies Act, 1908, gives the power to shareholders holding not less than one-tenth of the issued capital on which all moneys then due have been paid. 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,

(*e*) *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656.

(*f*) Companies Clauses Act, 1845, s. 70; C. A. 1908, s. 66.

(*g*) *Brown* v. *La Trinidad* (1887), 37 C. D. 1.

(*h*) *Haycraft Gold Reduction Co.*, [1900] 2 Ch. 230; *State of Wyoming Syndicate*, [1901] 2 Ch. 431.

(*i*) *Hooper* v. *Kerr Stewart & Co.* (1901), 83 L. T. 729.

and may consist of several documents in like form each signed by one or more requisitionists. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the deposit the requisitionists, or a majority of them in value, may themselves convene the meeting to be held not more than three months after such date, or if at any such meeting a resolution requiring confirmation as a special resolution is passed, and the directors do not within seven days thereafter convene a further meeting for that purpose, the said requisitionists or majority may do so. The requisitionists must convene the meeting in the same manner, as nearly as possible, as that in which meetings are to be convened by directors. Where directors refuse to insert in the notice calling a meeting some of the objects for which the shareholders require the meeting to be held, the requisitionists will not be restrained from holding a meeting convened by themselves (*k*). During the twenty-one days the directors only can convene the meeting, and the secretary, unless so authorized by them, cannot do so (*l*). Shares held by joint holders cannot be reckoned as forming part of the tenth of the issued capital unless all the joint holders sign the requisition (*m*). Where directors make default in calling a meeting as requested, a mandamus to compel them to do so will not be granted (*n*). The Companies Act, 1908, provides (sect. 67) that in default of and subject to any regulations in the articles five members may call a meeting; and this applies to a case where directors are the only persons competent to convene meetings, and there is no board of directors (*o*).

2. Every meeting should be held and conducted in the manner prescribed by statute, charter, or the regulations of the company.

Where the meeting is adjourned, the adjourned meeting is legally a continuation of the original meeting (*p*). Unless so empowered a chairman cannot dissolve or adjourn a meeting while any business for which it was convened remains untransacted (*q*). Where he has the right of adjourning a meeting he is not bound to adjourn it although requested so to do by a majority of the meeting (*r*). Directors, unless so authorised by the articles of association, cannot postpone the holding of a general meeting properly convened (*s*).

(*k*) *Isle of Wight Rail. Co.* v. *Tahourdin* (1883), 25 C. D. 320.

(*l*) *State of Wyoming Syndicate, supra.*

(*m*) *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164.

(*n*) *MacDougall* v. *Gardiner* (1875), 10 Ch. 606.

(*o*) *Brick and Stone Co.*, W. N. (1878), 140.

(*p*) *Scadding* v. *Lorant* (1851), 1 H. L. Cas. 414.

(*q*) *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159.

(*r*) *Salisbury Gold Mining Co.* v. *Hathorn*, [1897] A. C. 268.

(*s*) *Smith* v. *Paringa Mines*, [1906] 2 Ch. 193.

(1) If the prescribed quorum be not present within the prescribed time after the time appointed for the meeting no business can be transacted thereat, except such as is authorized by statute or the regulations of the company.

Unless otherwise provided by the regulations of a company, the members present by proxy cannot be reckoned in computing the quorum (*t*). A resolution passed at a meeting at which a quorum is not present, is void (*u*). One shareholder cannot make a meeting (*x*). By the Companies Clauses Act, 1845, sect. 72, in default of a quorum being prescribed by the special Act, the quorum is shareholders holding in the aggregate not less than one-twentieth of the company's capital, and being in number not less than one for every 500*l.* of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital shall be the quorum. And under the same section the prescribed time is one hour from the time appointed for the meeting. If a quorum is not then present no business can be transacted other than the declaring of a dividend, and the meeting is adjourned *sine die*, except that in the case of a meeting for the election of directors the meeting stands adjourned till the following day. In the case of a company having different classes of shareholders, articles of association usually provide that any agreement modifying the rights of any class must be confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and that all the provisions therein contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of the class. In such a case an article providing that if, at an adjourned general meeting, a quorum is not present, the members present shall form a quorum, does not apply to a class meeting (*y*).

(2) The chairman of a meeting should be the person designated by or elected in accordance with the regulations of the company.

The persons designated by the Companies Clauses Act, 1845, s. 73, to be chairmen, and the order in which they are to preside, are (1) chairman of directors, (2) deputy chairman of directors, (3) a director elected by the meeting, (4) a shareholder elected by the meeting. In default of and subject to any regulations of a company governed by the Companies

(*t*) *Cambrian Peat and Fuel Co.*, W. N. (1875), 6.

(*u*) *De la Mott's Case* (1875), 23 W. R. 405.

(*x*) *Sharp* v. *Dawes* (1876), 25 W. R. 66.

(*y*) *Hemans* v. *Hotchkiss Ordnance Co.*, [1899] 1 Ch. 115.

Acts any person elected by the members present at a meeting may be chairman thereof (*yy*). It is the duty of a chairman to preserve order, conduct the proceedings in a proper manner and properly ascertain the sense of a meeting on any question properly before it. He cannot, if the meeting opposes it, stop or dissolve the meeting, and if he refuses to act another chairman may be elected in his place by the meeting (*z*). Where the chairman deliberately rules that a proper amendment cannot be put to the meeting, a shareholder is not bound to challenge such ruling in order to preserve his right to impeach the validity of the proceedings in a court of law (*a*); but if the ruling is that a resolution has been passed, and nobody challenges such ruling at the meeting, it is conclusive and cannot be subsequently impeached (*b*). A chairman ought not to refuse to submit to the meeting a proper amendment to any resolution to be proposed thereat (*c*), but an amendment cannot be proposed to a resolution submitted to the second meeting for confirmation as a special resolution (*d*). It is not competent for a majority at a meeting to refuse to hear the minority, but when their views have been heard the chairman can, with the sanction of a vote of the meeting, declare the discussion closed and put the question to the vote (*d*).

The chairman of a general meeting has *primâ facie* authority to decide all incidental questions which necessarily require decision at the time, and the entry by him in the minute book of the result of a poll, or of his decision of all such questions, although not conclusive, casts the burden of proof upon those who dispute such result or any such decision (*e*). Where the articles provide that every vote not disallowed at any meeting shall be valid for all purposes, the chairman's ruling is binding in the absence of fraud or *mala fides* (*f*).

The Companies Act, 1908, s. 71, provides that every company governed by that Act shall cause minutes of all proceedings of general meetings, and of its directors or managers, to be entered in books kept for that purpose and that, until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect whereof minutes have been so made, shall be deemed to have been duly held and convened, and all proceedings thereat to have been duly had, and the Companies Clauses Act, 1845, s. 98, is to the like effect, except that it requires the minutes to be signed by the chairman of the meeting

(*yy*) C. A. 1908, s. 67.

(*z*) *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159.

(*a*) *Henderson* v. *Bank of Australasia* (1890), 45 C. D. 330.

(*b*) *Oppert* v. *Brownhill Great Southern* (1898), 14 T. L. R. 249; *Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419; dissenting from *Young* v. *South African Syndicate*, [1896] 2 Ch. 268. See also *Wandsworth and Putney Gas, &c., Co.* v. *Wright* (1870), 18 W. R. 728.

(*c*) *Henderson* v. *Bank of Australasia*, *supra*.

(*d*) *Wall* v. *London and Northern Assets Corporation*, [1893] 2 Ch. 469.

(*e*) *Indian Zoedone Co.* (1884), 26 C. D. 70.

(*f*) *Wall* v. *London and Northern Assets Corporation*, [1899] 1 Ch. 550.

to which they relate, whereas under the Act of 1908, s. 71, the signature may be either that of the chairman of that meeting or of the chairman of the next succeeding meeting. The minutes so signed are evidence of the proceedings (s. 71).

Where the minutes of a meeting signed by its chairman are receivable in evidence, it is not necessary that his signature should be affixed at a meeting (*g*). The minutes may be transcribed or made from rough minutes taken at the time of the meeting (*h*), but minutes after being signed ought not to be altered (*i*).

3. The votes of members should be taken in the prescribed way.

Unless otherwise provided, votes must be taken in the first place by a show of hands and not by counting shares (*k*), and proxies cannot be reckoned on a show of hands (*l*), or in demanding a poll (*m*). Members can protect themselves in such a case by requesting a poll, which should be done immediately after the show of hands (*n*). It is sufficient if the poll be demanded informally and privately, and the bare fact of the demand stated at the meeting by the chairman (*o*). The regulations of a company generally prescribe the minimum number and holding necessary to request a poll, and that the request must be in writing. In cases where, if a poll is demanded, it may be taken in such manner as the chairman may direct, he may direct it to be taken at the meeting where it is demanded (*p*); but not where the poll is to be held at a time and place to be fixed by the directors within seven days of the date of the meeting (*q*). Where a poll is duly demanded on each of several resolutions and only one poll is taken on all the resolutions, the resolutions are invalid (*r*).

(1) A member can only have such number of votes as he is entitled to under the regulations of the company.

(*g*) *West London Rail. Co.* v. *Bernhard* (1843), 1 Dav. & Mer. 397; *Southampton Dock Co.* v. *Richards* (1840), 1 M. & Gr. 448; *London, Brighton, &c., Rail. Co.* v. *Fairclough* (1841), 2 M. & Gr. 686; *Miles* v. *Bough* (1842), 3 G. & D. 119; *Ex parte Stock* (1864), 33 L. J. Ch. 731.

(*h*) *Re Jennings* (1851), 1 Ir. Ch. 236.

(*i*) *Cawley & Co.* (1889), 42 C. D. 209, 226.

(*k*) *Horbury Bridge Co.* (1879), 11 C. D. 109.

(*l*) *Caloric Engine Co.* (1885), 52 L. T. 846; *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1; overruling *Bidwell Bros.*, [1893] 1 Ch. 603.

(*m*) *Haven Gold Co.* (1882), 20 C. D. 151, 157; *R.* v. *Government Stock Investment Co.* (1878), 3 Q. B. D. 442.

(*n*) *Campbell* v. *Maund* (1836), 5 A. & E. 865.

(*o*) *Phœnix Electric Light Co.* (1883), 31 W. R. 398.

(*p*) *Chillington Iron Co.* (1885), 29 C. D. 159.

(*q*) *British Flax, &c., Co.* (1889), 60 L. T. 215. As to a poll in the case of a special resolution, see *post*, p. 339.

(*r*) *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164.

Where "members" are entitled to vote, no registered shareholder's vote can be rejected (*s*). Where a contract for sale by a director to a company is only valid if ratified by the company it is competent for him, although he holds a majority of the votes in the company, to vote in favour of such ratification if the contract is fair in its terms and not *ultra vires* of the company (*t*). Under the Companies Clauses Act, 1845, s. 75, a member, in default of any scale of voting being prescribed by the special Act, is entitled to one vote for every share up to ten, and an additional vote for every five shares beyond the first ten up to one hundred, and for every ten shares beyond the first hundred; but no shareholder is entitled to vote unless he has paid all calls due upon his shares. Articles of association usually provide that no member shall be entitled to vote while any moneys are due in respect of his shares (*u*).

It is submitted that, by analogy to the law of partnership, in the absence of any provisions defining the voting power of members, members are only entitled to one vote each, although their interests in the company are unequal, and this is expressly provided by the Companies Act, 1908, s. 67, in the case of companies governed by that Act having no regulations as to voting.

In the case of joint shareholders the person to vote is the person designated by the regulations of the company who is generally the person whose name stands first on the company's register; and where a shareholder is a lunatic, idiot, or infant, he may generally vote by his committee, guardian, or curator (*x*). An agreement to vote or not to vote in a particular way is valid, and the negative agreement may be enforced by injunction (*y*).

(2) Members can only vote by proxy when the regulations of the company permit such voting, and the regulations prescribed with reference to who may be proxies and the form of the instrument must be strictly followed, or the vote is bad (*z*).

A proxy paper unattested is bad if the regulations require attestation (*a*). Directors can apply the funds of the company to the printing, posting, &c. of proxy papers, even although their names are filled in as

(*s*) *Pender* v. *Lushington* (1877), 6 C. D. 70.

(*t*) *North West Transportation Co.* v. *Beatty* (1887), 12 A. C. 589.

(*u*) See *Randt Co.* v. *Wainwright*, [1901] 1 Ch. 184.

(*x*) Cf. Companies Clauses Act, 1845, ss. 78 and 79; and Table A, Art. 62.

(*y*) *Greenwell* v. *Porter*, [1901] 1 Ch. 530.

(*z*) *McMillan* v. *Le Roi Mining Co.*, [1906] 1 Ch. 335.

(*a*) *Harben* v. *Phillips* No. 1 (1882), 23 C. D. 14.

proxies (*b*). A proxy paper authorizing the proxy to vote at a particular meeting, to be held on a specified day, or any adjournment thereof, requires a penny stamp only (*c*). A proxy to vote "at the next election" does not sufficiently specify the day so as to make a penny stamp sufficient (*d*), but it is sufficient if a blank left by a printer's error for the day has been filled in by the secretary after signature and return to the company (*e*); or if the proxy is stamped at the time of execution, the dates of the execution and of the meeting may be filled in afterwards by any person duly authorized (*f*); but any other proxy paper must be stamped as a power of attorney, with a ten shilling stamp (*g*). Proxies cannot vote on a show of hands (*h*).

By the Companies Clauses Act, 1845, s. 76, votes may be given by proxies, being shareholders. If the proxy is a shareholder where the proxy paper is lodged and continues to be so until it is used his vote as proxy is valid (*i*). The Companies Clauses Acts, 1888 and 1889, provide that where the shareholder is a body corporate the proxy may be any member of such body, though not personally a shareholder. In the absence of a provision authorizing voting by proxy, it is doubtful if a body corporate could vote as a shareholder in another company. The instrument must be in writing, signed by the shareholder appointing the proxy, or if such shareholder be a corporation, under its common seal, and must be in the form in Schedule F. to the principal Act, or to the like effect. This Act does not require attestation, but (sect. 77) requires that the instrument appointing the proxy shall be sent to the secretary of the company within the period prescribed by its special Act, or, if no period be prescribed, not less than forty-eight hours before the time of meeting.

A company governed by the Companies Acts which is a member of another company so governed may by resolution of its directors authorize any person to act as its representative at any meeting of the other company and to exercise the same powers on behalf of the company he represents as if he were an individual shareholder of the other company (*k*). This would entitle the representative to speak and vote as the proxy of the company giving him the authority but not to act as proxy for any other shareholder.

(*b*) *Peel* v. *L. & N. W. Rail. Co.*, [1907] 1 Ch. 5, overruling *Studdert* v. *Grosvenor* (1886), 33 C. D. 528.

(*c*) Stamp Act, 1891, s. 80.

(*d*) *R.* v. *McInerney*, [1891] 30 L. R. Ir. 49.

(*e*) *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1.

(*f*) *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318.

(*g*) Cf. *Trinity House* v. *Beadle* (1849), 13 Q. B. 175.

(*h*) *Caloric Engine Co.* (1885), 52 L. T. 846; *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1; overruling *Bidwell Bros.*, [1893] 1 Ch. 603.

(*i*) *Bombay and Burmah Trading Corp.* v. *Shroff*, [1904] A. C. 214.

(*k*) C. A. 1908, s. 68. Cf. Table A, Art. 65.

(3) If the regulations of the company so provide, a chairman is entitled, in the case of an equality of votes, to a casting vote in addition to his other vote or votes.

By the Companies Clauses Act, 1845, s. 76, the chairman is entitled to a casting vote in addition to his votes as shareholder or proxy (*l*).

4. A resolution must be passed by the prescribed majority, and in the prescribed way, or, in the absence of any prescribed majority, by a simple majority of votes.

A resolution may be valid, although not proposed and seconded, if the chairman puts it to the meeting (*m*).

By statute, and usually by the regulations of a company, a greater majority is required to pass certain classes of resolutions. The regulations may provide that a majority shall, in a specified case, be two-thirds, three-fourths, or any other proportion.

By the Companies Clauses Act, 1863, ss. 12, 13 and 22, unless the special Act otherwise provides, a three-fifths majority is necessary to create and issue new ordinary capital, new preference capital, or debenture stock.

In the case of a company governed by the Companies Acts a special resolution is necessary to—

Alter its name (*n*).

Alter its memorandum of association with respect to its objects (*o*).

Alter its articles of association (*p*).

Return accumulative profits in reduction of capital (*q*).

Sub-divide its shares (*r*).

Reorganize its share capital (*s*).

Reduce its share capital (*t*).

Create reserve liability (*u*).

Make unlimited the liability of the directors, managing director, or managers of any limited company (*x*).

Authorize payment of interest out of capital unless authorized by the articles (*y*).

Appoint inspectors to investigate its affairs (*z*).

(*l*) See Table A, Art. 58.

(*m*) *Horbury Bridge Co.* (1879), 11 C. D. 117.

(*n*) Sect. 8.

(*o*) Sect. 9.

(*p*) Sect. 13.

(*q*) Sect. 40.

(*r*) Sect. 41.

(*s*) Sect. 45. See *ante*, p. 56.

(*t*) Sect. 46.

(*u*) Sect. 59.

(*x*) Sect. 61.

(*y*) Sect. 91, unless authorized by its articles.

(*z*) Sect. 110.

Convert a private company into a public company (*a*).

Authorize its liquidators to receive in compensation, in a voluntary liquidation, upon a sale of its property to another company, shares or other like interests in such company (*b*).

A company may be wound up voluntarily either by a special resolution or an extraordinary resolution (*c*). In the case of a company being wound up voluntarily, or being about to wind up voluntarily, under the Companies Act, 1908, an extraordinary resolution is necessary for the purpose of delegating to its creditors, or to any committee of its creditors, the power of appointing liquidators, or for entering into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised, or for sanctioning any arrangement between the company and its creditors or debtors (*d*).

It is essential to the validity of an extraordinary resolution (*e*) that—

(1) The majority passing it should not be less than three-fourths of the members present in person or by proxy (where allowed), and entitled to vote, at a general meeting.

(2) The notice of such meeting should specify the intention to propose the resolution as an extraordinary resolution.

(3) The notice should be given and the meeting held in the manner provided by the articles.

It is essential to the validity of a special resolution (*e*) that—

(1) It should be passed in manner required for the passing of an extraordinary resolution.

(2) It should be confirmed by a majority of members entitled to vote, present in person or by proxy (where allowed), at a subsequent general meeting of which notice has been duly given, and held, after an interval of not less than fourteen clear days, nor more than one calendar month, from the date of the first meeting.

(1) Unless a poll is demanded, the voting can be taken by a show of hands, at which proxies cannot vote (*f*), and a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of that fact, without proof of the number or proportion of the

(*a*) Sect. 121.
(*b*) Sect. 192.
(*c*) Sect. 182.
(*d*) Sects. 190, 191, 214.
(*e*) C. A. 1908, s. 69.
(*f*) *Ante*, p. 334.

votes recorded in favour of or against the same (*g*), unless the declaration shows on the face of it that the statutory majority has not voted for the resolution (*h*). A poll may be demanded by three persons entitled according to the articles to vote, unless the number is specified in the articles not exceeding five, and in computing the majority on the poll regard is to be had to the number of votes to which each member is entitled by the articles of the company (*h*).

The meeting may be either an ordinary or extraordinary general meeting.

It is sufficient if the poll be demanded informally and privately, and the bare fact of the demand stated by the chairman at the meeting (*i*).

Although the resolution passed at the second meeting must be the same as that passed at the first meeting (*k*), the resolution passed at the first meeting need not be identical with that set out in the notice convening that meeting, *e.g.* where notice is given to amend the articles by altering the remuneration of the directors by giving them a certain percentage of profits and by the resolution as passed a smaller percentage is given (*l*), but no amendment is regular which materially differs from the resolution set out in the notice (*m*).

The majority required at the second meeting is only a simple majority.

In computing the interval of time, the days on which the two meetings are held must be excluded (*n*).

A notice given of a meeting to consider and, if deemed advisable, to pass certain resolutions, and stating that "should such resolutions be duly passed, the same will be submitted for confirmation as special resolutions to a subsequent meeting," was held to be an invalid notice of the second meeting, upon the ground that it was a conditional notice, and, being bad when sent, could not be made good by the shareholders acquiring information *aliunde*, that the resolutions had been passed at the first meeting (*o*). But a conditional notice, if authorized by the articles, is good and both meetings may be called by the same notice if the notice of the second meeting is not made conditional upon the resolution being passed at the first meeting (*p*).

It is essential to the validity of an extraordinary resolution to wind

(*g*) C. A. 1908, s. 69; *Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419; *Arnot* v. *United African Lands, Ltd.*, [1901] 1 Ch. 518.

(*h*) *Caratal Mines, Ltd.*, [1902] 2 Ch. 498.

(*i*) *Phœnix Electric Light Co.* (1883), 31 W. R. 398.

(*k*) *Wall* v. *London and Northern Assets Corp.*, [1898] 2 Ch. 469, 483.

(*l*) *Torbock* v. *Lord Westbury*, [1902] 2 Ch. 871.

(*m*) *Teede & Bishop, Ltd.* (1901), 84 L. T. 561.

(*n*) *Railway Sleepers Co.* (1885), 29 C. D. 204; *Miller's Dale Co.* (1885), 31 C. D. 211.

(*o*) *Alexander* v. *Simpson* (1889), 43 C. D. 139.

(*p*) See *ante*, p. 327.

up a company voluntarily, that it should be to the effect that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same (*q*). And where it is intended to propose such a resolution, it is desirable that the resolution of which notice is given should closely follow the words used in sect. 182 of the Companies Act, 1908 (*r*), or otherwise the notice may be bad (*s*).

A printed copy of every special and extraordinary resolution must within fifteen days from its confirmation or passing be forwarded to the registrar of companies, who has to record the same (*t*). Where articles have been registered a copy of every special resolution for the time being in force is to be embodied or annexed to every copy of the articles issued after the confirmation of the resolution, and where articles have not been registered a printed copy must be forwarded to any member at his request upon payment of not more than one shilling (*t*).

(*q*) C. A. 1908, s. 182.

(*r*) See *Stone* v. *City and County Bank* (1877), C. P. D. 282, 296.

(*s*) *Bridport Old Brewery* (1869), 2 Ch. 191; *Silkstone Fall Co.* (1875), 1 C. D. 38.

(*t*) C. A. 1908, s. 70. As to penalty on default, see *post*, p. 403.

MEETINGS.

CANADIAN NOTES.

The shareholders' meeting, speaking generally, may be regarded as the surprise forum of the company.

Under the Ontario Act, however, it has been held that the provisions vesting in the directors' power to make bye-laws respecting certain matters impliedly remove these from the control of the shareholders. *Kelly* v. *Electrical Construction Co.*, 10 O. W. R. 704. See sect. 87.

Notice.

No important business should be transacted at a meeting which is not specified in the notice calling the meeting. The powers of the meeting are limited by the scope of the notice. Nor does the fact that the meeting has been adjourned authorize the transaction of any business at the adjourned meeting that could not have been transacted at the original meeting. *Christopher* v. *Noxon*, 4 O. R. 685; *Waddle* v. *Ontario Canning Co.*, 18 O. R. 41.

The words "special business" are frequently inserted to cover matters of which it is not thought desirable to give notice, but have been held to be insufficient. *Marsh* v. *Huron College*, 27 Gr. 605.

The fact that a shareholder attended a meeting called illegally, and entered upon a defence of himself there, does not prevent his afterwards filing a bill impeaching the proceedings as irregular and invalid. *Marsh* v. *Huron College*, 27 Gr. 605; and see *Cannon* v. *Toronto Corn Exchange*, 5 A. R. 268.

A shareholder who has proposed a resolution that the meeting be held at a different time than that appointed is estopped from making any objection to such meeting or to the validity of anything that transpired there on that score. Further, it has been held that where several plaintiffs are objecting to the validity of an act of the company done under such circumstances, and one of them is barred

by his conduct, the others are likewise estopped from taking the objection. *Christopher* v. *Noxon*, 4 O. R. 680.

Proxies.

Where there has been a transfer of shares of stock which has not been registered in the books of the company, a proxy from the registered owner is sufficient, and *a fortiori* when both the registered and beneficial owners of the shares sign a proxy, it cannot be questioned by the other shareholder or any of them. *Stephenson* v. *Vokes*, 27 O. R. 696.

The improper rejection of proxies is good ground for setting aside an election of directors. *Kelly* v. *Electrical Construction Co.*, 10 O. W. R. 704.

Quorum.

Where a bye-law specified that a quorum should consist of five members, representing one-third of the capital stock of the company, it was held that this must mean one-third of the subscribed, and not the nominal, capital. *Austin Mining Co.* v. *Gemmell* (1886), 19 O. R. 696.

Ratification.

Where, in a directors' meeting, certain persons protested against a transaction on the part of the officers of the company, but at a subsequent shareholders' meeting did not protest so as to call for the opinion of the shareholders, but allowed themselves to be elected as directors, and concurred in the management of the company for two years after, this was held to be such ratification as to amount to an estoppel. *Thompson* v. *Canada Fire Insurance Co.*, 9 O. R. 285.

To ratify a transaction of a kind which is within the corporate powers, it is not required that all the shareholders should approve; all the acts within the powers of the body are sufficiently effected by a majority. That the will of the majority should in all cases be taken as the will of the whole is an implied, but essential, stipulation in all joint stock companies. The company itself cannot be permitted to question the transaction afterwards, much less can a dissatisfied minority. *Christopher* v. *Noxon*, 4 O. R. 684.

Chairman.

The chairman is given a casting vote by sect. 42 of the Ontario Companies Act, but in the absence of express provision he has only one vote. *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 184.

Resolutions.

A declaration by the chairman that a resolution is carried, and an entry in the minutes to this effect is *primâ facie* evidence that such is the case. See Ontario Companies Act, sect. 41.

Amendments.

See *Wright* v. *Incorporated Synod of the Diocese of Huron*, 29 Gr. 348, 9 A. R. 411, 11 S. C. R. 95.

Scrutineers.

Candidates for a board of directors should not act as scrutineers in elections, as there is a plain conflict between interest and duty, and where the scrutineers, with the aid of legal advice, interpreted an instrument under which a shareholder had advanced a large sum of money to start the company, and which provided for further disposition of the shares of the company held by the plaintiff as security for his advance and allowed certain other persons to vote as being *cestui que trusts* of a portion of the shares, the election was set aside with costs to be paid by the directors acting as scrutineers. *Dickson* v. *Murray*, 28 Gr. 533.

Setting aside Election.

The Court has jurisdiction to set aside an election upon proper grounds being shown, and will do so where persons voted at election who were nominally subscribers, but in reality were not *bonâ fide* subscribers. *Davidson* v. *Grange*, 4 Gr. 377.

Votes and Majority.

The motive of a shareholder casting his vote will not be inquired into, and a majority shareholder is free to use his votes to ratify a

transaction which is for his own benefit and to the detriment of the company. *North-west Transportation Co.* v. *Beatty*, 12 App. Cas. 589; *Burland* v. *Earle* (1902), App. Cas. 83.

Where, at a meeting of shareholders, the legal right of voting is impaired or denied, the Court will interfere to set aside the election. This right to the intervention of the Court may be lost by acquiescence, however, and where, after an election in which each person present was allowed one vote irrespective of the number of shares held by him, but the election had been acted upon for more than eight months, the Court refused to interfere by *mandamus*. *Re Moore and Port Bruce Harbour Company*, 14 H. C. R. 365.

The fact that shares of stock have been purchased with a view of increasing the voting power of a shareholder or section of the shareholders, or with a view to influence the election of officers, is no ground for interference by the Court, and while an election of officers obtained by trick or artifice cannot be considered a *bonâ fide* election, yet when the shares have been regularly acquired according to the formalities prescribed by statute and the bye-laws of the company, the fact of their being purchased with a view to increasing the holder's voting power is immaterial. *Toronto Brewing & Malting Co.* v. *Blake*, 2 O. R. 175. *Christopher* v. *Noxon*, 4 O. R. 672.

The shareholder who is in arrears for unpaid calls is absolutely debarred from voting at a shareholders' meeting. *Christopher* v. *Noxon*, 4 O. R. 672.

Where the holder of a large number of shares of a company had been restrained by an *interim* injunction from voting on his shares pending the result of an action, and in the meantime, the meeting of shareholders was held and directors elected, the Court refused to set aside the election of directors. It was said that the shareholders might have applied to the Court for an injunction against the election proceeding, or to have the injunction against him suspended so far as to allow him to vote for an adjournment of the meeting, but having done neither and neglected such ordinary precautions, he was not entitled to have the election set aside. *Beaudry* v. *Read*, 10 O. W. R. 622.

CHAPTER XXVI.

LIABILITIES OF DIRECTORS AND PROMOTERS TO THE COMPANY.

THE liabilities of directors and promoters are both civil and criminal. The principal classification of the civil liabilities of directors and promoters may be based either upon the nature of the acts from which the liabilities arise, *e.g.* breach of contract, or tort, or the classes of persons who can enforce such liabilities. A director or promoter may incur liabilities to (1) the company, (2) the holders of its shares, debentures, or debenture stock, or (3) to other persons. The director's liability to the company may arise (i) from a breach of the duties springing out of the fiduciary relation subsisting between him and the company, or (ii) from negligence in the exercise of his powers as director, or (iii) from breach of contract, or (iv) by statute. A promoter's liability to the company arises out of the fiduciary relation subsisting between him and the company, or by statute. A director *de facto*, that is, a person who has acted as a director, although he was improperly elected, is liable to the company as if he had been properly elected (*a*). In this chapter the liabilities of directors to the company are treated of under the heads of—I. Breaches of Trust, II. Negligence, III. Statutory Liabilities, and IV. Contractual Liabilities, and the liabilities of promoters under heads I. and III.

I. *Breaches of Trust.*

Breaches of trust by directors may be divided into four classes, viz. those arising from (1) failing to account to the company for property of the company in their hands, (2) disposing of the property of the company without authority to do so, or for an improper purpose, (3) the acceptance of bribes from a person dealing with the company, and (4) the making of profits in dealing with the company without the knowledge of the

(*a*) *Western Bank of Scotland* v. *Baird's Trustees* (1872), Sc. S. C. 3rd Series, Vol. 11, p. 96. The word "director" as used in the C. A. 1908 includes any person occupying the position of a director by whatever name called unless the context otherwise requires. S. 285.

company. Promoters of a company are also liable to account for secret profits made by them in dealing with the company.

1. A director is bound to account to the company for all moneys and properties received by him on its behalf, subject to his right to retain thereout all moneys due to himself in respect of advances properly made, or expenses properly incurred by him on behalf of the company, and any remuneration properly payable to him.

Directors, like all other agents, are bound to render proper accounts to their principal; but generally, the regulations of the company contain provisions as to what accounts must be kept and rendered to the company; and when the mode of keeping the accounts is prescribed by the regulations, or by statute, directors will be responsible for any loss caused to the company by their failing to have the accounts so kept (*b*). Directors must account to the company for any of its funds in their hands (*c*).

2. A director of a company who disposes, or is a party to any disposition of the company's funds or property for any unauthorized or improper purpose, commits a breach of trust, and must compensate the company for the loss it thereby sustains.

The legal results arising from the disposition of a company's property are the same, whether the disposition is *ultra vires* of the directors only, or of the company; except that in the former case the unauthorized disposition may be ratified by the company in general meeting, or the company may release the directors from all liability therefor. A director commits a breach of trust even if he, *bonâ fide*, but mistakenly, believes that in disposing of the property of the company he is acting within his powers (*d*), or where he is only guilty of negligence (*e*).

The above rule has been applied to cases where a director has been a

(*b*) *Leeds Estate Building and Investment Co.* v. *Shepherd* (1887), 36 C. D. 787; *Davies' Case* (1890), 45 C. D. 537.

(*c*) *Cramer* v. *Bird* (1868), 6 Eq. 143.

(*d*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835; *Salisbury* v. *Metropolitan Rail. Co.* (1870), 22 L. T. 839; *Cullerne* v. *London, &c., Building Society* (1890), 25 Q. B. D. at p. 490; *Re Sharpe*, [1892] 1 Ch. at p. 158.

(*e*) *Marzetti's Case* (1880), 28 W. R. 541, where a director, without inquiry, voted for a payment for brokerage and commission as preliminary expenses, which was in fact paid for fraudulently raising the price of the company's shares in the market and for purchasing its own shares.

party to the payment of dividends out of capital (*f*); the return of capital to shareholders (*g*); the payment of remuneration (*h*) or making presents (*i*) to directors, unauthorized by the regulations of the company; lending the funds of the company in a manner unauthorized by its regulations (*k*); the payment of moneys of the company to a promoter without consideration, or for an improper purpose (*l*) the purchase by a company of its own shares (*m*); the payment of a commission in fraud of the company, there being an agreement that the greater part should be divided among its directors (*n*); the payment of secret commissions to directors on sales and purchases by the company (*o*); the payment of costs of litigation carried on by directors, but not connected with the business of the company (*p*); the issue of shares at a discount, whereby the company has suffered loss (*q*); or of debentures or fully paid shares without valuable consideration (*r*); unreasonable payments for brokerage (*s*), although not a reasonable payment for brokerage (*t*); and payments made by directors after the commencement of the winding-up (*u*). Courts of first instance have refused to make directors repay moneys of the company applied by them for purposes *ultra vires* of the company (*x*); but these decisions have been disapproved of by the Court of Appeal (*y*).

(*f*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835; *Salisbury* v. *Metropolitan Rail. Co.* (1870), 22 L. T. 839; *Rance's Case* (1870), 6 Ch. 104; *National Funds Assurance Co.* (1878), 10 C. D. 118; *Alexandra Palace Co.* (1882), 21 C. D. 149; *Flitcroft's Case* (1882), 21 C. D. 519; *Denham & Co.* (1883), 25 C. D. 752; *Oxford Building Society* (1886), 35 C. D. 502; *Leeds Estate Building Co.* v. *Shepherd* (1887), 36 C. D. 787; *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238; *Re Sharpe, supra.*

(*g*) *Mozham* v. *Grant*, [1900] 1 Q. B. 88.

(*h*) *Evans* v. *Coventry, supra*; *Oxford Building Society, supra*; *Leeds Estate Building Co.* v. *Shepherd, supra*; *Whitehall Court, Ltd.* (1887), 3 Times L. R. 402; *Liverpool Household Stores Association* (1890), 59 L. J. Ch. 618.

(*i*) *George Newman & Co.*, [1895] 1 Ch. 674.

(*k*) *Charitable Corporation* v. *Sutton* (1742), 2 Atk. 400; *Liquidator of Caledonian Heritable Trust Security Co.* v. *Carron's Trustees* (1882), Sc. S. C. 4th Series, Vol. 9, p. 1115.

(*l*) *Englefield Colliery Co.* (1878), 8 C. D. 388; *Ex parte Pelly* (1882), 21 C. D. 490; *Merchants' Fire Office* v. *Armstrong*, [1901] W. N. 163.

(*m*) *Evans* v. *Coventry, supra*; *Land Credit of Ireland* v. *Fermoy* (1869), 8 Eq. 7; 5 Ch. 763; *Ottoman Co.* v. *Farley* (1869), 17 W. R. 761; *Marzetti's Case, supra*; *Clayton Mill, &c., Co.* (1887), 3 Times L. R. 798.

(*n*) *General Exchange Bank* v. *Horner* (1870), 9 Eq. 480.

(*o*) *Oxford Building Society, supra.*

(*p*) *Liverpool Household Stores Association, supra.*

(*q*) *Hirsche* v. *Sims*, [1894] A. C. 654.

(*r*) *London Trust Co.* v. *Mackenzie* (1893), 62 L. J. Ch. 870; *Bland's Case*, [1893] 2 Ch. 612.

(*s*) *Imperial Mercantile Credit Association* v. *Chapman* (1871), 19 W. R. 379; *Faure Electric Accumulator Co.* (1888), 40 C. D. 141; *West of England Paper Mills* v. *Gilbert* (1891), 61 L. J. Ch. 92.

(*t*) *Metropolitan Coal Consumers' Association* v. *Scrimgeour*, [1895] 2 Q. B. 604.

(*u*) *Neath Harbour, &c., Works* (1887), 56 L. T. 727.

(*x*) *Pickering* v. *Stephenson* (1872), 14 Eq. 322, and *Studdert* v. *Grosvenor* (1886), 33 C. D. 528.

(*y*) *Cullerne* v. *London, &c., Building Society* (1890), 25 Q. B. D. at p. 490; *Re Sharpe*, [1892] 1 Ch. at p. 165.

Where a company purchases its own shares, and they are transferred to directors as trustees for the company, and the transfers are registered, the directors become personally liable as contributories; for the directors by allowing the transfers to be registered, hold themselves out to the world as shareholders, and are estopped from denying their liability on the shares (*z*). Where the transfers are not registered, the liability does not arise (*a*). Such a transaction being *ultra vires*, the directors cannot obtain any indemnity from the company.

Where directors fail to apply certain funds of the company for a purpose imperatively directed by the company or its regulations, such funds, by being otherwise used, are virtually applied for an unauthorized purpose, *e.g.* where a company resolves that a certain part of its income shall be invested upon specified securities, and the directors fail to make such investment (*b*).

A director who knowingly allots shares to an infant must make good any loss thereby caused to the company (*c*); but directors of a private company who, with the consent of all its members, allotted shares without consideration, were held not to have incurred any liability to the company (*d*), but they are liable if it is intended that any part of the capital should be offered to the public (*e*).

A director is not personally liable in respect of being a party to the payment of dividends out of capital, or the making advances on improper securities, if in so acting he has been misled by officers of the company in whom he was justified in placing his confidence (*f*).

3. A person who receives moneys or property of a company with notice that its directors are committing a breach of trust in paying or transferring the same, is compellable to make the same good to the company, with interest thereon at 4 per cent. per annum (*g*).

(*z*) See *Cree* v. *Somervail* (1879), 4 A. C. 648.

(*a*) *Gray's Case* (1876), 1 C. D. 664. See also *Saunders's Case* (1864), 2 De G. J. & S. 101.

(*b*) *British Guardian Co.* (1880), 14 C. D. 335.

(*c*) *Ex parte Wilson* (1872), 8 Ch. 45, where all the shares of the company having been issued the director was ordered to pay the arrears of calls due on the shares alloted to infants.

(*d*) *British Seamless Paper Box Co.* (1881), 17 C. D. 467; *Innes & Co.*, [1903] 2 Ch. 254. Cf. *Hadley & Co.* v. *Hadley* (1897), 77 L. T. 131.

(*e*) *London Trust Co.* v. *Mackenzie* (1893), 62 L. J. Ch. 870.

(*f*) *Dovey* v. *Corey*, [1901] A. C. 477; *Préfontaine* v. *Grenier*, [1907] A. C. 101.

(*g*) See *Bryson* v. *Warwick Canal Co.* (1853), 4 De G. M. & G. 711; *Holmes* v. *Newcastle Abattoir Co.* (1875), 1 C. D. 682; where shareholders were ordered to refund to the company capital divided among them; *Lund* v. *Blanchard* (1844), 4 Ha. 9.

This rule was applied in a case where it was held that the directors of a company had purchased its own shares, and in payment therefor had paid 230,000*l.* of its moneys to a bank, and the bank was ordered to repay the same, with interest to the company (*h*), but upon the appeal of two of the defendants this decision was reversed upon the ground, *inter alia*, that the 230,000*l.* never was the money of the company, and that the whole transaction was an illegal and fraudulent scheme (*i*). The rule has also been applied in the case of a building society (*k*).

Where a company, in pursuance of an *ultra vires* agreement with another company, paid two dividends to the shareholders of the latter company, it was held that the amounts so paid could not be recovered back from the company, because *in pari delicto, potior est conditio possidentis;* but *quære* whether the decision is right, as the *ultra vires* agreement was really not the act of the company at all. The decision can, however, be supported upon the ground that the payments were made direct to the shareholders, who had no notice of the breach of trust (*l*).

It is impossible to define with strict accuracy what constitutes a director a party to a breach of trust, as in each case it is a question of fact; but it is submitted that the two following rules embody the result of the various cases in which this point has been considered by the Court.

4. Any director who assists in doing acts, or knowingly permits acts to be done, which amount to a breach of trust, is a party thereto (*m*).

The only way in which a director can protect himself, who knows that his co-directors are about to commit a breach of trust, is to apply to the Court for an injunction to restrain them from doing so. If he does nothing, or only protests against their acts, he is liable for the breach of trust (*n*); *à fortiori*, if afterwards he does something to carry into effect the breach of trust, *e.g.* by signing a cheque for part of an unauthorized loan (*o*). A managing director of a company who is cognizant of a breach of trust is just as responsible as any other director, although he does not sanction the breach of trust by voting in favour of it, and its articles provide that "he shall act under the orders and directions of the board" (*o*). A director who signs cheques given by the company in payment for the purchase of its own shares, without knowing or inquiring

(*h*) *Gray* v. *Lewis* (1868), 8 Eq. 526.

(*i*) *Same Case* (1873), 8 Ch. 1035.

(*k*) *Hardy* v. *Metropolitan Land Co.* (1872), 7 Ch. 427.

(*l*) *James* v. *Eve* (1873), L. R. 6 H. L. 335.

(*m*) *Lands Allotment Co.*, [1894] 1 Ch. 616.

(*n*) *Jackson* v. *Munster Bank* (1885), 15 L. R. Ir. 356; *Joint Stock Discount Co.* v. *Brown* (1869), 8 Eq. 381, 401-404.

(*o*) *Ramskill* v. *Edwards* (1885), 31 C. D. 100, 111.

for what purpose they are required, is liable to replace the amount of such cheques (*p*).

There are cases, in which, although actual knowledge of a breach of trust cannot be proved against a director, facts are proved of such a nature as to justify the Court inferring that he did know, or to estop him from denying knowledge thereof. A director is presumed to have full knowledge of the company's regulations (*q*). The tendency of later decisions is to confine the doctrine of constructive notice within very narrow limits; to cases, in fact, in which the director must have known, unless he wilfully shut his eyes, or refrained from asking questions, or acted with gross negligence (*r*). A director is not presumed to know the contents of the company's books (*s*).

5. A director who has no knowledge of a breach of trust committed by his co-directors, and does not expressly or impliedly sanction its continuance, is not liable therefor (*t*).

This rule has been applied where money, which was only loanable on heritable securities, had been lent without the defendant's knowledge without security (*u*); and where dividends were paid out of capital (*x*). A director who was not present at a meeting at the time when it was resolved to purchase the company's own shares, but was only there when the cheques were drawn in payment therefor, and denied all knowledge of the transaction, was not held liable because he did not ask what the drawers of the cheque intended to do with the money (*y*). A director is not bound to make good the amount of a cheque drawn with his sanction for a lawful purpose, which gets into the hands of the wrong person and the proceeds of which are misappropriated (*z*). A director who is present at a meeting which passes a resolution that advances shall be made on a class of securities upon which, in fact, the funds of the society cannot be invested, is not liable to make good losses sustained by the society's making advances on securities of that class, such advances

(*p*) *Land Credit Co. of Ireland* v. *Fermoy* (1869), 8 Eq. 7; 5 Ch. 763.

(*q*) *Lane's Case* (1863), 1 De G. J. & S. 504, 506.

(*r*) *Ashurst* v. *Mason* (1875), 20 Eq. 225.

(*s*) *Hallmark's Case* (1878), 9 C. D. 329; *Denham & Co.* (1883), 25 C. D. 766. The decision in *Ex parte Brown* (1854), 19 B. 97, would not now be followed.

(*t*) *Cargill* v. *Bower* (1878), 10 C. D. 502.

(*u*) *Liquidator of Caledonian Heritable Security Co.* v. *Carron's Trustees* (1882), 9 S. S. Cas. (4th Series), 1115.

(*x*) *Denham & Co., Crooks' Case* (1883), 25 C. D. 752.

(*y*) *Land Credit Co. of Ireland* v. *Fermoy* (1870), 5 Ch. 763.

(*z*) *Perry's Case* (1876), 34 L. T. 716.

being made by his co-directors alone and not by himself (*a*). This is so because such a resolution is nugatory, and no director ought to act in pursuance of it (*a*). A director who duly ceases to be a director is not liable in respect of a dividend paid out of capital in pursuance of a recommendation contained in a directors' report in which his name appeared as a director, even if he knew it so appeared, provided he took no part in preparing the report or recommending the dividend (*b*).

A person who knew of a breach of trust, but was not a party thereto, and subsequently became a director, is not liable because he took no steps to recover the money lost to the company by the breach of trust (*c*). Where a director is present at a meeting when the minutes of the preceding meeting are read and confirmed, he does not thereby become liable for a breach of trust recorded in such minutes and completed before the meeting at which he is present, he having no previous knowledge of it (*d*).

6. The company is entitled to any secret profits made by a director in dealing with its business, property, or shares (*e*).

Where shares are to be issued at a premium, and directors—upon the application of one of the allottees, and to relieve him from liability—purchase some of such shares and re-sell them at a profit, they must account to the company for the profit (*f*). So, too, where directors have improperly allotted to themselves shares at an undervalue, they must account to the company for the difference between the sum paid by them for the shares and their market value at the date of allotment (*g*). Directors who, upon the amalgamation of their company with another company, secretly receive a commission, whether as compensation for loss of office (*h*) or otherwise (*i*), must pay the same to their company or its assigns. So, too, directors who share a commission paid for "placing" shares and debentures, must account for their share to the company (*k*). A director has been ordered to refund sums he had secretly received from the company for acting as ship's husband, and

(*a*) *Cullerne* v. *London, &c., Building Society* (1890), 25 Q. B. D. 485; *Young* v. *Naval, &c., Co-operative Society of South Africa*, [1905] 1 K. B. 687.

(*b*) *National Bank of Wales*, [1899] 2 Ch. 629.

(*c*) *Forest of Dean Coal Co.* (1878), 10 C. D. 450.

(*d*) *Lands Allotment Co.*, [1894] 1 Ch. 616.

(*e*) *York & North Midland Rail. Co.* v. *Hudson* (1853), 16 B. 485.

(*f*) *Parker* v. *McKenna* (1874), 10 Ch. 96.

(*g*) *Shaw* v. *Holland*, [1900] 2 Ch. 305.

(*h*) *Gaskell* v. *Chambers* (No. 3) (1858), 26 B. 360.

(*i*) *General Exchange Bank* v. *Horner* (1870), 9 Eq. 480.

(*k*) *Imperial Mercantile, &c., Association* v. *Coleman* (1873), L. R. 6 H. L. 189; *Barrow's Case* (1880), 49 L. J. Ch. 253.

also discounts from persons trading with the company, with interest (*l*) and also secret commissions on ships built for the company, and bonuses he had received as shareholder in another company employed by the company in respect of such employment (*m*), and also an amount received by him under an agreement between him and a promoter to buy his qualification shares at par, such shares being valueless when the promoter bought them (*n*), and also the value of shares received by him as a nominal vendor but really for his services as a promoter (*o*). A company cannot, however, recover the profit received by a person on a contract made between him and the company through the instrumentality of a director who was to receive half the profit, it not being proved that such person was privy to the non-disclosure to the company of the director's interest (*p*).

7. The company is entitled to any secret profits made out of its funds by a promoter in promoting it or dealing with it while he is a promoter.

In *Lydney and Wigpool Iron Ore Co.* v. *Bird* (*q*), Lindley, L.J. (delivering the judgment of the Court), said: "A promoter of a company is accountable to it for all moneys secretly obtained by him from it, just as if the relationship of principal and agent, or trustee and *cestui que trust* had wholly existed between him and the company when the money was so obtained." Thus, promoters have been ordered to account to the company for secret profits when moneys have been paid to them by the vendors to the company out of the purchase moneys (*r*), and for secret profits made by them as vendors to the company (*s*). In this case the promoters, in pursuance of an agreement between themselves, purchased debentures and a mortgage charged on Olympia by the National Agricultural Co., Ltd., then in liquidation, at a price considerably below par, then purchased Olympia free from incumbrances from the liquidator for 140,000*l.* and formed Olympia, Ltd., and contracted to sell Olympia to that company for 180,000*l.* The only directors of the company were the persons interested in the profits arising from the sale, and they received payment in full of the debentures and mortgage money from the liquidator. The promoters disclosed the 40,000*l.* profit they were making on the re-sale, but not the profit they made on the purchase and

(*l*) *Benson* v. *Heathorn* (1842), 1 Y. & C. Ch. 326.

(*m*) *Boston Deep Sea Fishing and Ice Co.* v. *Ansell* (1888), 39 C. D. 339.

(*n*) *Archer's Case*, [1892] 1 Ch. 322.

(*o*) *Bland's Case*, [1893] 2 Ch. 612.

(*p*) *Lands Allotment Co.* v. *Broad* (1895), 2 Mans. 470.

(*q*) (1886), 33 C. D. 85, 93.

(*r*) *Beck* v. *Kantorowicz* (1857), 3 K. & J. 230; *Whaley Bridge Calico Co.* v. *Green* (1879), 5 Q. B. D. 109; *Emma Silver Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396; *Bagnall* v. *Carlton* (1877), 6 C. D. 371; *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918; *Lydney and Wigpool Iron Ore Co.* (1886), 33 C. D. 85; *McKay's Case* (1871), 2 C. D. 1.

(*s*) *Gluckstein* v. *Barnes*, [1900] A. C. 240; *Leeds and Hanley Theatres*, [1902] 2 Ch. 809.

redemption of the debentures and mortgage, for which profit they were held to be liable. A vendor to a company is liable to pay to the company the amount of a commission which he has agreed to pay to a director for procuring the purchase by the company of the property, although at the date of the agreement he did not know but before completion he knew that the director was a director, and he is not entitled to claim the benefit of an agreement between the company and the director under which the company agrees to take a reduced amount in satisfaction of its claim against the director (*ss*). A promoter will be allowed to retain all legitimate expenses incurred by him in forming and bringing out the company, such as payments for reports of experts on the property to be acquired by the company, fees paid to solicitors and brokers, and for advertisements, printing, &c., but not moneys improperly paid by the company for underwriting its shares (*t*). In *Gluckstein* v. *Barnes* (*s*), a promoter was made accountable for secret profits, although the contract for sale to the company provided that the validity thereof should not be impeached on the ground that the vendors as promoters stood in a fiduciary relation thereto, and that they should not be required to account for any profit made by the purchase of the debentures and charges before mentioned. Where, however, a promoter received for his services a sum forming part of a larger sum paid to a third person for assistance in connection with the company, the Court of Appeal held that this sum was not a secret profit made out of the funds of the company (*u*).

8. A profit made by a director or promoter is a secret profit if made without disclosing to an independent board of directors, or to the company in general meeting, or by its articles of association, or, *semble*, by a prospectus, before the transaction with the company is completed out of which the profit arises, that he is interested in such transaction, and the nature of his interest.

Directors appointed by the vendors may constitute an independent board, but generally they do not do so, and the only effective way of making disclosures in the cases of sales by promoters to the company is to make full disclosure in the articles, and, if a prospectus is issued, in such prospectus also (*x*).

Apparently the amount of profit need not be stated if the property sold to the company was worth the price at the time of the sale (*y*).

(*ss*) *Grant* v. *Gold Exploration, &c., Syndicate*, [1900] 1 Q. B. 233.

(*t*) *Lydney and Wigpool Iron Ore Co., supra.*

(*u*) *Sale Hotel, Ltd.* (1898), 14 T. L. R. 344.

(*x*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*y*) *Chesterfield, &c., Colliery Co.* v. *Black* (1878), 37 L. T. 740.

As to the duty of promoters to procure an independent board where they are the real vendors to the company, see the observations of L.J. Romer (*z*).

9. Where a promoter or director of a company sells property to the company, and the company buys the property without knowing of his interest, the company may, upon discovering the fact, rescind the sale if the parties can be remitted to their original position, or may affirm the sale and make the promoter or director account for any profit made by him thereon, if when he bought it he was a promoter or director, or, if not, for the excess above the market price or the fair value.

This rule was applied where a director bought a ship and sold it to his company as from a stranger, and an inquiry was directed as to what he had paid for and properly expended on the ship, and he was ordered, if the total amount was less than the price paid by the company, to pay to it the difference, with interest (*a*).

If a promoter or a director of a company is desirous of selling any property to it, he should make a full disclosure to the company, or to an independent board, of everything within his knowledge which it is material for the company to know before entering into the contract for sale (*b*).

There are several cases in which rescission has been granted (*c*). Where rescission is granted, the company is entitled to a return of the consideration paid by the company, with interest at four per cent. per annum upon the cash consideration, and any dividends and interest paid on the share and debenture consideration; and if any of the shares or debentures have been sold, the company is entitled to the proceeds and interest thereon at the same rate (*c*).

Rescission will not be granted where the vendor cannot be restored to his position at the time of making the contract (*d*).

Although a company may not be able to obtain rescission by reason of its having sold the property, yet there may be a substituted cause of action in respect of the deceit, fraud, or breach of duty of the vendor (*e*); and

(*z*) *Leeds and Hanley Theatres*, [1902] 2 Ch. 809, 829.

(*a*) *Benson* v. *Heathorn* (1842), 1 Y. & C. Ch. 326. See also *Cape Breton Co., Bentinck* v. *Fenn* (1887), 12 A. C. per Lord Herschell, at p. 658.

(*b*) See *ante*, p. 221.

(*c*) *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218; *Phosphate Sewage Co.* v. *Hartmont* (1877), 5 C. D. 394. Cf. *Silkstone, &c., Coal Co.* v. *Edey*, [1900] 1 Ch. 167.

(*d*) *Sheffield Nickel, &c., Co.* v. *Unwin* (1877), 2 Q. B. D. 214; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 411.

(*e*) *Cape Breton Co., sub. nom. Bentinck* v. *Fenn* (1887), 12 A. C. 652, per Lord Herschell, at p. 664; *Sheffield, &c., Co.* v. *Unwin, supra*, 223.

the difference between the fair value and the price given by the company is recoverable as secret profits (*f*).

The price at which the promoter bought the property is not the measure of its value at the time of the sale to the company (*g*).

Where rescission is sought, the burden of proving that disclosure was made, and a fair price paid, lies upon the director or promoter; but where it is sought to make him liable for secret profits, the plaintiff, if the defendant was not a director or promoter at the time he purchased, must prove non-disclosure and unfairness of price (*h*). It appears, therefore, that rescission may sometimes be obtained when secret profits may not be recoverable (*i*). The decision of Stirling, J., in *Ladywell Mining Co.* v. *Brooks* (*k*), followed the decision of the Court of Appeal in *Cape Breton Co.* (*l*), but could be supported on the ground that the plaintiff did not prove unfairness of price.

Where the vendors of a property to a company are the same persons as its shareholders, and the consideration for the sale is shares of the company, there cannot be any profit on the transaction; but even if there were, it is not a secret profit, and the company cannot recover it (*m*).

10. A company is entitled to all profits made by a director thereof upon his contracts or dealings with the company, unless he is empowered by its regulations to enter into, or the company ratifies, such contracts or dealings (*n*).

This liability does not rest upon the contracts or dealings being made without the knowledge of a company, but upon the principle that, unless expressly so authorised, a director cannot place himself in a position where his duty and interest come into conflict. This liability does not extend to contracts made by the director and taken over by the company (*o*). The rule does not apply to remuneration received as a director of a company who holds his qualification shares as trustee for another company of which he is also a director (*p*).

(*f*) *Gluckstein* v. *Barnes*, [1900] A. C. 240; and see also observations of Bowen, L.J., in *Re Cape Breton Co.* (1885), 29 C. D. 808.

(*g*) *Whaley Bridge Co.* v. *Green* (1879), 5 Q. B. D. 109; *Ladywell Mining Co.* v. *Brooks* (1886), 34 C. D. 398; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, *supra*.

(*h*) *Re Cape Breton Co.*, *Bentinck* v. *Fenn* (1887), 12 A. C. 652.

(*i*) *Lady Forrest Mine, Ltd.*, [1901] 1 Ch. 582.

(*k*) (1886), 34 C. D. 398.

(*l*) (1885), 29 C. D. 795.

(*m*) *Ambrose Lake Tin Co.* (1880), 14 C. D. 399.

(*n*) *Ante*, p. 222.

(*o*) *Albion Steel Co.* v. *Martin* (1875), 1 C. D. 580; cf. *Ex parte Larking* (1876), 4 C. D. 566.

(*p*) *Dover Coalfield Extension*, [1908] 1 Ch. 65.

11. A director commits a breach of trust if he accepts, or is a party to the acceptance by his co-directors of, any money or property as a gift or bribe from persons dealing with the company, and is liable to repay to the company such money, or to account to the company for such property or its full value if parted with by the director.

A person is considered to be dealing with the company within the meaning of this rule while there is any question open between him and the company (*q*). The above rule applies to payments made to a person who has agreed to become a director (*r*), and also to persons entering into contracts on behalf of, or as trustees for, an intended company (*s*). Directors must account to the company for presents, whether given to them by promoters, vendors, or other persons dealing with the company. Sometimes the bribe is in money (*t*), and if applied by a director in buying qualification shares his liability to make good the money is not barred by his surrender of the shares to the company (*u*). If the money forms part of the purchase-money payable to the vendor by the company, and is given to enable the director to buy his qualification shares, and he buys them with the money, the company can either treat the shares as unpaid or demand the money (*x*); but not where the director accepts the money but pays for his shares out of his own money (*y*). The company is entitled to money received by a director from a promoter under an agreement to indemnify him against any loss on his qualification shares (*z*).

Directors who accept, as a gift, from a promoter of the company (*a*), or from a vendor (*b*), or any other persons dealing with the company, shares credited as fully paid, must pay to the company the highest value of the shares at any time while they are in their possession. Where at or about the time of the transfer other shares were allotted to *bonâ fide*

(*q*) *Eden* v. *Ridsdale, &c., Co.* (1889), 23 Q. B. D. 368.

(*r*) *Henderson* v. *Huntingdon, &c., Copper Co.* (1878), S. S. Cas., 4th series, vol. 5, p. 1.

(*s*) *Phosphate Sewage Co.* v. *Hartmont* (1877), 5 C. D. 394.

(*t*) *London & Provincial Starch Co.* (1869), 20 L. T. 390; *Madrid Bank* v. *Pelly* (1869), 7 Eq. 442; *Brighton Brewery Co.* (1868), 37 L. J. Ch. 278; *Ormerod's Case* (1877), 25 W. R. 765.

(*u*) *McLean's Case* (1885), 55 L. J. Ch. 36.

(*x*) *Hay's Case* (1875), 10 Ch. 593.

(*y*) *Eastwick's Case* (1876), 34 L. T. 84.

(*z*) *Archer's Case* [1892] 1 Ch. 322.

(*a*) *Pearson's Case* (1877), 5 C. D. 336; *De Ruvigne's Case* (1877), 5 C. D. 306; *Mitcalf's Case* (1873), 13 C. D. 169; *Carriage Co-operative Supply Association* (1884), 27 C. D. 322; *Howatson Patent Furnace Co.* (1889), 4 Times L. R. 152.

(*b*) *Postage Stamp, &c., Co.*, [1892] 3 Ch. 566; *Clarke and Helden's Case* (1877), 37 L. T. 222.

applicants, the value of the shares, as against the director, will be taken to be their par value (*e*). Where shares rise in value after the transfer, the director must pay the highest value they reached while the shares stood in his name (*d*); but this rule must be applied fairly, so that the highest value should be what the shares in question could have been sold for (*e*). Where a director has paid a part of the value of such shares, he is liable to pay the difference between the sum so paid and the value of the shares (*f*). If the shares remain in the possession of the director the company can recover them from him (*g*).

Directors cannot be placed on the list of contributories in respect of fully-paid shares so transferred to them as if such shares were unpaid (*h*).

12. The rate of interest upon moneys ordered to be paid by directors to the company in respect of a breach of trust is 4 per cent. per annum from the time of such breach until payment, except in cases of wilful fraud, or where the director has been using the funds of the company for his own profit, when the rate is 5 per cent. (*i*).

This rule has often been acted upon in cases of breaches of trust arising from directors parting with the funds or assets of a company in pursuance of some *ultra vires* transaction (*k*), or for improper purposes (*l*).

Interest is not always allowed (*m*); and in one case 5 per cent. was allowed where dividends had been paid out of capital, although not fraudulently (*n*). In case of secret profits only 3 per cent. was allowed

(*c*) *Pearson's Case, De Ruvigne's Case, Mitcalfe's Case*, and *Carriage Co-operative Supply Association, supra; McKay's Case* (1875), 2 C. D. 1.

(*d*) *Eden* v. *Ridsdale, &c., Co.* (1889), 23 Q. B. D. 368; *Nant-y-Glo, &c., Ironworks Co.* v. *Grave* (1878), 12 C. D. 738.

(*e*) See *Shaw* v. *Holland*, [1900] 2 Ch. 305.

(*f*) *Weston's Case* (1879), 10 C. D. 579.

(*g*) *Carling's Case* (1875), 1 C. D. 115, 126.

(*h*) *Ex parte Currie* (1862), 11 W. R. 46; *Carling's Case* (1875), 1 C. D. 115; *Innes & Co.*, [1903] 2 Ch. 254.

(*i*) See *Imperial Mercantile Credit Association* v. *Coleman* (1873), L. R. 6 H. L. 189, and judgment of Lord Cairns at p. 209.

(*k*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835; *Salisbury* v. *Metropolitan Rail. Co.* (1870), 22 L. T. 839; *Rance's Case* (1870), 6 Ch. 104; *National Funds Assurance Co.* (1878), 10 C. D. 118; *Flitcroft's Case* (1882), 21 C. D. 519; *Oxford Building Society* (1886), 35 C. D. 502; *Leeds Estate Building Co.* v. *Shepherd* (1887), 36 C. D. 787; *Faure Electric Co.* (1888), 40 C. D. 141; *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238; *Re Sharpe*, [1892] 1 Ch. 154.

(*l*) *York Rail. Co.* v. *Hudson* (1853), 16 B. 485.

(*m*) *British Guardian Life Assurance Co.* (1880), 14 C. D. 335.

(*n*) *Alexandra Palace Co.* (1882), 21 C. D. 149.

by the Court of Appeal (*o*). Where a director, liable to replace dividends paid out of capital, has been guilty of wilful fraud, 5 per cent. is allowed (*p*).

Directors have been ordered to pay interest at the rate of 5 per cent. where they have made secret profits (*q*) or received bribes (*r*). In *York Rail. Co.* v. *Hudson* (*s*) the chairman of the company was ordered to pay to the company the profits made by him upon the sale of shares belonging to the company, which he had treated as his own, with interest at 5 per cent.

When interest is given in the nature of damages for a fraudulent breach of trust a director is not entitled, under sect. 40 of the Income Tax Act, 1853, to deduct income tax from the interest (*t*).

13. The liability of directors for breaches of trust and of directors and promoters in respect of secret profits is joint and several.

Any director who is a party to a breach of trust may be compelled to make good the whole of the loss to the company thereby caused. Thus, an action may be brought against one director alone, and he will be ordered to make good the total amount of the loss; or, if several directors are successfully sued, the order to repay the amount will be made against them jointly and severally, and execution can, in default of payment, be levied against one of them for the whole amount.

The amount recoverable from directors does not depend upon the extent to which they have profited by the breach of trust. Thus, where directors have paid dividends out of capital, they are liable not only for the dividends received by them on their own shares, but for the total amount of dividends paid. Generally, the judgment, in cases of breaches of trust, orders the directors jointly and severally to pay the amount of the loss occasioned to the company, together with interest and costs (*u*). Where, however, the breaches of trust by the defendants are not the same, a director will not be ordered to pay more for costs than he would have to pay had he been a sole defendant (*x*).

(*o*) *Gluckstein* v. *Barnes*, [1900] A. C. 240; but see Lord Macnaghten's comment at p. 255.

(*p*) *Denham & Co.* (1883), 25 C. D. 752.

(*q*) *Benson* v. *Heathorn* (1842), 1 Y. & C. Ch. 326; *Oxford Building Society* (1886), 35 C. D. 502.

(*r*) *Henderson* v. *Huntingdon Copper, &c., Co.* (1878), Sc. S. Cas. 4th series, vol. 5, p. 1; *Benson* v. *Heathorn, supra*; *Archer's Case*, [1892] 1 Ch. 322. In *Nant-y-Glo, &c., Co.* v. *Grave* (1878), 12 C. D. 738, only 4 per cent. was allowed.

(*s*) (1853), 16 B. 485.

(*t*) Per Wright, J., *National Bank of Wales, Ltd.*, [1899] 2 Ch. 651.

(*u*) See *Oxford Building Society* (1886), 35 C. D. 502; *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787; *Faure Electric Co.* (1888), 40 C. D. 141.

(*x*) *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787, 809.

The liability of directors to account to the company for secret profits and for bribes is joint and several, although, in some cases, directors have been only made severally liable. In these cases, apparently, the point was not taken, or, if taken, was not insisted upon (*y*). Promoters are jointly and severally liable in respect of secret profits (*z*).

14. The liability of a director or promoter for a breach of trust or misfeasance can be enforced against him by action, and also by a summary proceeding in the winding up of a company governed by the Companies Acts.

An action of this kind, commenced while the company is a going concern, is usually brought by the company; but where the breach of trust is incapable of ratification, any shareholder, suing on behalf of himself and all other shareholders, may bring the action (*a*); but not as a rule when the act complained of is within the powers of the company, although not within those of the directors, as that can be ratified by the company (*b*). As to the relief to be obtained in the winding-up, see *post*, p. 461.

15. The liability of a director for a breach of trust can be enforced by action against his estate after his death.

It is clear that the death of a director does not take away the right of the company arising in respect of his breaches of trust, and his legal personal representatives are liable therefor to the extent of the estate of the testator (*c*). The liability cannot, however, be enforced under sect. 215 of the Companies Act, 1908 (*d*).

16. Where directors apply the funds of the company for

(*y*) As to remuneration improperly divided among directors, see *Oxford Building Society* (1886), 35 C. D. 502, where the point was not insisted upon as to part of such remuneration, the amount being only about 300*l*. and the directors had been made jointly and severally liable for about 50,000*l*. for paying dividends out of capital; and *Leeds Estate Co.* v. *Shepherd* (1887), 36 C. D. 787.

(*z*) *Gluckstein* v. *Barnes*, [1900] A. C. 247, 255.

(*a*) See *ante*, p. 46.

(*b*) See *ante*, pp. 110-112.

(*c*) *Ramskill* v. *Edwards* (1883), 31 C. D. 100, which was an action claiming contribution in respect of money which a director had paid under a judgment in an action for breach of trust. *Re Sharpe*, [1892] 1 Ch. 154.

(*d*) See *post*, p. 462.

purposes which are not within its powers, such misapplication cannot be ratified (*e*).

17. Where directors apply the funds of the company for purposes unauthorized by their own powers, but within the powers of the company, the company may ratify such application, in which case the directors will incur no liability therefor (*f*).

18. A claim against a director for a breach of trust in improperly disposing of the company's property, which is not fraudulent, is barred by the Trustee Act, 1888, unless the claim is to recover property or funds of the company still retained by the director or previously received by him and converted to his use (*g*).

The Trustee Act, 1888, does not in express terms apply to directors. The interpretation clause, sect. 1 (3), however, makes the expression "trustee," as used in the Act, include a trustee whose trust arises by construction or implication of law; and as a director can commit a breach of trust, it is clear that he is a trustee within the meaning of the Act, and entitled to avail himself of the protection afforded by the 8th section (*h*). He must, however, in defending an action for breach of trust, expressly plead the Statute of Limitations. It is conceived that the time within which the action could be brought would be within six years from the time when the breach of trust was committed (*i*). Prior to the 1st January, 1890, when sect. 8 of the Trustee Act, 1888, became operative, the Statute of Limitations could not be set up by directors as a defence in actions against them for breach of trust in parting with moneys or property of the company for an unauthorized or improper purpose (*k*); but the statute could be pleaded where the claim was for money not belonging to the company, which the director received in fraud of the company; and, in such a case, the statute began to run from the time when the company discovered the fraud (*l*). This Act does not extend to Scotland.

(*e*) See *ante*, p. 108.

(*f*) See *ante*, p. 107.

(*g*) Trustee Act, 1888, ss. 1 (3) and 8; *Thorne* v. *Heard*, [1895] A. C. 495.

(*h*) *Lands Allotment Co.*, [1894] 1 Ch. 616.

(*i*) 21 James I. c. 16, amended by 4 & 5 Anne, c. 3, and 19 & 20 Vict. c. 97, s. 12.

(*k*) *Lindsay Petroleum Co* v. *Hurd* (1874), L. R. 5 P. C. 221; *Flitcroft's Case* (1882), 21 C. D. 519; *Re Sharpe*, [1892] 1 Ch. 154.

(*l*) *Metropolitan Bank* v. *Heiron* (1880), 5 Ex. D. 319.

19. The liability of a director or promoter to the company is extinguished by the dissolution of the company (*m*), unless it has been dissolved under section 242 of the Companies Act, 1908, or the dissolution has been declared void by the Court (*n*).

20. An order of discharge in bankruptcy releases a bankrupt director or promoter from any debt or liability to the company which is provable in the bankruptcy, unless it was incurred by means of any fraud or *fraudulent* breach of trust to which he was a party, or in respect whereof he has obtained forbearance by any such fraud (*o*).

The corresponding section of the Bankruptcy Act, 1869, s. 49, did not contain the word "fraudulent," and an order of discharge granted under that Act did not bar a claim against a director for payment of dividends out of capital (*p*) or improperly investing the funds of the company (*q*). It is submitted that in all cases of breach of trust, where a director has not acted with the view of securing any personal benefit for himself, an order of discharge in bankruptcy will now release him from liability in respect of past breaches of trust. Where, however, a director is liable in respect of bribes accepted by him out of moneys paid by the company, or a director or promoter is liable for profits made out of the company's business without its knowledge, such liability is incurred "by means of fraud," or fraudulent breach of trust, within the meaning of the Bankruptcy Act, 1883, s. 30, and is therefore not barred by an order of discharge (*r*). Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, are not provable in the bankruptcy. (Sect. 37 (1).)

21. A director who has, in pursuance of a judgment, paid to a company the amount found due for a breach of trust which was not fraudulent, is entitled

(*m*) *Pinto Silver Mining Co.* (1878), 8 C. D. 273; and *London, &c., Insurance Co.* (1879), 11 C. D. 140 (voluntary winding up); *Coxon* v. *Gorst*, [1891] 2 Ch. 73 (compulsory winding up).

(*n*) C. A. 1908, s. 223. If the dissolution is declared void, such proceedings may be taken as might have been taken if the company had not been dissolved.

(*o*) Bankruptcy Act, 1883, s. 30.

(*p*) *Flitcroft's Case* (1882), 21 C. D. 519.

(*q*) *Ramskill* v. *Edwards* (1885), 31 C. D. 100.

(*r*) *Emma Silver Mining Co.* v. *Grant* (1899), 17 C. D. 122.

to contribution from the other directors or persons who were parties thereto.

Thus, where shares of a company were purchased in pursuance of an *ultra vires* resolution, and transferred into the name of a director of the purchasing company in trust therefor, his co-directors, who concurred in such purchase, were ordered to contribute to the calls then paid by him and all further calls to be paid by him on such shares, with interest at 4 per cent. per annum (*s*). A director's right to contribution cannot be enforced in winding-up proceedings (*t*); an action should therefore be brought for that purpose. It is submitted that in such an action the defendant is not estopped from disputing the validity of the judgment by which the plaintiff was made liable for a breach of trust (*u*), and that the only way to bind a person who is liable to make contribution is for the defendant in the original action to obtain leave in that action, under the Rules of the Supreme Court, Ord. XVI. r. 48, to issue a third-party notice and serve it upon him. Where, in pursuance of an *ultra vires* agreement, the shares of a director have been cancelled for the purpose of relieving him from his liability thereon, he is not entitled to contribution from his co-directors for calls made thereon after the cancellation is declared void (*x*).

Where directors are ordered to pay to the company dividends paid out of capital, it is usual to insert a proviso in the order that it shall be without prejudice to any right which they or any of them may have against the shareholders who received such dividends (*y*). There is, however, no reported case of any action having been brought against shareholders seeking to enforce any such right. Where a shareholder receives such dividends without notice of any breach of trust, there does not appear to be any principle of law under which he incurs any liability. Such a proviso can only be of service where a shareholder is a party to the breach of trust committed by paying the dividends. Thus, in *Re Alexandra Palace Co.* (*z*), the order was made without prejudice to the right of the directors to be indemnified by any shareholders or creditors of the company who were parties or privies to the payment of dividends out of capital, but the directors were refused the leave of the Court to use the name of the official liquidator in suing to recover such dividends from shareholders who had received them with notice that they were paid

(*s*) *Ashurst* v. *Mason* (1873), 20 Eq. 225. See also *Ramskill* v. *Edwards* (1885), 31 C. D. 100.

(*t*) *Alexandra Palace Co.* (1883), 23 C. D. 297.

(*u*) Cf. *Parker* v. *Lewis* (1873), 8 Ch. 1056.

(*x*) *Walker's Case* (1856), 8 De G. M. & G. 607.

(*y*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835.

(*z*) (1882), 21 C. D. 149.

out of capital (*a*). But just as a director, who has paid to the company, in pursuance of an order of the Court, the moneys it has lost by his breach of trust, can obtain contribution from his co-directors who were parties to it, so directors who by order of the Court have made good to the company dividends paid out of capital, can get contribution from shareholders who had notice of the breach of trust to the extent of the dividends received by them. And contribution has been enforced in a case where directors returned part of the company's capital to its members, although no reduction of capital had been sanctioned by the Court (*b*). Cases of this kind, however, with regard to dividends, would be rare, for as a general rule shareholders only know what directors tell them as to what profits have been earned. Leave to serve a third-party notice under the Rules of the Supreme Court, Ord. XVI. r. 48, on 450 shareholders was refused on an application by directors, who were defendants in an action seeking to make them liable for dividends alleged to have been paid out of capital (*c*).

22. If in any proceeding against a director or person occupying the position of a director for negligence or breach of trust it appears to the Court that he is or may be liable, but has acted honestly and reasonably, and ought fairly to be excused, the Court may relieve him either wholly or partly from his liability upon such terms as the Court may think proper (*d*).

II. *Negligence.*

In addition to the liabilities arising out of the fiduciary relation subsisting between a director and the company, there are also other liabilities towards the company arising out of his position as director, *e.g.*, liability for negligence, and his liability in the winding up of the company to give information about its affairs and property.

23. A director, in the performance of his duties, is bound to exercise at least the same amount of discretion as he would exercise in relation to his own affairs, or otherwise he will be liable to the company for any damages directly caused by failing to exercise such

(*a*) *Alexandra Palace Co.* (1883), 23 C. D. 331.

(*b*) *Moxham* v. *Grant*, [1900] 1 Q. B. 88.

(*c*) *Wye Valley Rail. Co.* v. *Hawes* (1880), 16 C. D. 489.

(*d*) C. A. 1908, s. 279.

discretion if his negligence is in a business sense culpable or gross (*e*).

It is submitted that the principle applicable to an agent, as formulated in the Indian Contract Act, 1872, s. 212, applies equally to a sole director or a managing director, but only in a lesser degree to other directors, because in the latter case they usually act as a board. This section enacts that "an agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which is indirectly or remotely caused by such neglect, want of skill, or misconduct." It has been said that if directors are guilty of such negligence that it cannot be said in doing what they did they attempted to perform their duties as directors, then they are guilty of negligence and their liability is the same as that of an agent (*f*).

It is stated in the judgment of the Court of Appeal, in *Lagunas Nitrate Co.* v. *Lagunas Syndicate* (*g*), that if directors act within their powers—if they act with such care as is reasonably to be expected of them, having regard to their knowledge and experience—and if they act honestly for the benefit of the company they represent, they discharge their equitable as well as their legal duty to the company. A director having no suspicion that anything is wrong is not guilty of actionable negligence if he makes no special inquiries in order to ascertain that all is right (*h*).

The liability of a director for negligence may be extinguished by the subsequent conduct of the company. For example, in an action by a banking company and its liquidators against a director for grossly neglecting his duty (a) during two years in which he attended the meetings of directors, and (b) during former years in which he did not attend them, it was held (1) that he could not be made liable for losses on advances on accounts current with persons to whom the bank had continued to make advances after he had resigned; (2) that any liability which he might have incurred in allowing advances by way of discount on bills had been extinguished by the bank subsequently renewing the bills and making new advances; and (3) that any liability for loss which

(*e*) *National Bank of Wales*, [1899] 2 Ch. 629; *Overend, Gurney & Co.* v. *Gibb* (1872), L. R. 5 H. L. 480.

(*f*) Per Vaughan Williams, J., *New Mashonaland Co.*, [1892] 3 Ch. at pp. 585, 586.

(*g*) [1899] 2 Ch. 392, 435.

(*h*) *National Bank of Wales, Ltd.*, [1899] 2 Ch. 629; S. C. [1901] A. C. 477.

he might have incurred by allowing the funds of the bank to be expended in payment of premiums on policies of insurance effected on lives of certain debtors to the bank, had been extinguished by the sale of such policies by the bank without notice to such director (*i*).

24. Where directors, having authority to do so, appoint a person to act for the company in its business, he is an agent of the company for such part of its business as is intrusted to him, and the directors are not responsible to the company for his acts and negligences if, in selecting him, they have exercised the same amount of discretion as a man of ordinary prudence would exercise in its own case.

This rule is adapted from the Indian Contract Act, 1872, s. 194; but there are not, so far as the author is aware, any company cases bearing on this point.

25. If directors, acting within their powers, by imprudence or error of judgment, but not fraudulently, or by gross negligence, cause loss to the company, they are not personally liable to make good such loss.

The distinction between the liability of directors for losses caused by them in acting beyond their powers and within their powers is pointed out by Lord Hardwicke in a very early case (*k*). The above rule has been applied where directors of a bank have made loans to persons who failed to repay them (*l*); where directors purchased a business for the acquisition of which the company was formed (*m*); where directors approved of a transfer of shares on which there was a heavy liability, and such liability was irrecoverable from the transferee in the winding-up (*n*); where directors had included in their accounts bad debts as good, but it was not proved they did so with knowledge (*o*); and in other cases (*p*).

(*i*) *Western Bank of Scotland* v. *Baird's Trustees* (1872), Sc. S. C. (3rd Ser.), Vol. 11, p. 96.

(*k*) *Charitable Corporation* v. *Sutton* (1742), 2 Atk. 405.

(*l*) *Turquand* v. *Marshall* (1869), 4 Ch. 376; *Grimwade* v. *Mutual Society* (1885), 52 L. T. 409; *New Mashonaland Co.*, [1892] 3 Ch. 577.

(*m*) *Overend, Gurney and Co.* v. *Gibb* (1872), L. R. 5 H. L. 480; *S. C.*, 4 Ch. 701.

(*n*) *Faure Electric, &c., Co.* (1888), 40 C. D. 141.

(*o*) *Marzetti's Case* (1880), 28 W. R. 541. See also *National Bank of Wales*, *supra*.

(*p*) *Liverpool Household Stores* (1890), 59 L. J. Ch. 616.

III. *Statutory Liabilities.*

26. A director or promoter of a company governed by the Companies Acts may, in the winding-up of the company, be summoned to appear before the Court to produce any documents in his custody or power relating to the company, and to be examined on oath as to its affairs or property (*q*).

IV. *Contractual Liabilities.*

Sometimes a director of a company enters into a contract with the company, *e.g.*, to become its managing director or a trustee for holders of its debentures or debenture stock. In ascertaining the rights and liabilities of such a director regard must be had to the terms of the contract as well as to the articles of association. If a managing director has covenanted with the company for valuable consideration not to carry on the business carried on by the company and the area and terms of restriction are not more than are reasonably necessary to protect the company, he can be restrained by injunction from breaking his covenant (*r*); but in the absence of an agreement to that effect a chairman, managing director, or director of a company cannot be restrained from acting as a director of another company or otherwise competing with the company (*s*).

(*q*) See *post*, p. 452.

(*r*) *Nordenfelt* v. *Maxim-Nordenfelt Co.*, [1894] A. C. 535.

(*s*) *London and Mashonaland Exploration Co.* v. *New Mashonaland Exploration Co.*, W. N. (1891), 165.

CHAPTER XXVII.

LIABILITIES OF DIRECTORS AND PROMOTERS TO HOLDERS OF SHARES, DEBENTURES AND DEBENTURE STOCK.

HAVING dealt with the liabilities of directors and promoters enforceable by the company, we have next to consider the other liabilities which they may incur. In this chapter the liabilities of directors and promoters to shareholders and holders of debentures and debenture stock will be considered under the heads of—I. Misrepresentation at Common Law; II. Sect. 84 of the Companies Act, 1908; and III. Sect. 81 of the Companies Act, 1908.

I. *Misrepresentation at Common Law.*

The liability of directors and promoters for misrepresentation may be divided into two classes, viz.:—(1) Liability at common law, and (2) liability by statute. The common law liability may be enforced against the directors or promoters of any company or corporation by any person to whom the misrepresentation is made. The statutory liability exists only with respect to the directors and promoters of companies governed by the Companies Acts, and can only be enforced by subscribers for the shares, debentures, or debenture stock of such companies. The common law liability of directors and promoters will first be briefly dealt with.

Numerous cases have occurred in which persons have sought to make directors personally liable in damages for misrepresentation. The majority of such actions have been brought by persons who alleged that they were induced to become shareholders in a company by the misrepresentation of its directors. Where a person has been induced by a false statement of directors to take shares he has upon discovering the misrepresentation two remedies: one against the company, and the other against the directors. As against the company he can repudiate his shares, and obtain a rescission of the contract to take them, and a return of the money he has paid for them with interest thereon, and the removal of his name from the register as the holder of such shares. As against the directors he may either keep the shares and recover damages against

them if the shares were not at the time he subscribed for them worth what he gave for them, or having obtained rescission he may recover any damages he may have sustained. The shareholder can combine in the same action his claim for rescission against the company and his claim at common law or under statute for damages or compensation against the directors and promoters, when the claim is for relief in respect of the issue of a prospectus (*a*).

Where the action against directors is brought in the winding-up, and the shares in respect of which the action is brought are only partly paid up, the shareholder is entitled, in addition to the difference between what he has paid upon them and the value of his shares, to be indemnified against future calls. The purchaser of a chattel who is induced to buy it by the fraud of the owner's agent can affirm the contract and sue both the owner and the agent for any damages he has sustained by such purchase (*b*). But a shareholder cannot, if he retains shares he has subscribed for on the faith of a fraudulent representation, sue the company for damages; nor can he do so even if rescission is impossible by reason of the winding-up of the company (*c*). If the shareholder does not repudiate his shares before the winding-up of the company begins, he is debarred from obtaining either rescission or damages against the company (*d*); but the liability of the directors still remains. The liability of directors or promoters at common law does not in any way depend upon the fiduciary relation subsisting between them and the company, and actions at common law for misrepresentation, generally known as actions of deceit, may be brought against the directors or promoters of any company, building society, or other corporation. If, however, the person making the misrepresentation dies before the action is brought, his legal personal representative cannot be sued in respect thereof unless his estate benefited by the fraud, and his estate is only liable to the extent it so benefited (*e*). The same rule applies even where the action has been commenced but he dies before judgment (*f*). The personal representatives of the deceased person can, however, sue in respect of such deceit if the action is commenced within six calendar months after the grant of probate or letters of administration, and the cause of action accrued less than six calendar months before his death (*g*).

An action of deceit differs in several respects from an action under

(*a*) *Frankenburg* v. *Great Horseless Carriage Co.*, [1900] 1 Q. B. 504.

(*b*) *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317; *Cape Breton Co.* (1885), 29 C. D. 809, per Bowen, L.J.

(*c*) *Houldsworth* v. *Glasgow Bank* (1880), *supra*. Cf. *Burgess's Case* (1880), 15 C. D. 507, and *Addlestone Linoleum Co.* (1887), 37 C. D. 191.

(*d*) See *ante*, p. 142.

(*e*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377.

(*f*) Cf. *Phillips* v. *Homfray* (1883), 24 C. D. 439.

(*g*) 4 Edw. 3, c. 7; 3 & 4 Will. 4, c. 42, s. 2; *Twycross* v. *Grant* (1878), 4 C. P. D. 40.

sect. 84 of the Companies Act, 1908 (*h*), and, for the sake of convenience, the points of difference will alone be treated of in this section, and the rules of law applicable to both classes of action will be dealt with in sect. 11 of this chapter. Either a director or a promoter may make a fraudulent representation in order to induce a person to take shares in a company, or to subscribe for debentures, or to act in some other way to his damage; and the rule of law applicable to such cases is the following:—

1. If a director or promoter knowingly makes a false representation to a person as to a matter of fact then ascertained, in order to induce such person to act thereon, and he acts thereon relying on such representation and thereby sustains damage, such damage may be recovered from the director or promoter.

The burden of proof lies upon the plaintiff, and he has to prove the following facts in order to sustain his action:—

(1) That the representation was made by the director or promoter.
(2) That the representation was false.
(3) That the director or promoter knew that the representation was false.
(4) That the representation was as to a matter of fact then ascertained.
(5) That the representation was made to the plaintiff with the view of inducing him to act thereon.
(6) That the plaintiff acted in reliance upon such representation.
(7) That by so doing the plaintiff has sustained damage.

Even if the plaintiff succeeds in proving all these facts, he will fail if the cause of action arose more than six years before action commenced, and the defendant sets up the Statute of Limitations as a defence (*i*); but such an action is not barred by an order of discharge in bankruptcy (*k*).

(1) A director or promoter is only liable for fraudulent misrepresentation if he made it, or authorized it to be made, or was a party to its being made.

Where the misrepresentation is contained in a prospectus, the presumption is that the directors whose names are upon it authorized its issue (*l*); and if they did not, they must prove that fact. And where it

(*h*) This section re-enacts the Directors Liability Act, 1890, as amended by s. 33 of the C. A. 1907.
(*i*) See *post*, p. 384.
(*k*) See *post*, p. 384.
(*l*) See *Denham & Co.* (1883), 25 C. D. at p. 765.

is stated on the prospectus that one of the persons named as a director will not join the board until some event has happened or period of time has elapsed, he may, although the prospectus is issued before such event has happened or period has elapsed, by his acts before or after its issue, authorize or ratify such issue (*m*). A director may also, by his conduct, ratify an issue of a prospectus made without his authority, *e.g.* by circulating copies of it (*n*). If, however, a director proves that he did not issue or authorize the issue of the prospectus he will not be liable (*o*). If a person, being acquainted with all that the other directors know, consents to become a director, knowing, as a matter of course, that a prospectus will be issued, and signs the memorandum and articles of association referred to in the prospectus, and upon receipt of a prospectus fills up and signs the form of application for shares which is printed with and forms part of it, he must be taken to have been a party to the issuing of such prospectus (*p*). Where directors employed a firm of brokers to place debentures, and the brokers issued a prospectus bearing the directors' names, containing untrue statements, on the faith of which persons bought debentures, it was held that as the directors were not aware of the falsehood of such statements, and derived no personal benefit from the receipt of the money paid for such debentures, they were not liable (*o*).

Actions by holders of shares or debentures against promoters for inducing them to take shares or debentures by false representations are not of frequent occurrence, because it is difficult to prove that the promoters authorized the statements in the prospectus; but promoters have been held liable in such actions (*q*). A promoter is liable if the misrepresentation is made with his knowledge or consent or by his agent (*r*).

(2) The representation must be false. The cases as to what constitutes a false representation are dealt with at pp. 378, *et seq.*

(3) The director or promoter must have made the false representation knowing it to be false, or without belief in its truth, or recklessly without caring whether it were true or false. If persons make assertions, as to which they have no belief whether they are true or untrue, their civil liability is as great as if they had asserted that which they knew to be untrue (*s*). A false statement made through carelessness, and without

(*m*) *Glasier* v. *Rolls* (1889), 42 C. D. at p. 444.

(*n*) *Peek* v. *Derry* (1889), 37 C. D. 541.

(*o*) *Weir* v. *Barnett* (1877), 3 Ex. D. 32; *Weir* v. *Bell* (1878), 3 Ex. D. 238. See also *Cargill* v. *Bower* (1878), 10 C. D. 502.

(*p*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 392.

(*q*) *Dunnet* v. *Mitchell* (1885), 12 Rett. 40 (a Scotch case); *Arnison* v. *Smith* (1889), 41 C. D. 348.

(*r*) *Glasier* v. *Rolls* (1889), 42 C. D. at p. 441.

(*s*) *Reese Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64, as explained in *Derry* v. *Peek*, *infra*, at p. 371.

reasonable ground for believing it to be true, may be evidence of fraud, but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent, however unreasonable the belief may be (*t*).

(4) The representation must be as to a matter of fact ascertained at the time it was made (*u*).

(5) The representation must have been made to the person suing the director or promoter, with the view of inducing him to act thereon. Where the representation is contained in a prospectus which has been issued to the public and invites subscription for shares, it is clear that the representation is made to all persons to whom the prospectus comes, and if the prospectus is advertised it is made to all persons who read the prospectus and apply for an allotment of shares (*x*). The proper purpose of a prospectus of an intended company is to invite persons to become allottees of its shares. When it has performed this office it is exhausted. In order that a transferee of shares should have a right of action in respect of his having, in reliance upon the truth of such a prospectus, bought shares and thereby suffered loss, he must show some direct connection between the persons issuing such prospectus and himself in regard to the communication thereof (*y*). Upon the same principle, it is difficult to conceive any case in which directors of a company could be made liable to persons who bought shares, or applied for shares forming part of a new issue, on the strength of statements contained in reports and balance-sheets submitted by the directors to its shareholders (*z*). Where, however, a prospectus or report is issued, not merely to invite persons to subscribe for shares, but in order also to induce persons to buy shares in the open market, any person who buys shares on the faith of the prospectus or report may recover damages from the persons issuing it, if it contains representations which were false to the knowledge of such persons (*a*).

(6) The plaintiff must have acted in reliance upon the misrepresentation (*b*).

(*t*) *Derry* v. *Peek* (1889), 14 A. C. 337; *Glasier* v. *Rolls* (1889), 42 C. D. 436; *Angus* v. *Clifford*, [1891] 2 Ch. 449; *Jackson* v. *Turquand* (1862), L. R. 4 H. L. 305.

(*u*) See *post*, p. 377.

(*x*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377; *Swift* v. *Winterbotham* (1873), L. R. 8 Q. B. 253; *Richardson* v. *Silvester* (1873), L. R. 9 Q. B. 34; *Roussell* v. *Burnham*, [1909] 1 Ch. 127.

(*y*) *Peek* v. *Gurney*, *supra*, overruling *Seymour* v. *Bagshaw* (1856), 18 C. B. 903, and *Bedford* v. *Bagshaw* (1859), 4 H. & N. 538 (where directors were held liable for false representations, although not made to the plaintiffs), and explaining *Gerhard* v. *Bates* (1853), 2 El. & Bl. 476, *q.v.*, and also *Barry* v. *Croskey* (1861), 2 J. & H. 1.

(*z*) *Barrett's Case* (1865), 3 De G. J. & S. 30.

(*a*) *Andrews* v. *Mockford*, [1896] 1 Q. B. 372; *Cullen* v. *Thomson* (1862), 4 Macq. H. L. 441; *Stainbank* v. *Fernley* (1839), 9 Sim. 556.

(*b*) See *post*, p. 376.

(7) The plaintiff must have suffered damage by acting upon such misrepresentation (*c*).

II. *Sect.* 84 *of the Companies Act*, 1908.

In order to understand the alteration made in the law by the Directors' Liability Act, 1890, it is necessary to remember that, prior to its passing, a person who subscribed for shares or debentures of a company on the faith of an untrue statement contained in a prospectus, could only recover damages from the directors or promoters issuing the prospectus by means of an action of deceit, in which he had to prove actual fraud; and that although a false statement made through carelessness, and without reasonable ground for believing it to be true, may be evidence of fraud, it does not necessarily amount to fraud, and, if made in the honest belief that it is true, it is not fraudulent, however unreasonable the belief may be (*d*).

In the Court of Appeal the defendants in *Peek* v. *Derry* (*e*) were held to be liable, because the statement complained of was untrue, and was made by them without reasonable ground for their believing it to be true. The House of Lords reversed this decision, upon the ground that, as the defendants honestly believed in the truth of the statement, they were not guilty of fraud, whether they had or had not reasonable ground for their belief. The object of the Directors' Liability Act was to remove the defect in the law brought to light by the decision of the House of Lords in *Derry* v. *Peek*, and to impose upon those who issue prospectuses the duty to take reasonable care not to make untrue statements (*f*). This Act gave legislative sanction to the view of the law taken by the Court of Appeal in *Derry* v. *Peek*, and in every case where the plaintiff proved that the prospectus or notice contained an untrue statement, it threw upon the persons liable under the Act the burden of proving that he believed that it was true, and had reasonable grounds for such belief. The Act created a new statutory duty to abstain from inaccurate statements, and thus, in effect, gave a new action on the case to those persons who had been injured by the neglect of that statutory duty (*g*). Sect. 84 of the Companies Act, 1908 (which re-enacts the provisions of the Directors' Liability Act as modified by sect. 33 of the Companies Act, 1907) therefore imposes a very serious burden upon directors, as it may be difficult for them, where there is an untrue statement in the prospectus, to prove to the satisfaction of a judge or jury that they had reasonable grounds for believing it was true. It is submitted that this section

(*c*) See *post*, p. 383.

(*d*) *Derry* v. *Peek* (1889), 14 A. C. 337; *Glasier* v. *Rolls* (1889), 42 C. D. 436.

(*e*) (1887), 37 C. D. 541.

(*f*) Per Lindley, M. R., in *Greenwood* v. *Leather Shod Wheel Co.*, [1900] 1 Ch. at p. 434.

(*g*) *Thomson* v. *Lord Clanmorris*, [1900] 1 Ch. 718, per Vaughan Williams, L. J., p. 727.

does not impose any fresh duty towards the company on a promoter or other person liable thereunder (*h*); nor give a shareholder or debenture holder any additional right against the company (*i*), or a right to any person other than subscribers for shares, debentures, or debenture stock of a company (*k*).

Having regard to the provisions of this section and of sects. 80 and 81 of the Act of 1908, it is advisable for a person who is requested to become a director of a new company incorporated under the Act which intends to issue a prospectus to take the following precautions:—

1. To require the promoters of the company to submit to him a draft of the prospectus proposed to be issued.
2. To make his consent to become a director conditional upon his approval of the prospectus and of the persons proposed to be appointed directors.

It is also advisable for any person liable under this Act for the issue of a prospectus of a company—

1. To satisfy himself that (i) the statements in the prospectus are true; (ii) any copy of or extract from the report or valuation of an expert, the statement of a public official, or any public document therein contained or sent therewith, fairly represents such report, valuation, statement, or document; (iii) the expert is qualified to give an opinion upon the subject-matter of his report or valuation; (iv) the statement purporting to be made by a public official, or to be contained in a public document, was so made or contained; and (v) the prospectus complies with the provisions of sects. 80 and 81 of the Act (*l*).
2. To keep copies of all correspondence, reports, and other documents relating to the above matters (*m*).
3. To prevent the prospectus being issued if it contains misstatements, and, if necessary, to apply for an injunction to restrain such issue.
4. If such a prospectus is issued without his knowledge or consent, to give public notice by advertisement in the newspapers, or the principal newspapers in which the prospectus was advertised, or, if not advertised, in the principal newspapers of the places where the prospectus was circulated, stating that the same has been issued without his knowledge or consent.

(*h*) Cf. dictum of Lord Blackburn in *Erlanger* v. *Sombrero Phosphate Co.* (1878), 3 A. C. 1269.

(*i*) Cf. *Gover's Case* (1875), 1 C. D. 182.

(*k*) Cf. *Cornell* v. *Hay* (1873), L. R. 8 C. P. 328.

(*l*) See *ante*, p. 115, *et seq.*

(*m*) This is most important, so that any person sued under s. 84 may be able to give particulars of the grounds of his belief in the truth of the statements contained in the prospectus and prove that such grounds were reasonable: *Aiman* v. *Oppert*, [1901] 2 K. B. 576.

5. If, after the prospectus has been issued with his consent, and before allotment, he, either by discovering inaccuracies therein, or by reason of something happening which makes it inaccurate, ceases to believe in the truth of some material statement therein, to immediately give the directors notice that he withdraws his consent to such issue, and give public notice by advertisement as before of his having done so, and his reasons for so doing, or to see that the board sends to each applicant for shares, &c., an amended prospectus correcting the misstatements, and that the allotment is made conditional upon the applicant accepting the same upon the terms of the amended prospectus.

Where directors discover that the prospectus contains misrepresentations for which they may be liable, they may escape liability wholly or partially by immediately acquainting the allottees of shares or debentures of the fact, and offering on behalf of the company to rescind the allotment and return the money subscribed. If any allottee, being still the holder of the shares or debentures allotted to him, accepts the offer, and the money is returned, his right of action is barred. If he sells his shares before the misrepresentation is discovered, or if he declines to accept the offer, his right of action remains, as a person induced by fraud to enter into a contract may affirm the contract and yet sue the person who induced him to enter into the contract (*n*). But actual notice must be given to each shareholder, as the provisions in the regulations of a company as to service of notices upon its members apply only to notices relating to the ordinary business of the company (*o*). It is not enough for directors, in order to escape liability, to send to the allottees a circular which, among other matters, states the truth as to the matter misrepresented, but does not admit the misrepresentation or inform the allottees that they can have the allotment rescinded and their money returned (*p*). In the majority of cases the discovery is made after the moneys subscribed have been parted with by the company, and so too late for the directors to avail themselves of this mode of escaping liability.

The directors and promoters of companies incorporated by special Act of Parliament or royal charter are not within the purview of the Companies Act, 1908 (*q*). Sect. 84 of the Act applies to every company governed by the Act, whether the company was incorporated before or after the 18th August, 1890.

(*n*) Per Cotton, L.J., in *Arnison* v. *Smith* (1889), 41 C. D. at p. 371.

(*o*) *London and Staffordshire Fire Insurance Co.* (1883), 24 C. D. 149.

(*p*) *Arnison* v. *Smith* (1889), 41 C. D. 348.

(*q*) See s. 285 and *Christchurch Gas Co.* v. *Keily* (1887), 3 Times L. R. 634.

Sect. 84 provides that "(1) where a prospectus (*s*) invites persons to subscribe for shares in or debentures (*s*) of a company, every person who is a director (*t*) of the company at the time of the issue of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter (*u*) of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares, or debentures, on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a) With respect to every such untrue statement not purporting to be made on the authority of an expert (*x*), 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, believe, that the statement was true; and

(b) With respect to every untrue statement purporting to be a statement by 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 person 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

(c) 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 such statement or copy of or extract from the document:

or unless it is proved (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent, or (ii) that the prospectus was issued without his knowledge or consent, and that on

(*s*) By s. 285 of the C. A. 1908, "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, and "debenture" includes debenture stock.

(*t*) See *post*, p. 374, as to meaning of "director."

(*u*) See *post*, p. 372, as to meaning of "promoter."

(*x*) See *post*, p 372, as to meaning of "expert."

becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or (iii) that after the issue of the prospectus, and before allotment 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 18th August, 1890, has issued shares or debentures, and for the purpose of obtaining further capital by 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."

(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."

In any action brought under sect. 84 it is necessary for the plaintiff to prove—

1. That he is entitled to sue;
2. That the defendant is liable to be sued;
3. That a prospectus inviting subscriptions for shares, debentures, or debenture stock of a company was issued, and that he subscribed for the shares, debentures, or stock, in respect of which the action is brought, on the faith of such prospectus or notice;
4. That such prospectus or notice contained an untrue statement; and
5. That the plaintiff sustained loss by such subscription.

Assuming that the plaintiff has discharged the burden of proof lying upon him, the defendant will be free from liability—

6. If he establishes any of the grounds of defence given to him by this section, or can successfully plead the Statute of Limitations.

For the sake of convenience the following notes to this Section are arranged in the above order.

1. There are only three clases of persons who can sue under this section, viz. those persons who respectively apply to the company for and obtain an allotment of shares, debentures, and debenture stock (*b*).

(*b*) See *ante*, p. 257, *et seq.*, as to the meaning of the words "debenture" and "debenture stock."

The cause of action survives, however, to the executors or administrators of a deceased member of any of these classes. The action, if commenced in the lifetime of the deceased, can be continued by his executors or administrators, or if no action has been begun they can take proceedings (*c*). A subscriber for shares is a person who enters into an agreement to take shares from the company by means of a formal application or otherwise (*d*).

In an action for misrepresentation—and therefore in an action under sect. 84—a person ought not to sue on behalf of himself and the other members of the class to which he belongs, as his claim is purely personal (*e*). Sometimes a number of persons join as plaintiffs in actions for misrepresentation, although their claims are quite separate (*f*); and as the plaintiffs are jointly and severally liable for costs if they are all unsuccessful, and any unsuccessful plaintiff is liable to pay the costs caused by his being added as a plaintiff, the defendant has no ground for objection, nor if he objected would his objection be upheld (*f*). So, too, several plaintiffs may, under sect. 84, jointly sue the directors in respect of untrue statements contained in the same prospectus (*g*). Where separate actions are brought by different persons against a director for misrepresentation in a prospectus, the Court may, on the application of the plaintiffs, enlarge the time for taking the next step in several of the series of actions (*h*), or stay proceedings in them till one of them has been tried as a test action, binding all the plaintiffs but not the defendants (*i*); but the plaintiff in the test action may decline to proceed with it (*k*), in which case another of the actions may be made a test action (*l*). The defendant may also obtain an order for the consolidation of such actions (*m*). The plaintiff may in the same action sue directors for compensation under sect. 84, and for damages for deceit and breach of duty, and also the company for rescission, provided his claim arises out of the same prospectus (*n*).

2. The persons liable under sect. 84 are divided by it into four classes:—

(*c*) 4 Edw. 3, c. 7; *Twycross* v. *Grant* (1878), 4 C. P. D. 40. See *ante*, p. 364, as to the time within which they must bring the action.

(*d*) *Arnison* v. *Smith* (1889), 41 C. D., per Kekewich, J., at p. 357.

(*e*) *Croskey* v. *Bank of Wales* (1863), 4 Giff. 314; *Hallows* v. *Fernie* (1868), 3 Ch. 467; *Turquand* v. *Marshall* (1869), 4 Ch. 376.

(*f*) R. S. C., Ord. XVI. r. 1; *Arnison* v. *Smith* (1889), 41 C. D. 98.

(*g*) *Drincqbier* v. *Wood*, [1899] 1 Ch. 393.

(*h*) *Amos* v. *Chadwick* (1877), 4 C. D. 869.

(*i*) *Bennet* v. *Lord Bury* (1880), 5 C. P. D. 339.

(*k*) *Robinson* v. *Chadwick* (1878), 7 C. D. 878.

(*l*) *Amos* v. *Chadwick* (1878), 9 C. D. 459.

(*m*) Daniell's Ch. Pr. 6th ed. p. 1888.

(*n*) *Frankenburg* v. *Great Horseless Carriage Co.*, [1900] 1 Q. B. 504.

(1.) *Every person who is a director of the company at the time of the issue of the prospectus*, unless the company was in existence on the 18th August, 1890, and had issued shares, debentures, or debenture stock, in which case a director is only liable if he authorized, adopted or ratified the issue of the prospectus. It is submitted that these words not only apply to persons who have been duly elected directors (*o*), but also to persons who, though not duly elected, are acting as directors, as by the Interpretation Section of the Act (sect. 285), "director" includes any person occupying the position of director. The question, however, is not so important as it otherwise would be, as such a person would generally be liable as falling within Class 2 or Class 3. It will be seen that the Directors' Liability Act, 1890, made a great alteration in the law. Before it passed, a director could not be liable for misrepresentations contained in a prospectus unless he authorized or was a party to its issue, or subsequently ratified or adopted such issue (*p*); and this is still the case with regard to directors of a company in existence on the 18th of August, 1890, which issues a prospectus inviting subscriptions for the purpose of obtaining further capital. Now, in such a case, every director of any other company governed by the Act of 1908, is *primâ facie* liable, and cannot escape liability unless he can establish one of the defences given by sect. 84. The plaintiff must prove that the person sued as a director was a director at the time of the issue of the prospectus (*q*). Frequently the whole of the original share and debenture capital of a company is agreed to be allotted to a vendor or to a contractor in payment for property sold to or work done for the company, and the company undertakes as his agent to offer the capital to the public for subscription. It is submitted that sect. 84 would in such a case apply to every director of the company.

(2.) *Every person who has authorized the naming of him, and is named in the prospectus as a director, or as having agreed to become a director, either immediately or after an interval of time.* It is submitted that, provided a person has authorized such naming, it is immaterial whether he has or has not in fact agreed to become a director. The words employed in sect. 84 bring within its purview persons who with their consent are named on the prospectus as directors, or as having agreed to become directors, but who are not to act as directors or become directors until after the first allotment of shares of the company, or after some other interval of time. It has been the practice, where vendors to a company are to be directors, for them to authorize their names appearing on the

(*o*) As to who are directors, see *ante*, p. 86, *et seq.*

(*p*) See *ante*, p. 368; *Cargill* v. *Bower* (1878), 10 C. D. 502. The defendants in *Weir* v. *Barnett* (see *ante*, p. 366) would have been liable under this section.

(*q*) Under s. 80 of the C. A. 1908 the date stated on the prospectus must, unless the contrary be proved, be taken as the date of its publication.

prospectus as directors, with a note to the effect that they will join the board after allotment. The object of this device is to prevent any liability arising out of the fiduciary relation between a director and the company, until after the sale has been carried into effect. As, however, the mere fact of agreeing to become a director of the company is sufficient to create such a fiduciary relation (*r*), and such persons generally so act as to constitute themselves promoters of the company, this plan is of doubtful utility (*s*). Having regard to the terms of the section, it is very unlikely that the practice will continue; for as persons falling within this class incur the liabilities of directors, it will be advisable for them to exercise the rights of directors, and ascertain for themselves that the prospectus contains no untrue statement.

(3.) *Every promoter of the company.* A promoter in sect. 84 is defined as a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement. Therefore, in order to fix any persons with liability under this part of the Act, it must be proved (1) that he was a promoter of the company, *and* (2) that he took part in preparing the prospectus or portion. It is conceived that, subject to this limitation, the word "promoter" in this section means a person who, as principal, is a party to the formation or floating of the company (*t*). A person who merely acts in a professional character for promoters is not himself a promoter (*u*); but in order that there may be no ambiguity, this section expressly provides that the word "promoter," as used therein, does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company (*x*). Therefore, counsel, solicitors, accountants, &c., who act in a professional capacity in preparing the prospectus, incur no liability.

(4.) *Every person who has authorized the issue of the prospectus.* This class includes persons who, not being directors or promoters, authorize the issue of the prospectus, *e.g.*, persons who are entitled to the shares, debentures, or debenture stock, and on whose behalf the prospectus is issued. It is submitted that this class does not include underwriters who take no part in preparing the prospectus, or bankers, solicitors, auditors, brokers or trustees for debenture holders whose names appear on the prospectus, if they do not act as principals. It is usual for bankers, brokers, and solicitors to decline to permit their names to appear on a prospectus unless they approve of it, and sometimes they suggest alterations in it, but this cannot, it is conceived, be construed as authorizing the issue of the prospectus. If, upon the issue of shares, debentures, or debenture stock of a company, bankers, brokers, solicitors, or other professional men

(*r*) See *ante*, p. 341.

(*s*) *Glasier* v. *Rolls* (1889), 42 C. D. 436, 442.

(*t*) See *ante*, p. 61.

(*u*) *Great Wheal Polgooth* (1883), 32 W. R. 107.

(*x*) See sub-s. 5 of s. 84.

acting as agents of the company, have a pecuniary interest in the issue, other than that to which they are entitled as agents, they might be considered as having authorized the issue of a prospectus inviting subscriptions therefor, and if the company had recently been formed, might be held to be promoters of the company (*y*). But where bankers receive prospectuses for distribution to persons applying for them, they only act as agents, and will not, it is apprehended, be treated as issuing of the prospectus.

It is conceived that in the event of a person liable under this section dying before an action was commenced, the right of action would not survive against his estate, as actions of tort can only be brought against the legal representatives of the deceased wrong-doer if his estate has benefited by the wrong, and it is evident that the estate of a director or other person liable under this Act, cannot benefit by an untrue statement in the prospectus (*z*). The rule is the same although an action has been commenced, if the defendant dies before judgment is given (*a*).

3. Any persons suing under sect. 84 must prove that a prospectus inviting subscriptions for shares, debentures, or debenture stock of a company was issued, and that he subscribed for the shares, debentures, or debenture stock in respect of which the action is brought upon the faith of the prospectus.

The word "prospectus" in this section is defined by sect. 285 of the Companies Act, 1908, as meaning 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 issue of a prospectus may be made by distributing copies of it or by advertising it. A person to whom a prospectus is sent, who applies for but is unable to obtain allotment, and who subsequently buys shares, debentures or debenture stock from an allottee or other person, cannot sue under this section. To "subscribe" for shares is to enter into an agreement to take shares from the company by means of a formal application or otherwise (*b*).

A person applies for shares, debentures, or stock, on the faith of a prospectus, when his application is induced by the belief that the statements therein made are true (*c*). Where a person applies for shares on the faith of a prospectus which contains a misrepresentation, it is no defence to his action for damages that he could have discovered the truth by making inquiries or by examining the documents which the prospectus

(*y*) Cf. *Lydney, &c., Co.* v. *Bird* (1886), 33 C. D. 85; and *Weir* v. *Bell* and *Weir* v. *Barnett*, *ante*, p. 366.

(*z*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377.

(*a*) *Phillips* v. *Homfray* (1883), 24 C. D. 439.

(*b*) Cf. *Arnison* v. *Smith* (1889), 41 C. D. per Kekewich, J., at p. 357.

(*c*) *Smith* v. *Chadwick* (1882), 20 C. D. per Jessel, M.R., at p. 44; *Arnison* v. *Smith*, *supra*, per Lord Halsbury, at p. 369.

offered for his inspection (*d*). Where the statements in the prospectus are the principal factor in inducing a person to subscribe, they need not be the only inducement (*e*); for "if the Court sees on the face of it [the prospectus] that it is of such a nature as would induce a person to enter into the contract, or would tend to induce him to do so, or that it would be a part of the inducement to enter into the contract, the inference is if he entered into the contract that he acted on the inducement so held out, and you want no evidence that he did so act; but even then, you may show that in fact he did not so act in one of two ways: either by showing that he knew the truth before he entered into the contract, and therefore could not rely on the misstatements, or else by showing that he avowedly did not rely upon them, whether he knew the facts or not" (*e*). It is not necessary for the plaintiff to prove that if the misrepresentations had not been made he would not have taken the shares (*f*). If a person subscribes before he sees the prospectus, or in reliance upon his own judgment as to the merits of the company, or upon the representations of other persons, it is clear that he does not subscribe on the faith of the prospectus.

4. The person suing under the section must prove that the prospectus or some report or memorandum appearing on the face thereof, or incorporated therein or issued therewith contains an untrue statement.

An untrue statement may be made as to either a matter of fact or a matter of law. An untrue statement as to a matter of law is not actionable (*g*); and it is submitted that although the words "untrue statement" are not qualified, this section does not make any difference in this respect.

It is also submitted that the untrue statement must be as to a matter of fact ascertained at the time it was made. Where the statement is as to something which is expected to happen in the future, it is evident that it is a matter of opinion, and that it cannot be untrue at the time of the issue of the prospectus. Therefore, promoters and directors may, in the prospectus of a company, take a sanguine view of its prospects without incurring any liability (*h*).

The untrue statement may appear in (1) the prospectus, or (2) any report or memorandum appearing on the face of it, or (3) any report or memorandum incorporated therein, or (4) any report or memorandum issued therewith. Therefore, subject as provided in this section, the liability may arise although the statements do not purport to be made by

(*d*) *Central Rail. Co. of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. Cas. 99.

(*e*) *Peek* v. *Derry* (1888), 37 C. D. 541.

(*f*) *Carling* v. *London and Leeds Bank* (1887), 56 L. J. Ch. 321.

(*g*) *Eaglesfield* v. *Marquis of Londonderry* (1876), 4 C. D. 693, and see *post*, p. 395.

(*h*) *Beattie* v. *Lord Ebury* (1872), 7 Ch. 777, 804; *Hallows* v. *Fernie* (1868), 3 Ch. 467; *Denton* v. *McNeil* (1866), L. R. 2 Eq. 352; *Bellairs* v. *Tucker* (1884), 13 Q. B. D. 562.

the directors or other persons responsible for the issue of the prospectus, but purport to be made by some other persons. In this respect the law has been changed, as formerly a director was not liable where the untrue statement was contained in a report set out, with its author's name, in the prospectus (*i*), unless he knew it was false, or recklessly asserted it was true, nor was a shareholder entitled to rescission of his contract to take shares (*k*).

It is submitted that the section does not make every untrue statement, however trivial it may be, actionable; and that, in construing the section, the rule of common law will be followed, which requires that the untrue statement must be such as to be a material inducement to take shares, debentures, or debenture stock. This limitation to the meaning of the words "untrue statement" is not mentioned in the section, but it is conceived that it is implied by the words "all persons who subscribe for any shares or debentures, on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein." If the untrue statement is made in respect of a matter which is unimportant, it is difficult to see what loss a subscriber can sustain from the untruth (*l*). If the misrepresentation be material, it need not be the only inducement (*m*). A statement that a certain person is a director of the company may or may not be a material inducement (*n*); it may be so, either because of his well-known position or because the person applying knew him well and relied upon his being a director as a guarantee for the *bonâ fides* of the company (*o*). In *Hallows* v. *Fernie* the directors had consented to be directors, but had resigned, and in *Smith* v. *Chadwick* (*p*), the director was not well known to the applicant, and the plaintiff did not make the application in reliance upon such person being a director.

The following are examples of material misstatements made in prospectuses, the untrue statements and the facts being arranged in parallel columns:—

Misrepresentation.	*Fact.*
That more than half the first issue of the company's shares had been subscribed for (*q*).	The only subscription was by a contract with a promoter to "place" half the first issue.

(*i*) See note (*g*), *ante*, p. 377.

(*k*) *Ex parte Vickers* (1887), 56 L. T. 815.

(*l*) *Smith* v. *Chadwick* (1882), 20 C. D. 27.

(*m*) *Peek* v. *Derry* (1887), 37 C. D. 541.

(*n*) See *Ex parte Munster* (1866), 14 W. R. 957; *Hallows* v. *Fernie* (1868), 3 Ch. 467; *Smith* v. *Chadwick* (1882), 20 C. D. 50, 51.

(*o*) *Ex parte Blake* (1865), 34 B. 639; *Scottish Petroleum Co., Anderson's Case* (1881), 17 C. D. 373; approved, same company, *Wallace's Case* (1883), 23 C. D. 413.

(*p*) (1882), 20 C. D. 27.

(*q*) *Ross* v. *Estates Investment Co.* (1866), 3 Eq. 122.

Misrepresentation.	*Fact.*
That the directors and their friends had subscribed a large portion of the company's capital of 25,000*l.* (*r*).	The directors and their friends had only subscribed 1,500*l.*
That 200,000*l.* share capital of the company had been subscribed (*s*).	The only capital issued was 200,000*l.*, allotted to a contractor with the company as fully paid.
That the company had contracted for the purchase of a property, on which the the vendor had in addition to his purchase-money expended 70,000*l.* (*q*).	The vendor had only contracted to buy it to sell it again to the company, and had expended nothing upon it.
That the company had contracted to buy a property (*q*).	The vendor had no interest in the property other than under an invalid contract for sale.
That a contract for the construction of the railway (which was the principal object of the company) had been made with a responsible contractor at a price considerably within the available capital of the company (*t*).	The contractor was a man of no means, and the contract price was not much below the *share* capital of the company.
That the mine which the company had contracted to buy, and for the acquisition of which it was formed, contained several very valuable claims (*u*).	The mine was valueless.
That the object of the issue of debentures was to complete alterations in the buildings of the company, to purchase property therefor, and develop its trade (*x*).	The object of the issue was to pay off pressing liabilities.
That by the special Act of Parliament obtained, the company had the right to use steam or mechanical motive power instead of horses, and it was fully expected by means of this a considerable saving would result in the working expenses of the line as compared with other tramways worked by horses (*y*).	The right to use steam power was subject to the consent of the Board of Trade, which had not then been given.
That the business then returned a net profit of over 17 per cent. on the capital employed (*z*)	The net profits were not more than half that rate.

(*r*) *Henderson* v. *Lacon* (1867), 5 Eq. 249. See also *Croydon* v. *Prudential Loan Co.* (1885), 2 T. L. R. 535.

(*s*) *Arnison* v. *Smith* (1888), 41 C. D. 348.

(*t*) *Central Rail. Co. of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. Cas. 99.

(*u*) *Reese River Mining Co.* v. *Smith* (1869), L. R. 4 H. L. Cas. 64.

(*x*) *Edgington* v. *Fitzmaurice* (1885), 29 C. D. 459.

(*y*) *Peek* v. *Derry* (1887), 37 C. D. 541.

(*z*) *Glasier* v. *Rolls* (1889), 42 C. D. 436.

Misrepresentation.	*Fact.*
That full reports on the property (for the acquisition of which the company was formed) had been prepared for the directors by four eminent engineers, such reports being set out in the prospectus (*a*).	The reports were made on the instructions of the agent of the vendors, and not for the directors.
That certain noblemen and gentlemen named in the prospectus were members of a council of administration of the company not exceeding twenty-five in number, from whom the board were to be selected, and that the council were members of the company (*b*).	The persons named were neither members of the council nor of the company.
That there was on the property which the company was formed to acquire and work, a powerful lode carrying lead containing silver in huge masses at the surface for over a mile in length, and that 8,000 tons of ore had been raised and stacked (*c*).	The mine was worthless, and only 300 tons of rock and ore had been stacked.
That the company had entered into certain contracts for sale of machines at prices which would leave a substantial profit to the company (*d*).	The contracts entered into bound the company, but not the other contracting parties.
That the purchase price paid by the company was 36,000*l.* (*e*).	6,000*l.*, part thereof, was paid to a promoter, who was in no sense a vendor to the company.
That numerous orders had been given with a view to the adoption of leather-shod wheels to be made under the company's patents (*f*).	The only orders given were for trial and experiment.
That no promotion money had been or would be paid (*g*).	There was an agreement to pay a sum to a promoter, and such payment was made.
That certain dividends were guaranteed and were secured by the deposit of a sufficient amount of government securities and first class bank and insurance stock (*h*).	There was no such guarantee or deposit.

(*a*) *Angus* v. *Clifford* (1890), 7 T. L. R. 123.

(*b*) *Wainwright's Case* (1890), 63 L. T. 429; *Karberg's Case*, [1892] 3 Ch. 1; *Kent County Gas Co.*, (1907) 95 L. T. 756.

(*c*) *British Burmah Land Co.* (1888), 4 T. L. R. 631.

(*d*) *Snook* v. *Self-Acting Sewing Machine Co.* (1887), 3 T. L. R. 612.

(*e*) *Capel* v. *Sims' Ship's Composition Co.* (1888), 57 L. J. Ch. 713.

(*f*) *Greenwood* v. *Leather-Shod Wheel Co.*, [1900] 1 Ch. 421.

(*g*) *Lodurck* v. *Earl of Perth* (1884), 1 T. L. R. 76.

(*h*) *Knox* v. *Hayman* (1892), 67 L. T. 137.

Misrepresentation.	*Fact.*
That certain dividends were guaranteed (*i*).	There was only the personal guarantee of the promoter.
That the company was formed to purchase certain patent rights for making a formidable projectile (*k*).	No such patent rights were in existence.
That the only contracts to which the company was a party were two specified contracts (*l*).	There was another material contract to which the company was a party.

The following rule of common law is applicable to the section, namely, that where the omission to state a fact makes a statement in the prospectus false, the statement so made is an untrue statement (*m*).

Mere non-disclosure of facts, unless such non-disclosure has the effect of making the disclosed facts false or misleading, is not sufficient to give rise to an action for misrepresentation (*n*). No mere silence will ground the action of deceit (*o*). Thus, a statement that a responsible contractor has undertaken to construct and complete a railway for a sum within the capital of the company is not false by reason of the prospectus not stating also that the contractor before the formation of the company agreed to give certain persons, who afterwards became directors of the company, large sums in paid-up shares for their services in promoting it, and agreeing to become directors (*p*). A statement that the sum payable to the vendor by the company is payable by instalments is not false because it is not also stated that interest is payable on the instalments (*q*).

The following are examples of representations in prospectuses made false representations by reason of omissions:—

Misrepresentation.	*Omission.*
That the company had been formed for the purchase of a banking business [Overend, Gurney & Co.], and that the consideration for the goodwill was 500,000*l.*, terms which, in the opinion of the directors, could not fail to insure a highly remunerative return to the shareholders (*r*).	That the business had been carried on at a loss for several years, and was at that time insolvent to the extent of two or three millions.

(*i*) *Kent* v. *Freehold Land Co.* (1867), 4 Eq. 588.

(*k*) *Scott* v. *Snyder Dynamite Projectile Co.* (1892), 67 L. T. 104.

(*l*) *Shepheard* v. *Broome*, [1904] A. C. 342.

(*m*) *Drincqbier* v. *Wood*, [1899] 1 Ch. 393, 407; approved by C. A. in *Greenwood* v. *Leather-Shod Wheel Co.*, *supra*, at p. 434.

(*n*) Per Lord Cairns, *Peek* v. *Gurney* (1873), L. R. 6 H. L. Cas. 377; *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

(*o*) *Arkwright* v. *Newbold* (1881), 17 C. D. 301, 318, 320.

(*p*) *Heymann* v. *European Central Rail. Co.* (1868), 7 Eq. 154.

(*q*) *Smith* v. *Chadwick* (1882), 20 C. D. 58.

(*r*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325.

Misrepresentation.	*Facts.*
That the company had succeeded in obtaining (*inter alia*) a free grant of 200,000 acres of land, through which the line was to pass (*s*).	That the grant was dependent on the completion of a certain part of the railway.
That the company had acquired a concession for a railway (*t*).	That 50,000*l.* had been given by the company for the concession.
That the objects of the company were certain specific objects (*u*).	That there were other objects of the company.

Directors and promoters are also liable under sect. 81 of the Companies Act, 1908, for omissions in a prospectus, although they do not make any of its statements false (*x*).

"In construing a prospectus, the preliminary character of the document must always be taken into consideration, . . . and unless it distinctly refers to what is actually existing at the time, it must be taken to represent what will be the state of things when the company is completely formed" (*y*). Where a statement is ambiguous, the plaintiff must state which meaning he relied on; it is not enough for him to say that he relied upon it according to its meaning (*z*). In an action of deceit he must also prove that the statement was made with a fraudulent intent (*a*), but in actions under this section it is not necessary to prove fraud.

If persons publishing a prospectus use such careless language that their statements literally read are untrue, although this literal sense is different from what they intended, this amounts to a misrepresentation for which they may be responsible to any one who is deceived or injured by it, provided that the words used, whether taken alone or read with the context, are free from ambiguity (*b*). They are not entitled to say that the plaintiff should have seen that the primary sense of the words could not have been true (*c*).

The construction or meaning of statements in a prospectus must be determined by the Court, and not by the jury (*d*). A document not

(*s*) *New Brunswick Rail. and Land Co.* v. *Muggeridge* (1860), 1 Dr. & Sm. 363.

(*t*) *Central Rail. Co. of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99.

(*u*) *Briggs' Case* (1866), 35 B. 273.

(*x*) See *post*, p. 389.

(*y*) *Hallows* v. *Fernie* (1868), 3 Ch., per Lord Chelmsford at p. 475. See also *Denton* v. *Macneil* (1866), L. R. 2 Eq. 352.

(*z*) *Smith* v. *Chadwick* (1884), 9 A. C. 187.

(*a*) *Watts* v. *Atkinson* (1892), 8 T. L. R. 235.

(*b*) Per Lord Chelmsford, *Hallows* v. *Fernie* (1868), 3 Ch. 476. See also *Clarke* v. *Dickson* (1859), 6 C. B. N. S. 453; *Greenwood* v. *Leather-Shod Wheel Co.*, [1900] 1 Ch. 421.

(*c*) *New Brunswick & Canada Rail. Co.* v. *Muggeridge* (1860), 1 Dr. & Sm. 363.

(*d*) *Moore* v. *Explosives Co.* (1887), 56 L. J. Q. B. 235.

received by the plaintiff until after he has applied for shares cannot be looked at for the purpose of construing the prospectus (*e*).

---

5. A person suing under this section must prove that he has suffered pecuniary damage by reason of his subscribing for shares, debentures, or debenture stock, on the faith of the prospectus.

This is necessary in an action of deceit, and sect. 84 only gives a right of action to recover "compensation . . . for the loss or damage sustained by reason of any untrue statement therein." The plaintiff must prove that he paid more for the shares, debentures, or debenture stock than they were worth when they were allotted to him. The damages to which the plaintiff is entitled will be the difference between the price he paid for the shares, debentures, or stock, and their real value at the time of allotment having regard to subsequent events including the winding-up, and not the difference between the price paid and the market value (*f*); and an inquiry in chambers will be directed to ascertain the amount of such difference (*g*).

The price paid for shares includes calls paid upon the shares. The shares, &c., may have been worthless, and, if so, the plaintiff is entitled to recover all he has paid (*h*). Where the action is brought in respect of shares not fully paid up, and judgment is given after the winding-up of the company has commenced, the shareholder is entitled to be indemnified against his liability as a contributory in the winding-up in respect of such shares (*i*). Although a shareholder has obtained a rescission of the contract to take shares, and the removal of his name from the share register as the holder of such shares, an action will still lie against a person liable under the section if the company by reason of its winding-up has not returned to the shareholder the whole of the amount paid by him for such shares (*i*).

The liability of persons sued under this section is joint and several; that is, if there are more persons than one liable, they may all be made defendants in one action, and judgment will be given against each of them for the amount of damages and costs, and such judgment may be enforced against any of them, or any person liable may be sued alone, and is liable to pay the whole of the damage sustained by the plaintiff.

(*e*) *Smith* v. *Chadwick* (1882), 20 C. D. 27.

(*f*) *Davidson* v. *Tulloch* (1867), 3 Macq. 790; *Peek* v. *Derry* (1887), 37 C. D. 541, 593; *Arnison* v. *Smith* (1889), 41 C. D. 363; *Broome* v. *Speak*, [1903] 1 Ch. 586; *McConnel* v. *Wright*, [1903] 1 Ch. 546.

(*g*) *Peek* v. *Derry*, *supra*, at p. 591; *Arnison* v. *Smith*, *supra*, p. 364; *Glasier* v. *Rolls* (1889), 42 C. P. 455.

(*h*) *Gerhard* v. *Bates* (1853), 2 El. & Bl. 476; *Twycross* v. *Grant* (1877), 2 C. P. D. 469, 489; *Jury* v. *Stoker* (1881), 9 L. R. Ir. 404; *White* v. *Haymen* (1883), 1 C. & E. 101.

(*i*) See *Cargill* v. *Bower* (1878), 10 C. D. 502, 508.

In order to diminish this enormous liability sub-sect. 4 of sect. 84 provides that a person so liable may recover contribution in certain cases.

---

6. A person sued under sect. 84 will be free from liability if he can establish any of the defences given by the section, or successfully plead the Statute of Limitations.

The defences which are available to persons who are sued under this Act, in cases where the person suing has proved all the facts necessary for him to prove (*k*), are those given by this section and by the Statute of Limitations. An action under this section is not barred by an order of discharge under the Bankruptcy Act, 1883, as the claim is not provable in bankruptcy (sect. 37 (1)(*l*)), and, even where judgment has been obtained, the judgment debt will not be barred if fraud was proved, as it would be a "liability incurred by fraud" within the meaning of those words as used in sect. 30 (1) of that Act.

The defences given by the section are—

(1) Any person sued under the section will be exempt from liability if he can prove either—

(a) That the prospectus was issued without his knowledge or consent, *and* that, on becoming aware of its issue, he forthwith gave reasonable public notice that it was so issued without his knowledge or consent (*m*); or

(b) That after the issue of the prospectus, and *before* allotment 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.

Where a director knows that a prospectus is being issued inviting persons to take debentures and he abstains from asking to see it until after action brought in respect of a misrepresentation therein contained, it is then too late to give public notice (*n*). It will be for the jury to say whether "reasonable public notice" has been given. Each case must stand by itself, but it is submitted that, if notice were given by advertisement in one of the leading newspapers in each place where the prospectus was issued, circulated, or advertised, it would be sufficient.

Besides the above defences, which are general, an additional defence is given to a person who, having consented to become a director, proves that he withdrew his consent before the issue of the prospectus, *and* that

(*k*) See *ante*, p. 372.

(*l*) Cf. *In re Giles* (1889), 61 L. T. 82.

(*m*) Before the Directors' Liability Act, 1890, was passed a director was not liable if he proved that he had not expressly authorised or tacitly permitted the issue of the prospectus: *Cargill* v. *Bower* (1878), 10 C. D. 502; *Weir* v. *Barnett* (1877), 3 Exch. D. 32; *Weir* v. *Bell* (1878), 3 Exch. D. 238.

(*n*) *Drincqbier* v. *Wood*, [1899] 1 Ch. 393.

it was issued without his authority or consent. It is obvious that the consent to be a director must be withdrawn before he becomes a director, as, when once appointed a director, with his consent, he is liable as a director, and this defence would not be open to him. A person who establishes this defence could recover, under sub-sect. (3) of sect. 84, the sum spent by him in giving such notice. Where none of the above defences is available, any person sued under this section has still open to him the following defences given by sub-sect. 1 (a) (b) and (c) of sect. 84.

(2) A person sued under this section will be exempt from liability (where the untrue statement did not purport to be made on the authority of an expert or of a public official document or statement), if he proves that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true.

It has already been observed that one effect of sect. 84 is to relieve the plaintiff who has proved that the prospectus contains an untrue statement, from proving also that the defendant knew it to be false. It is always difficult to prove a negative, especially when the fact to be proved is a state of mind. Hence, it was desirable to make the defendant prove his own belief in the truth of the statement, but this section goes further, and makes it also necessary for him to prove that he had reasonable grounds for his belief (*o*). It is submitted that it will be for the judge, in jury cases, to determine whether there were any grounds for the defendant's belief, and for the jury to determine whether or not such grounds were reasonable.

It has been held that if a statement in a prospectus (untrue at the time the prospectus is issued) is true at the time the person applies for shares, he cannot maintain an action (*p*), and this section does not alter the law in this respect. It was, however, formerly doubtful whether in the converse case there was any liability; that is, where the statement was true at the time the prospectus was issued, but was not true at the time of allotment (*q*). Under this section, however, a director would be liable, unless he proved that at the time of the issue of the prospectus, and thenceforth until the time of allotment, he did believe, and had reasonable grounds to believe, that the statement was true. Where directors by their defence to an action brought against

(*o*) *Greenwood* v. *Leather Shod Wheel Co.*, [1900] 1 Ch. 421, where the defendants, the directors and promoters, failed to prove reasonable grounds for their belief.

(*p*) *Ship* v. *Crosskill* (1870), 10 Eq. 73.

(*q*) *Arkwright* v. *Newbold* (1881), 17 C. D. 325, 329, where the point is left open. Cf. *Brownlie* v. *Campbell* (1880), 5 A. C. at p. 950. It might, however, entitle the shareholder to rescission. Cf. *Trail* v. *Baring* (1863), 4 De G. J. & S. 318; *Scottish Petroleum Co.* (1883), 23 C. D. 438.

them under this section allege that they had such grounds they will be ordered to give particulars thereof (*r*).

(3) Any person sued under this Act will be exempt from liability if he proves—

(a) Where the untrue statement purported to be a statement by an expert or an official person, that it fairly represented the statement made by him, unless with respect to a statement made by an expert the person suing proves that the person sued had no reasonable ground to believe that the expert was competent to make the statement; or

(b) Where the untrue statement purported to be a copy of or extract from a report or valuation of an expert or a public official document, that it was a correct and fair copy or extract, unless with respect to the report or valuation of an expert the person suing proves that the person sued had no reasonable ground to believe that the expert was competent to make it.

An "expert" includes an engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him (*s*). It is evident that, as a general rule, a statement, report, or valuation to be authoritative must be made by a person whose profession qualifies him to form a correct opinion upon the subject-matter of the statement, &c. It is conceived that, apart from this section, a director who issues a prospectus containing or accompanied by a copy or extract from a report or valuation which he knows to be false, would be liable for misrepresentation, but not if he was unaware of its falsity (*t*). Under this section, however, a director who was ignorant of the falsity of the report or valuation is liable if the plaintiff proves that the director had no reasonable ground for believing that the expert was competent to make it; and, on the other hand, a director, although the report is false, may escape liability under this section by proving that he had reasonable ground for believing that the expert was competent to make it.

It frequently happens that the prospectus of a company formed to acquire or work property in a foreign country contains statements as to its revenue, imports, exports, resources, &c., which are either copied or compiled from public documents issued by the authority of the State or some other public body, or from statements made by some public official. Where the statements in the prospectus are accurately copied from, or fairly represent the official documents or statements, the defendant is not liable under this section if such statements are proved to be false. It is submitted that if he knew them to be false he would be liable in an action of deceit.

(*r*) *Alman* v. *Oppert*, [1901] 2 K. B. 576.

(*s*) Sub-s. 5 of s. 84.

(*t*) *Ex parte Vickers* (1887), 56 L. T. 815.

The defence available under the Statute of Limitations (*u*) is as follows:—

Any person sued under sect. 84 will be exempt from liability if he pleads and proves that more than six years have elapsed since the cause of action accrued (*x*), unless, it is submitted, the plaintiff proves that he did not discover, and had no reasonable means of discovering, the misrepresentation until within six years before action, and that the representation was fraudulent, and that its existence was fraudulently concealed by the defendant until within such six years. The principle as to concealed fraud was laid down in the case of *Gibbs* v. *Guild* (*y*), in an action of deceit to recover moneys paid for the purchase of shares. The cause of action accrues at the time when the agreement to take the shares is made (*z*), although in the case of a purchase of fully paid shares the cause of action accrues at the time when the price is paid (*a*), and in the case of an agreement to take debentures or debenture stock when the money is paid upon the faith of the misrepresentation.

When a misrepresentation by a director is actionable, the mere lapse of time is not a defence, unless and until sufficient time has elapsed to enable him to plead the Statute of Limitations (*b*). Merely failing to commence the action after discovering the truth does not take away the right of action given by the section. It is submitted that to disentitle a person otherwise entitled from suing, the director must prove either a release under seal or for a valuable consideration, or such facts as will enable the Court to infer that such a release has been given.

"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 become 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 be 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" (*c*).

A person entitled to relief under this sub-section is a person named in the prospectus as a director of the company, or as having agreed to become a director of it, who did not authorize or consent to the issue of

(*u*) 21 Jac. 1, c. 16, s. 3, amended by 4 & 5 Anne, c. 3, and 19 & 20 Vict. c. 97, s. 12.

(*x*) *Thomson* v. *Lord Clanmorris*, [1900] 1 Ch. 718.

(*y*) (1881), 8 Q. B. D. 296, and on appeal (1882), 9 Q. B. D. 59.

(*z*) *Thomson* v. *Lord Clanmorris*, *supra*.

(*a*) *Gibbs* v. *Guild*, *supra*, at p. 71.

(*b*) *Redgrave* v. *Hurd* (1881), 20 C. D. at p. 13; *Peek* v. *Gurney* (1873), L. R. 6 H. L. at pp. 384, 402.

(*c*) C. A. 1908, s. 84 (3).

the prospectus, and who either never consented to be a director, or withdrew his consent before such issue and before he was appointed a director. The persons against whom such relief is given are (1) any director of the company who knew or consented to the issue of the prospectus; and (2) any other person who authorized such issue. The relief given to the person entitled is an indemnity against all damages, costs, and expenses, to which he may be 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. He would be, therefore, able to recover all costs and expenses to which he was put in defending actions brought against him by reason of his name appearing on the prospectus, which he was unable to recover from the plaintiff, and also the costs of enforcing the indemnity. It is submitted that the indemnity would include more than solicitor and client costs, as this section gives damages, costs, and expenses (*d*). In addition to this remedy, the person so named could obtain an injunction restraining the publication of the prospectus (*e*), and this he should apply for immediately he discovers that his name appears in it.

"Every person who, by 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 prospectus, becomes 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 (*f*), unless the person who becomes so liable was and that other person was not guilty of fraudulent misrepresentation" (*g*).

This is an exception to the rule of law that there can be no contribution between tortfeasors or wrong-doers. The persons entitled to contribution under this section include every person liable to make any payment under the Act, except a promoter who has been a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but who has not authorized its issue. The persons from whom contribution can be obtained are all the persons liable to make the same payment. It is submitted that the rules of law as to contribution between directors who have parted with the property of the company without power to do so (*h*), will also govern cases of contribution under this section.

(*d*) *Bradbrough* v. *Newdegate* (1883), 11 Q. B. D. 1, 15.

(*e*) Cf. *Routh* v. *Webster* (1847), 10 B. 561, where the plaintiff obtained an injunction to prevent his name appearing as a trustee of a company.

(*f*) *Gerson* v. *Simpson*, [1903] 2 K. B. 197.

(*g*) C. A. 1908, s. 84 (4). The latter part of this section meets the objection urged in *Gerson* v. *Simpson*, *supra*, at p. 203.

(*h*) See *ante*, p. 357, *et seq.*

III. *Companies Act*, 1908, *s.* 81.

In addition to the liability of directors and promoters for misrepresentation at common law and under sect. 84 of the Companies Act, 1908, further liabilities arise by implication under s. 81 of that Act (*i*).

As already pointed out, sect. 81 replaces sect. 10 of the Companies Act, 1900, as amended by the Companies Act, 1907. Sect. 81 does not prescribe any penalty for non-compliance with its provisions, nor does it purport to give compensation to any person for any damage he may sustain by such non-compliance. The Companies Bill, which was introduced in the House of Lords in the session of 1899 and, with amendments, was passed in 1900, contained a clause which provided that in the event of non-compliance with any of the requirements of the Act with respect to a prospectus, any person aggrieved should be entitled to compensation from any director or promoter of the company who was a party to the issue of the prospectus. No such provision, however, was contained in sect. 10 of the Act of 1900, or is contained in sect. 81 of the Consolidation Act of 1908, but sub-sect. 9 of sect. 81, expressly enacts that nothing in this section shall limit or diminish any liability which any persons may incur under the general law or this Act apart from this section. It is, therefore, necessary to consider what is the liability of a company or person responsible for the issue of a prospectus which does not comply with the provisions of sect. 81. This section imposes a statutory duty upon every person responsible for the public issue of a prospectus falling within the section to see that the prospectus complies with its requirements. Every person commits a misdemeanour who wilfully disobeys any statute of the realm by doing any act which it forbids, or by omitting to do any act which it requires to be done and which concerns the public, or any part of the public, unless it appears from the statute that it was the intention of the Legislature to provide some other penalty for such disobedience (*j*). It is submitted that wilful non-compliance with this section is a misdemeanour if the non-compliance is material.

The word "person" in a statute includes a corporation, and it has been held that where a statute imposes upon a company a duty to perform a particular act, and does not provide any other remedy, the company, though a corporation, may be indicted for non-performance of that duty (*k*). Having regard to the language of the section, a duty is also imposed by it upon directors and other persons who authorize the issue of the prospectus to comply with the terms of the section. That being so, they, as well as the company, will be liable to an indictment for a

(*i*) See *ante*, pp. 116–118, where the section is set out.

(*j*) Stephen's Digest of Criminal Law, p. 95; *R.* v. *Price* (1840), 11 A. & E. 727; *R.* v. *Hall*, [1891] 1 Q. B. 747; *R.* v. *Tyler*, [1891] 2 Q. B. 588.

(*k*) *R.* v. *Tyler*, [1891] 2 Q. B. 588, 597.

misdemeanour if they wilfully disobey this section. Every person convicted of a misdemeanour, for which no special punishment is provided by law, is liable at the discretion of the Court to fine and imprisonment, or either (*l*). Moreover, where by a statute a duty is imposed for the benefit or protection of particular classes of persons, an action may be brought for breach of the statutory duty by another member of the class for the damage he thereby sustains. As a company is liable for the wrongful acts of its agents (*m*), the question will arise whether such an action can be brought against the company by any subscriber for shares, debentures or debenture stock upon the faith of a prospectus which does not comply with the section. Shareholders cannot do so unless they can and do repudiate their shares (*n*), but there is no reason why a subscriber for debentures or debenture stock should not bring such an action. A similar action would lie against the directors or other persons responsible for the issue of the prospectus, and this action could be maintained by a subscriber for shares, whether he did or did not repudiate the shares, as well as by a subscriber for debentures or debenture stock.

It is submitted that no action will lie for any non-compliance with the provisions of this section unless the plaintiff is able to prove that the contracts or facts undisclosed are material, and that if the facts or contracts which ought to have been stated in the prospectus had been so stated he would not have subscribed for the shares, debentures or debenture stock, and that he has suffered damage by such subscription (*o*). Probably the measure of damages in such an action would be the difference between the real value of the shares, &c., subscribed for at the time he subscribed and the sum he paid for them, regard being had in fixing such value to subsequent events (*p*). Where the shares were worthless the damages would be the sum paid for the shares (*q*). Sometimes an inquiry is directed in order to ascertain the damages (*r*). It is submitted that in such a case a subscriber for shares as against the company would be entitled to rescission of his contract to take the shares and consequential relief in addition to his remedy in damages against a director or other person who is liable.

As sect. 81 expressly provides (sub-sect. 8) that nothing in the section is to limit or diminish any liability which any person may incur under the general law or the Act of 1908 apart from this section, a subscriber for

(*l*) Stephen's Digest of Criminal Law, p. 18.

(*m*) *Groves* v. *Wimborne*, [1898] 2 Q. B. 402; see *ante*, p. 108.

(*n*) See *ante*, p. 364.

(*o*) Cf. *Nash* v. *Calthorpe*, [1905] 2 Ch. 237; *MacLeay* v. *Tait*, [1906] A. C. 24.

(*p*) Cf. *Twycross* v. *Grant* (1877), 2 C. P. D. 469, 489; *Shepheard* v. *Broome*, [1904] A. C. 342; *McConnel* v. *Wright*, [1903] 1 Ch. 546.

(*q*) *Jury* v. *Stoker* (1881), 9 L. R. Ir. 404; *White* v. *Haymen* (1833), 1 C. & E. 101.

(*r*) *Cackett* v. *Keswick*, [1902] 2 Ch. 456; *Batey* v. *Keswick*, [1901] W. N. 167; *Broome* v. *Speak*, *supra*.

shares, debentures or debenture stock on the faith of a prospectus which contains material misrepresentations of fact, or statements which by reason of omissions are made false or misleading, will be entitled to his remedies at common law and in equity, and under the Act in respect of such misrepresentations or statements.

In order to protect directors and other persons responsible for the issue of the prospectus, sub-sect. 6 of this section provides that in the event of non-compliance with any of the requirements of the section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that as regards any matter not disclosed he was not cognisant thereof, or that the non-compliance arose from an honest mistake of fact: and as to non-compliance with the requirements contained in paragraph (m) of sub-sect. (1) of this section he will escape liability unless it be proved against him that he had knowledge of the matter not disclosed. The requirements of this section cannot be waived, nor can a subscriber for shares or debentures or debenture stock, be affected with notice of any contract, document or matter not specifically referred to in the prospectus (sub-sect. 4).

Sect. 38 of the Companies Act, 1867 (*s*), prior to its repeal by the Companies Act, 1900, s. 33, imposed another liability on the directors and promoters of companies governed by the Companies Acts. Having regard, however, to the fact that actions under the repealed section could be successfully defended under the Statute of Limitations by pleading and proving that more than six years had elapsed before the time at which the cause of action arose and the time at which the writ was issued it is unnecessary to further consider sect. 38.

(*s*) See *ante*, p. 118, where the section is set out.

CHAPTER XXVIII.

LIABILITIES OF DIRECTORS TO PERSONS OTHER THAN HOLDERS OF SHARES, DEBENTURES, OR DEBENTURE STOCK.

In addition to the liabilities which a director may incur to his company and to the holders of shares therein, or debentures or debenture stock thereof, he may incur liabilities to other persons in conducting the business of the company. Such liabilities principally arise in cases where an agent acting on behalf of his principal would be liable—*e.g.*, where the director contracts so as to make himself personally liable on the contract, where he purports to act on behalf of his principal without authority, or where he is guilty of some fraud or other wrongful act in connection with the transaction.

1. Where a director, although acting on behalf of the company, signs a contract in his own name, he is to be deemed a person contracting personally, unless it is apparent from the other portions of the document that he does not intend to bind himself as principal (*a*).

Where directors of a company make a promissory note by which they undertake as directors, *jointly and severally*, to pay a certain sum of money, they are personally liable on the note (*b*). *Secus*, where the promissory note was signed by the directors and secretary, and was as follows: "Three months after date we jointly promise to pay F. S. or order 600*l.* for value received in stock on account of the L. & B. I. & H. Co., Ltd." (*c*). But where directors, in making a promissory note or accepting a bill, describe themselves as directors, but do not state on the

(*a*) *McCollin* v. *Gilpin* (1880), 6 Q. B. D. 516.

(*b*) *Healey* v. *Storey* (1848), 3 Exch. 3; *Penkivil* v. *Connell* (1850), 5 Exch. 381. See also *Attwood* v. *Small* (1827), 1 Man. & Ry. 246; and *Hodgson* v. *Hancock* (1827), 1 Y. & J. 317.

(*c*) *Lindus* v. *Melrose* (1858), 3 H. & N. 177. See also *Okell* v. *Charles* (1876), 34 L. T. 822; *Aggs* v. *Nicholson* (1856), 1 H. & N. 165.

face of the document that they are acting on behalf of the company, they are personally liable thereon, and such liability is not excluded by the seal of the company being affixed to the document (*d*); but it may be excluded if the name of the company appears on the face of the note (*e*). A director cannot, however, by accepting for himself and his co-directors a bill drawn upon them, bind them, unless by the regulations of the company he has power to do so, or they have expressly authorized him to do so (*f*).

Where a member of a company advances money to one of its directors, knowing that it is to be applied in taking up a bill of exchange to which such director has become a party for the purposes of the company, it is a question for the jury whether the money was advanced on the credit of the company, or of the director individually (*g*). Where it is doubtful, upon the terms of an agreement in writing entered into by the directors of a company, whether they have made themselves personally liable to repay the amount advanced to the company under the agreement, parol evidence to explain the ambiguity is admissible (*h*). A director, manager, or officer of a limited company governed by the Companies Acts is, by sect. 63 of the Companies Act, 1908, personally liable on any bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless paid by the company, if he signs or authorizes the signing on behalf of the company of any such bill, &c., and in such bill, &c., the name of the company does not appear in legible characters (*i*), or the name is not stated accurately (*k*).

2. Where a director duly authorized, acting on behalf of the company, enters into a contract in its name, he personally cannot sue or be sued thereon.

Thus, the directors of a company are not liable upon cheques of the company signed by them and countersigned by the secretary and honoured by the company's bankers, although they have no funds of the company (*l*), and damages cannot be obtained against directors personally for non-allotment of shares (*m*). So, too, a person who had lent 1000*l.* to the

(*d*) *Dutton* v. *Marsh* (1871), L. R. 6 Q. B. 361; *Courtauld* v. *Saunders* (1867), 16 L. T. 562.

(*e*) *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

(*f*) *Bramah* v. *Roberts* (1837), 5 Scott, 172; *Premier Industrial Bank* v. *Carlton Manufacturing Co.*, [1909] 1 K. B. 106.

(*g*) *Colley* v. *Smith* (1838), 2 Moo. & Rob. 696.

(*h*) *McCollin* v. *Gilpin* (1881), 6 Q. B. D. 516.

(*i*) *Atkins & Co.* v. *Wardle* (1889), 58 L. J. Q. B. 377; *Penrose* v. *Martyr* (1858), E. B. & E. 499, where the word "limited" was omitted from the name of the company.

(*k*) *Nassau Steam Press* v. *Tyler* (1894), 70 L. T. 376.

(*l*) *Beattie* v. *Lord Ebury* (1874), L. R. 7 H. L. 102.

(*m*) *Ferguson* v. *Wilson* (1866), 2 Ch. 77.

company upon the security of a transfer of a mortgage, which it was agreed should be replaced, if it became ineffective, by the transfer of another mortgage, sought unsuccessfully to make the directors of the company personally liable for gross negligence in not replacing the security when paid off by another security (*n*).

3. If a director of a company, acting on its behalf, is guilty of fraud or some other wrongful act, he is personally liable to the person injured for any damages he thereby sustains.

This is merely an application of the general rule of law that every person who is a party to a tort is a principal, and, therefore, cannot shelter himself upon the ground that he was acting as agent for some other person. Numerous illustrations of the rule will be found in Chap. XXVII.

It is the duty of the directors to communicate to all the shareholders any part of the report of the auditors which materially affects the accounts of the company; and causing a letter containing a part of such report, which affected the character of one of the company's agents, to be printed and forwarded to the shareholders who were not present at the general meeting, is a reasonable and necessary mode of publishing such report, and the letter must be treated as published on a privileged occasion, and the report being printed without comment, and there being no extrinsic or intrinsic evidence of malice, neither the company nor the directors are liable to the plaintiff in an action for libel (*o*).

4. A director who untruly or by mistake represents himself to have authority to bind the company in any transaction, and thereby induces a person to enter into such transaction, is liable to make compensation to such person in respect of any damage or loss thereby caused to him, in case the company does not or cannot ratify such transaction.

(*n*) *Wilson* v. *Lord Bury* (1880), 5 Q. B. D. 518.

(*o*) *Lawless* v. *Anglo-Egyptian Co.* (1869), L. R. 4 Q. B. 262; 38 L. J. Q. B. 129. See also *Philadelphia Rail.* v. *Quigley*, 21 Howard (Sup. Court, U. S.), 202, where it was decided that it is within the course of business and employment of the president and directors to investigate the conduct of their officers and agents, and to report the result to the stockholders, and that in the absence of malice and bad faith such a report is privileged; but that such privilege did not extend to the preservation of the report and evidence in a book for distribution amongst the persons belonging to the corporation.

Thus, directors are liable for sums paid by a bank in honouring cheques of the company's manager who they represented had authority to draw such cheques on behalf of the company (*p*).

The issue of debentures or debenture stock of the company, or borrowing of moneys on its behalf by directors, is equivalent to a representation that they have power to do so; and if the debentures or stock issued or money borrowed exceed the amount authorized, they are liable to make good the loss sustained by the person taking or lending the same (*q*). So, too, directors who, without authority, accept bills on behalf of their company, are liable in damages to a holder for value without notice of want of authority (*r*). The measure of damages in these cases is the amount required to place the party to whom the representation is made in the same position as if it had been true. Thus in the case of an unauthorized issue of debentures or debenture stock, the damages would be the value at the time of such issue of the authorized debentures or stock (*s*). Where, however, the representation is as to a matter of law, and not of fact, no liability is incurred by the directors making it (*t*). A contract with a person to supply goods to a company to be paid for by its first mortgage debentures, is not a representation that the company has debentures of that class available for that purpose (*u*). Somewhat analogous to the cases on misrepresentation of authority is the case of *Moseley* v. *Cressey's Co.* (*x*). There directors stated in the prospectus that deposits paid on application would be returned if no allotment were made. As in the absence of any special contract the deposits became the moneys of the company, and available for the payment of its creditors generally, the directors were considered to be personally liable to the persons applying for shares on the faith of that statement for the amount of such deposit. It is advisable in such a case for directors to invest the deposits in the names of trustees for the applicants until allotment.

5. Where directors, duly authorized to do so, employ a person to act on behalf of the company, such person

(*p*) *Cherry* v. *Colonial Bank of Australasia* (1869), 3 P. C. 24.

(*q*) *Weeks* v. *Propert* (1873), 8 C. P. 427; *Looker* v. *Wrigley* (1882), 9 Q. B. D. 397; *Whitehaven, &c., Banking Co.* v. *Reed* (1886), 54 L. T. 360; *Firbank's Executors* v. *Humphreys* (1886), 18 Q. B. D. 54; *Richardson* v. *Williamson* (1871), L. R. 6 Q. B. 276; *Chapleo* v. *Brunswick Permanent Building Society* (1881), 6 Q. B. D. 696. See also *Starkey* v. *Bank of England*, [1903] A. C. 114. Cf. *Elkington & Co.* v. *Hürter*, [1892] 2 Ch. 452.

(*r*) *West London Commercial Bank* v. *Kitson* (1884), 13 Q. B. D. 360.

(*s*) *Weeks* v. *Propert*, *supra*; *Firbank's Executors* v. *Humphreys*, *supra*.

(*t*) *Beattie* v. *Lord Ebury* (1874), L. R. 7 H. L. 102; *Rashdall* v. *Ford* (1866), 2 Eq. 750; *Eaglesfield* v. *Marquis of Londonderry* (1876), 4 C. D. 693.

(*u*) *Elkington & Co.* v. *Hürter*, [1892] 2 Ch. 452.

(*x*) (1865), 1 Eq. 405, 409.

is a sub-agent, and the directors are not responsible to third persons for his unauthorized acts, unless they derive benefit from such acts.

Thus, directors who were authorized to issue debentures on such terms and for such amount as they thought fit, and who employed brokers to place the debentures, were not liable for misrepresentations contained in the prospectus issued by the brokers, inviting subscriptions for such debentures, the misrepresentations being made without the knowledge or authority of the directors (*y*). This would be so whether the brokers were considered the agents of the company or the sub-agents of the directors (*y*). But if the directors had, in this case, derived a benefit from the fraud committed by the broker, they would have been held liable (*z*).

It has been held that directors are responsible for the infringement by the workmen of the company of a patent, although they directed such workmen not to infringe it; but as the case was decided upon the ground that a master is liable for the acts of his servants, done in the course of his employment, and the workmen were the servants of the company, it it is difficult to understand this decision (*a*).

Any judgment or order against a company may, by leave of the Court or a judge, be enforced by a writ of sequestration against its corporate property or against its directors or other officers by attachment, or by writ of sequestration of their property (*b*).

(*y*) *Weir* v. *Bell* (1878), 3 Exch. D. 238, Cotton, L.J., dissenting. In such a case a director might now be liable under s. 84 of the Companies Act, 1908.

(*z*) *Weir* v. *Bell*, *supra*, judgment of Cockburn, C.J., pp. 249 and 250.

(*a*) *Betts* v. *De Vitre* (1868), 3 Ch. 429.

(*b*) R. S. C., Order XLII. r. 31; *Lewis* v. *Pontypridd, &c., Rail. Co.* (1895), 11 T. L. R. 203; *McKeown* v. *Joint Stock Institute*, [1899] 1 Ch. 671.

CHAPTER XXIX.

CRIMINAL LIABILITY OF DIRECTORS AND PROMOTERS.

The acts of directors and promoters in respect of companies which cause them to incur criminal liability, may be divided into two classes—viz., offences punishable with imprisonment, and offences punishable by pecuniary penalties or fines.

In several cases directors have been convicted of conspiracy to defraud. The law of conspiracy is very elastic, and in the case of *The Gold Co.* (*a*), where the capital had been "watered" under a power in the articles, by giving the holder of every 1*l.* share three 1*l.* shares, Bramwell, L.J., said: "Another thing which it may be as well for gentlemen to bear in mind who have such schemes as this in their heads is, that it is by no means clear that if they were indicted for a conspiracy, they could not be very properly convicted, and suffer punishment for it, for it is perfectly certain that in this case a false impression must have been created. It is impossible to suppose that these shares would have been sold at the average price at which they were sold if the truth had been known. I have thought it right to express this opinion, with a view to prevent others from repeating practices which are here so objectionable."

The same judge, in *Twycross* v. *Grant* (*b*), alluding to the practice of directors receiving their qualification from promoters, said that thirty-five years ago he pointed out the obvious impropriety of directors being nominees of sellers and at the same time agents of buyers, with a warning that it might bring the parties to it within the law of conspiracy.

If the directors of a company agree to publish false statements of the affairs of the company, under such circumstances as show a fraudulent intent to deceive, they are not only civilly liable to those whom they have deceived and injured, but may be criminally prosecuted and punished (*c*).

It is an indictable offence to conspire, on a particular day, by false

(*a*) (1879), 11 C. D. 701, 723.
(*b*) (1877), 2 C. P. D. 469, 493.
(*c*) *Burnes* v. *Pennel* (1849), 2 H. L. Cas., per Lord Campbell, at p. 524.

rumours, to raise the price of the public funds, with the intention to injure any person who should on that day buy any part of such funds (*d*).

The directors and promoters of the Eupion Fuel Gas Company were indicted for, and found guilty of, conspiring to induce the committee of the Stock Exchange to order a quotation of the shares of the company in their official list (*e*). Two directors of the Great Eastern Steamship Company were found guilty of conspiring to defraud the company, by agreeing with a broker and promoter of the company to charge a third party 6000*l.* for chartering the vessel, and to accept 5000*l.* for the company, and give the broker the difference (*f*). A director who is also employed as a servant to collect money for the company may be convicted of embezzling such money as being a clerk or servant of the company (*g*).

There are several statutes which contain provisions for the punishment of directors who commit frauds against the company, its members and creditors. The Larceny Act, 1861, which does not apply to Scotland, enacts, among other things, that every director or public officer of any body corporate or public company shall be guilty of a misdemeanour, and on being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to imprisonment not exceeding two years with or without hard labour, who fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of its property (*h*); or who as such director or officer receives or possesses himself of any of its property otherwise than in payment of a just debt or demand, and with intent to defraud omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company (*i*); or who, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, or valuable security belonging to it, or makes, or concurs in the making of, any false entry, or omits, or concurs in omitting, any material particular in any book of account or other document (*k*); or who makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement or account which he knows 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,

(*d*) *R.* v. *De Berenger* (1814), 3 M. & S. 67.

(*e*) *R.* v. *Aspinall* (1876), 2 Q. B. D. 48. For form of indictment, see p. 49.

(*f*) *R.* v. *Barber* (1887), 3 T. L. R. 491.

(*g*) *R.* v. *Stuart*, [1894] 1 Q. B. 310.

(*h*) Sect. 81. As to the construction of a similar section in an Isle of Man Act, see *Nelson* v. *R.*, [1902] A. C. 250.

(*i*) Sect. 82.

(*k*) Sect. 83.

or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof (*l*).

Sections 82, 83 and 84 also apply to a manager and sections 81 and 83 to a member of a body corporate or public company. No person liable under sects. 81 to 84 is entitled to refuse to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy, upon the ground that his doing so might tend to show that he had committed any of the offences defined in such sections; but he is not liable to be convicted under any of these sections by any evidence whatever in respect of any act done by him, if he has at any time previous to his being charged with such offence first disclosed such act on oath in consequence of any compulsory process of any Court, which in 1861 was a Court of either law or equity, in any action, suit, or proceeding *bonâ fide* instituted by any party aggrieved, or if he has first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency (*m*).

Any person commits a felony, and is liable on conviction to penal servitude for life or not less than three years, who, with intent to defraud, forges, alters, or utters any share warrant or coupon issued in pursuance of the Companies Act, 1908, or by means of any such forged or altered warrant or coupon falsely personates any owner of any share or interest in any company or of any share warrant or coupon issued in pursuance of the Act and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon or any money payable in respect thereof or due to such owner (*n*).

Any person commits a felony and is liable on conviction to penal servitude for fourteen years or not less than three years, who without lawful authority or excuse engraves or makes or uses any material for making or printing any such share warrant or coupon or any blank warrant or coupon or any part thereof respectively or knowingly has in his possession or custody any such material (*m*).

If any person, in any return, report, certificate, balance-sheet, or other document required by or for the purposes of any of the provisions (*o*) of the Companies Act, 1908, specified in the fifth schedule

(*l*) Sect. 84. This section applies to a manager *de facto*, *R.* v. *Lawson*, [1905] 1 K. B. 541.

(*m*) Sect. 85.

(*n*) C. A. 1908, s. 38.

(*o*) These provisions are those relating to—

The conclusiveness of certificates of incorporation, s. 17.

Restriction on appointment or advertisement of directors, s. 72.

Restrictions on commencement of business, s. 87.

Returns as to allotments, s. 88.

Statutory meetings, s. 65.

The particulars as to directors and mortgage debt and the statement in the form of a balance-sheet in the annual summary, s. 26.

The appointment and remuneration and powers and duties of auditors, ss. 112, 113.

thereto, wilfully makes a statement false in any material particular knowing it to be false, he is guilty of a misdemeanour and is 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 fine in lieu of, or in addition to, such imprisonment, but such fine, on summary conviction, is not to exceed 100*l.* (*p*).

Any director, officer or contributory of any company being wound up is guilty of a misdemeanour, and, upon conviction, is liable to two years' imprisonment, with or without hard labour, who destroys, mutilates, alters, or falsifies any books, papers, accounts, deeds, writings, documents, or securities, or makes, or is privy to making, 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 (*q*). Any director, manager, or officer of a company governed by the Companies Act, also commits a misdemeanour who wilfully conceals the name of any creditor who is entitled to object to a proposed reduction of the capital of the company, or wilfully misrepresents the nature or amount of his debt or claim, or aids, abets, or is privy to such concealment or misrepresention (*r*). Any person is guilty of a misdemeanour and is liable on conviction on indictment to fine and imprisonment, or on summary conviction to a penalty of 50*l.*, who signs a document required by the Assurance Companies Act, 1909, which to his knowledge is false in any particular (*s*).

If it appears to the Court, in the course of a winding-up of a company by or subject to the supervision of the Court, that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company (*t*). The discretion conferred on the Court by this section is unfettered by any obligation to hear evidence as to the

Obligations of companies where no prospectus is issued, s. 82.

Registration of mortgages and charges in England and Ireland, s. 93.

Filing of accounts of receiver and manager, s. 95.

Notice by liquidator in voluntary winding-up of his appointment, s. 187.

Rights of creditors in a voluntary winding-up, s. 188.

Requirements as to companies established outside the United Kingdom, s. 274.

Annual Report by Board of Trade, s. 283.

(*p*) C. A. 1908, s. 281.

(*q*) *Ibid.* s. 216.

(*r*) *Ibid.* s. 54.

(*s*) Sect. 24. As to what is an assurance company, see *ante*, p. 296.

(*t*) C. A. 1908, s. 217 (1); *Charles Denham & Co.* (1883), 53 L. J. Ch. 1113; *London and Globe Finance Corpn.*, [1903] 1 Ch. 728.

propriety of a prosecution, and the application should be made *ex parte* (*u*). In a voluntary liquidation the liquidator may, with the previous sanction of the Court, prosecute the offender, and all expenses properly incurred by him in the prosecution are payable out of the assets of the company in priority to all other liabilities (*x*).

The following Table gives a list of the penalties or fines prescribed by the Companies Act, 1908, in respect of offences committed under that Act. All such offences may be prosecuted under the Summary Jurisdiction Acts (*y*). Every penalty imposed by the Assurance Companies Act, 1909, is recoverable and applicable in the same manner as the penalties following (see sect. 26 and *ante*, p. 296).

FINES AND PENALTIES.

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Default in delivering to the registrar of joint stock companies any document required by s. 9 to be delivered to him.	s. 9.	The company.	£10 for every day during which it is in default.
Default in sending to a member at his request and on payment of 1s. or such less sum as the company may prescribe a copy of the memorandum and of the articles if any.	s. 18.	The company.	£1 for each offence.
Default in keeping the prescribed register of members (*z*), or in the case of a company having a share capital default in making and supplying to the registrar once in every year (*a*) a list of members and a summary (*b*).	s. 25. s. 26.	The company and every director and manager (*c*) knowingly and wilfully (*d*) authorising or permitting the default.	£5 for every day during which the default continues.

(*u*) *Charles Denham & Co., supra.*

(*x*) C. A. 1908, s. 217 (2).

(*y*) *Ibid.* s. 276 (1). Under sub-s. (2) certain of these offences can only be prosecuted in Scotland at the instance of the Lord Advocate or of a procurator fiscal as he may direct. See s. 277 as to application of penalties.

(*z*) See *ante*, p. 154, as to what the register must contain.

(*a*) As to what must be proved to recover the penalty, see *R.* v. *Newton* (1879), 48 L. J. M. C. 77; and as to time within which it may be recovered, *R.* v. *Catholic, &c., Co.* (1883), 48 L. T. 675.

(*b*) See *ante*, p. 288, as to contents of the annual list and summary and Form E in the 3rd Schedule to the C. A. 1908.

(*c*) The secretary of a company may be a manager within the section, *Gibson* v. *Barton* (1875), 10 Q. B. 329.

(*d*) As to the meaning of knowingly and wilfully, see *Twycross* v. *Grant* (1877), 2 C. P. D. 469; *Watts* v. *Bucknall*, [1903] 1 Ch. 766; *Hoole* v. *Speak*, [1904] 2 Ch. 732; *Tait* v. *Macleay*, [1904] 2 Ch. 631, affirmed, [1906] A. C. 24.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Refusal to allow inspection or furnish copy of the register or of the list or summary required by s. 26 (*e*).	s. 30.	The same.	£2 and a further £2 for every day during which the refusal continues (*f*).
Where a company has altered its share capital under s. 41, subsequently issuing any copy of the memorandum not containing the alteration.	s. 41.	The same.	£1 for each copy.
Default in notifying to the registrar an increase in share capital beyond the registered capital, or in the number of members of a company limited by guarantee beyond the registered number.	s. 44.	The same.	£5 for every day during which default continues.
Issuing any copy of a memorandum of association without embodying in it the minute of a reduction of capital.	s. 52.	The same.	£1 for every copy.
Default in adding to proposal that any person shall be elected or appointed director or manager of a limited company in which the liability of a director or manager is unlimited a statement to that effect, or in giving notice to him in writing, before he accepts the office that his liability will be unlimited.	s. 60.	The director, manager or proposer who makes default in adding such statement, and any promoter, director, manager, or secretary who makes default in giving such a notice.	Fine of £100 and also liable for any damage which the person elected may sustain from the default.
Default in embodying in or annexing to any copy of memorandum of association issued after confirmation of a special resolution rendering liability of directors or managers or managing directors unlimited, a copy of such resolution.	s. 61.	The company and every director or manager who knowingly and wilfully authorises or permits the default.	£1 for each copy in respect of which default is made.

(*e*) Every person other than a member must pay the sum (not exceeding one shilling) prescribed by the company for each inspection, and every person requiring a copy must pay sixpence, or such less sum as the company may prescribe, for each hundred words copied. The section does not give the right of taking extracts from or making copies of entries in the register, *Balaghat Gold Mining Co.*, [1901] 2 K. B. 665. As to statutory companies, see *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 248.

(*f*) An order for inspection may also be obtained from any judge as respects companies registered in England or Ireland, s. 30.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Carrying on business without a registered office, or without giving notice to the registrar of its situation, or of any change therein.	s. 62.	The company.	£5 for each day on which it so carries on business.
Default in painting or affixing and keeping painted or affixed the name of a limited company on the outside of each of its offices and places of business, in a conspicuous position in letters easily legible.	s. 63.	The company and every director and manager knowingly and wilfully authorising or permitting the default.	£5 for every day during which default continues.
Using or authorising the use of any seal purporting to be a seal of a limited company or issuing or authorising to be issued any notice, advertisement, or other official publication of the company or any bill of parcels, invoice, receipt or letter of credit of the company whereon or wherein its name does not appear in legible characters.	s. 63.	Every director, manager or officer of the company or any person on its behalf doing such act or authorising the same to be done.	£50.
Signing or authorising to be signed any bill of exchange, promissory note, indorsement, cheque or order for money or goods on behalf of a limited company wherein its name does not appear in legible characters.	s. 63.	The same.	£50, and to be personally liable for the amount of the bill, note, &c., unless the company duly pays the same.
Default in holding general meeting of the company once in every calendar year, or within 15 months after the last general meeting.	s. 64.	The company and every director, manager, secretary, and other officer who is knowingly a party to the default.	£50.
Default in printing or forwarding to the registrar a copy of a special or extraordinary resolution.	s. 70.	The company and every director and manager who knowingly and wilfully authorises or permits such default.	£2 for every day during which the default continues.
Default in embodying in or annexing to a copy of its articles or in forwarding in print to a member, at his request and on payment of 1s., a copy of a special resolution.	Ib.	The same.	£1 per day for each copy in respect of which default is made.
On application for registration of the memorandum and articles of a company, delivering to the register a list of directors containing the name of a person who has not consented.	s. 72.	The applicant.	£50.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Acting as director while unqualified after expiration of two months from date of appointment or of such shorter time as is fixed by regulations of the company.	s. 73.	The person so acting.	£5 for every day he so acts after expiration of period.
Default in keeping at registered office a register containing names, addresses, and occupations of directors or managers or in sending to registrar a copy thereof, or in notifying to him from time to time any change among directors or managers.	s. 75.	The company and every director and manager who knowingly and wilfully authorises or permits the default.	£5 for every day during which the default continues.
Issuing a prospectus without filing a copy thereof with the registrar.	s. 80.	The company and every person who is knowingly a party to the issue.	£5 for every day from date of issue until a copy is filed.
Commencing business or exercising borrowing powers before obtaining registrar's certificate under s. 87.	s. 87.	Every person responsible.	£50 for every day during which the contravention continues without prejudice to any other liability.
Default in filing return of allotments of shares and the necessary contracts or particulars and return as to shares allotted as fully or partly paid up otherwise than in cash.	s. 88.	Every director, manager, secretary or other officer who is knowingly a party to the default.	£50 for every day during which default continues but the court can grant relief in certain cases.
Default in completing and having ready for delivery within 2 months after allotment or registration of transfer the certificates of all shares and debenture stock and all debentures allotted or transferred unless the conditions of issue otherwise provide.	s. 92.	The company and every director, manager, secretary, and other officer who is knowingly a party to the default.	£5 for every day during which the default continues.
Default in giving notice to registrar of order for appointment of receiver or manager or of appointment of receiver or manager under any instrument.	s. 94.	Every person obtaining the order or making the appointment.	£5 for every day during which the default continues.
Default in filing abstract of receipts and payments of receiver or manager or notice of ceasing to act as such.	s. 95.	Every receiver or manager making default.	£50.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Default in sending to the registrar particulars of any mortgage or charge or issue of debentures of a series requiring registration unless registration has been effected by some other person.	s. 99 (1).	The company and every director, manager, secretary and other person knowingly a party to the default.	£50 for every day during which the default continues.
Default in complying with any requirement of this Act as to registration of any mortgage or charge created by this company, unless registration has been effected by some other person.	s. 99 (2).	The company and every director, manager and other officer of the company who knowingly or wilfully authorised or permitted the default.	£100.
Delivery of any debenture or certificate of debenture stock requiring registration without a copy of the certificate of registration endorsed on it.	s. 99 (3).	Any person knowingly and wilfully authorising or permitting the delivery.	£100, without prejudice to any other liability.
Omission of entry in the company's register of mortgages of any mortgage or charge specifically affecting property of the company.	s. 100.	Any director, manager or other officer knowingly and wilfully authorising or permitting the omission.	£50.
Refusing inspection of copies of instruments creating any mortgage or charge and requiring registration, or of register of mortgages, to any creditor or member, or refusing inspection of the register of mortgages to any persons on payment of prescribed fee.	s. 101.	Any officer refusing inspection and every director or manager authorising or knowingly and wilfully permitting the refusal.	£5, and a further £2 for every day during which the refusal continues.
Refusing to allow registered holder of debentures or debenture stock or shareholder to inspect register or holders of debentures or stock, or to supply to any such holder a copy of the register or any part thereof or a copy of any trust deed upon payment of the prescribed charge.	s. 102.	The company and every director, manager, secretary or other officer who knowingly authorises or permits the refusal.	£5 and a further £2 for every day during which the refusal continues.
Default by limited banking company or insurance company (*ff*) or deposit, provident, or benefit society in making and publishing and supplying to members and creditors copies of half-yearly statements in the form marked C in the 1st schedule to C. A. 1908.	s. 108.	The company and every director and manager who knowingly and wilfully authorises or permits the default.	£5 for every day during which the default continues.

(*ff*) See *ante*, p. 293.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Refusal of any officer or agent of the company to produce any book or document in his custody or power to an inspector appointed by the Board of Trade or by special resolution to investigate the companies' affairs or to answer any questions relating to the affairs of the company.	ss. 109, 110.	Any officer or agent so refusing.	£5 for each offence.
Issuing, circulating, or publishing a balance-sheet not signed by two of the directors on behalf of the board, or by the sole director, or without a copy of or reference to the auditors' report.	s. 113.	The company and every director, manager, secretary or other officer knowingly a party to the default.	£50.
Default in making statement of affairs of the company.	s. 147.	The director, officer or promoter of the company whose duty it is to make statement and who is in default.	£10 for every day during which the default continues.
Default in reporting to the registrar an order for dissolution of the company.	s. 172.	The liquidator.	£5 for every day during which the default continues.
Default in filing with the registrar notice of his appointment as liquidator in a voluntary winding-up within 21 days after his appointment.	s. 187.	The liquidator.	The same.
Default in reporting to the registrar the holding of the final meeting in a voluntary winding-up and its date.	s. 195.	The liquidator.	The same.
Default in filing with a registrar an office copy of an order deferring date of dissolution of the company.	Ib.	Any person on whose application the order is made.	The same.
Default in filing with registrar an office copy of any order declaring the dissolution of a company to have been void.	s. 223.	The applicant.	The same.
Default in sending to the registrar a statement as to the proceedings in and the position of the liquidation at the times in the form and containing the particulars prescribed.	s. 224.	The liquidator.	£50 for each day during which the default continues.

FINES AND PENALTIES—*continued.*

Offence.	Sect. of C. A. 1908.	Person Liable.	Maximum Penalty.
Default in filing with the registrar (*a*) a certified copy of the instrument defining the constitution of the company and a certified translation thereof; (*b*) a list of the directors; (*c*) names and addresses of some one or more persons in the United Kingdom authorised to accept on behalf of the company service of process and of any notice required to be served on it.	s. 274.	Every company incorporated outside the United Kingdom which establishes a place of business within it and every officer or agent of the company.	£50, or in the case of a continuing offence £5 for every day during which the default continues.
Default (*a*) in stating in any prospectus inviting subscriptions for shares or debentures in the United Kingdom the country in which it is incorporated; or (*b*) in conspicuously exhibiting in every place where it carries on business in the United Kingdom the name of the company and the country in which it is incorporated; or (*c*) in having the name of the company and the country in which it is incorporated mentioned in legible characters on all bill-heads, paper, notices, advertisements and official publications of the company.	s. 274.	Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom and uses the word "Limited" as part of its name, and every officer or agent of the company.	The same.
Trading or carrying on business under name of which "Limited" is the last word, unless duly incorporated with limited liability.	s. 282.	Any person.	£5 for every day on which that name or title has been used.

CHAPTER XXX.

LEGAL PROCEEDINGS BY AND AGAINST COMPANIES.

A COMPANY incorporated under the Companies Acts is capable of exercising all the functions of an incorporated company (*a*). It is, therefore, capable of suing and being sued in its corporate name. It is intended in this chapter to deal almost exclusively with procedure so far as legal proceedings by or against a company while a going concern differ from legal proceedings by or against an individual (*b*).

Any writ, summons, notice, order or other legal process may be served on a company by leaving it or sending it by post to the registered office of the company (*c*), and where an Imperial Statute (*d*) provides for service, the service of a writ, summons, or other legal process in accordance with O. 9, r. 8 of the Rules of the Supreme Court on the head officer, clerk, treasurer or secretary of a company is invalid (*d*). If the secretary arranges that service shall be made at some place other than the registered office, the service is good, although he conceals the fact of service from the directors (*dd*). It is sufficient service if a clerk of the plaintiff's solicitor hands the writ to a director of the company at its head office (*e*).

A company registered under the Companies (Consolidation) Act, 1908, which has its registered office in Scotland or Ireland, cannot be served at a branch in England at which it carries on its business as a foreign company could be, but must be served at its registered office, leave to serve out of the jurisdiction being first obtained (*f*). A foreign company, however, which is "resident" in England, can be served by leaving the writ, summons, or notice with its head officer, clerk, treasurer or secretary

(*a*) Companies Act, 1908, s. 16.

(*b*) The procedure in the winding-up of a company is dealt with in the chapters relating to winding-up. The procedure in legal proceedings between a company and its shareholders will be found in Chap. XVIII., and between a company and holders of debentures or debenture stock in Chap. XXI.

(*c*) C. A. 1908, ss. 116 and 285.

(*d*) *Palmer* v. *Caledonian Ry. Co.*, [1892] 1 Q. B. 823, 829.

(*dd*) *Ex parte Baily. Steel and Plant Co.* (1878), 8 Ch. D. 183, p. 189.

(*e*) *Watson* v. *Sheather* (1886), 2 T. L. R. 473.

(*f*) *White* v. *Land Co.*, W. N. (1883), 174; *Wood* v. *Anderston Foundry Co.* (1888), 36 W. R. 918; *Watkins* v. *Scottish, &c., Co.* (1889), 23 Q. B. D. 285.

at its place of business in England (*g*), and for this purpose it is sufficient if a substantial part of its business is carried on in the country, though another part is not (*h*). But the mere keeping of a separate share register for English shareholders in England, is not carrying on business here (*i*). The test of "residence" of a company for income tax purposes is "Where does it keep house and do business? Where is the actual management?" (*k*). A Scottish corporation which is not incorporated under the Companies Acts and as to which there is no statutory provisions to the contrary is, for this purpose, in the position of a foreign corporation, so that service upon the manager of a branch in England is good (*l*). A foreign corporation complying with sect. 274 of the Companies Act, 1908, must, however, be served with process in accordance with that section.

After a winding-up order has been made, no action or other proceeding can be either proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose (*m*). The proper person to serve, when leave has been obtained, is the liquidator.

A voluntary winding-up, is not a bar to the commencement of proceedings, and the service may be either on the company as above explained, or on the liquidator (*n*).

A company must appear in court by counsel or solicitor; it cannot be represented by one of its officers (*o*).

A person will not be appointed to represent a class of shareholders, on a summons for the construction of the company's articles, unless approved at a meeting of the shareholders of that class (*p*).

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 (*q*).

In the case of a company in liquidation security will be ordered unless it satisfies the Court that its assets will be sufficient to pay the defendant's costs (*r*). Where a company being defendant appeals, security

(*g*) *Dunlop Pneumatic Co.* v. *Actien Gesellschaft*, [1902] 1 K. B. 342.

(*h*) *Haggin* v. *Comptoir d'Escompt de Paris* (1889), 23 Q. B. D. 519.

(*i*) *Badcock* v. *Cumberland*, [1893] 1 Ch. 362.

(*k*) *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455.

(*l*) *Logan* v. *Bank of Scotland*, [1904] 2 K. B. 495.

(*m*) C. A. 1908, s. 142. See *post*, p. 422.

(*n*) *Tandberg* v. *Strand Wood Co.* (unreported; Annual Practice, 1910, p. 58).

(*o*) *London County Council Tramways Arbitration* (1897), 13 T. L. R. 254.

(*p*) *Morgan's Brewery Co.* v. *Crosskill*, [1902] 1 Ch. 898.

(*q*) C. A. 1908, s. 278.

(*r*) *Northampton Coal, &c., Co.* v. *Midland Waggon Co.* (1878), 7 C. D. 500; and *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235.

cannot be obtained (*s*), but security may be ordered for the costs of a counter-claim by the company (*t*).

The company is the proper party to sue and be sued in respect of all contracts made with it, and is the proper plaintiff in respect of all wrongs done to it. In respect of wrongs done by the company both the company and its agent or servant who did the wrongful act can be sued. A member of a company cannot maintain an action in which he sues on behalf of himself and all other members of the company in respect of wrongs committed against or frauds upon the company as the wrongful or fraudulent acts can be confirmed by a majority of the corporators (*u*). The action can, however, be maintained if he alleges and proves that the wrongdoers themselves control a majority of the company and that he is supported by a majority of the independent members (*v*).

Where the subject matter of the action is an agreement which is alleged to be *ultra vires* of the company all the parties to the agreement must be made parties to the action (*x*). Where, however, the agreement complained of is not alleged to be *ultra vires* of the company the proper plaintiff is the aggrieved company, and if the action is brought by a shareholder of that company on behalf of himself and all other shareholders it is demurrable (*y*).

A company is the best judge of its own interests and is competent to waive any of its rights. If a wrong is done to the company, in respect of which a shareholder desires that an action should be brought and he is supported by a majority of the company, he may bring an action in the name of the company and obtain interim relief, but, if there is any dispute as to whether the company wishes the action to be brought, the Court will if necessary direct a meeting to be held to determine the point, and if the decision of the meeting is against the action, the Court will dismiss it (*z*). And the solicitor who has brought the unauthorized action will be ordered personally to pay the company's solicitor and client costs and the defendant's party and party costs (*a*). This order will be

(*s*) *Sinclair* v. *Glasgow and London Contract Corpn.* (1904), 6 F. 818.

(*t*) *Strong* v. *Carlyle Press*, W. N. (1893), 51.

(*u*) *Foss* v. *Harbottle* (1843), 2 Hare 461; *Macdougall* v. *Gardiner* (1875), 1 Ch. D. 13; *Duckett* v. *Gover* (1877), 6 Ch. D. 82, as explained in *Mason* v. *Harris* (1879), 11 Ch. D. at p. 106; and *Harben* v. *Phillips* (1883), 23 Ch. D. at p. 29.

(*v*) *Atwool* v. *Merryweather* (1867), 5 Eq. 464, n.; *Menier* v. *Hooper's Telegraph Works* (1874), 9 Ch. 350; *Mason* v. *Harris* (1879), 11 Ch. D. 97; *Spokes* v. *Grosvenor Hotel, &c., Co.*, [1897] 2 Q. B. 124; *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56; *Burland* v. *Earle*, [1902] A. C. 83; *Campbell* v. *Australian Mutual Provident Soc.* (1908), 99 L. T. 3.

(*x*) *Russell* v. *Wakefield Waterworks Co.* (1875), 20 Eq. 474, 481.

(*y*) *Gray* v. *Lewis* (1873), 8 Ch. 1035; and *Russell* v. *Wakefield Waterworks Co.*, *supra*.

(*z*) *Macdougall* v. *Gardiner* (1875), 1 Ch. D. 13, 23; *Pender* v. *Lushington* (1877), 6 Ch. D. 70, 79; *Duckett* v. *Gover*, *supra*; *Imperial Hydro Hotel Co.* v. *Hampson* (1882), 23 Ch. D. 1.

(*a*) *Newbiggin Gas Co.* v. *Armstrong* (1879), 13 Ch. D. 310; *Jno. Morley Bldg. Co.* v. *Barras*, [1891] 2 Ch. 386, at p. 394.

made even where the use of the company's name has been authorized personally by the majority of the members; it is necessary that the company's authority should be properly given, either by the directors or by a meeting of the company (*b*). And the fact that notice of absolute discontinuance of the action has been given does not prevent the order being subsequently made against the solicitor personally (*c*). If, however, there is a co-plaintiff with the company who has in fact been responsible for the use of its name as plaintiff, the order for payment of costs will be made against him and not against the solicitor (*d*). And if it is clear that the majority of the company is in favour of the action being brought, the Court will not insist that a meeting should be held whose decision would be a foregone conclusion (*e*), and in such a case if the directors in the name of the company apply to restrain the action, their solicitor will be ordered to pay the costs personally. Even where the action is brought in the name of the company by shareholders who technically have no right to use it, if the court is satisfied that they substantially represent the wishes of the majority they will be allowed their costs out of the company's assets (*f*). It is possible, however, for a company by its articles to commit the management of its affairs to its directors in such a way that it can only be taken out of their hands in a specific manner (*e.g.*, by the passing of an extraordinary resolution). If that has not been done, an action brought in the name of the company, against the wishes of the directors, will be dismissed, although it is admitted that the majority of the members are in favour of it (*g*).

In cases where the act in respect of which the action is brought is illegal or fraudulent or *ultra vires* of the company, or is oppressive or fraudulent against a minority (*h*), or contravenes its articles of association (*i*), any member of the minority can obtain relief. He can bring an action in his own name (*k*) or in the name of the company (*h*), or as is usually done he can sue on behalf of himself and all other shareholders, and make the company one of the defendants (*l*). This is the proper course to take where the majority of the company object to the company being a co-plaintiff, but the Court may order the costs of a successful application to strike out the company's name as plaintiff to be paid out

(*b*) *Cie. de Mayville* v. *Whitley*, [1896] 1 Ch. 788, p. 804.

(*c*) *Gold Reefs of W. Australia* v. *Dawson* [1897] 1 Ch. 115.

(*d*) *Cie. de Mayville* v. *Whitley*, *supra*.

(*e*) *Marshall's Valve Gear Co.* v. *Manning Wardle & Co.*, [1909] 1 Ch. 267.

(*f*) *Imperial Hydro Hotel Co.* v. *Hampson* (1882), 23 Ch. D. 1. Cf. *Harben* v. *Phillips* (1883), 23 Ch. D. 14.

(*g*) *Automatic Self-Cleansing Filter Co.* v. *Cunningham*, [1906] 2 Ch. 34.

(*h*) *Russell* v. *Wakefield Waterworks Co.* (1875), 20 Eq. p. 481; *Hoole* v. *G. W. Rail. Co.* (1867), 3 Ch. 262; *Holmes* v. *Newcastle Abattoirs* (1876), 1 Ch. D. 682; *Atwool* v. *Merryweather* (1867), 5 Eq. 464 n.

(*i*) *Salmon* v. *Quinn and Axtens, Ltd.*, [1909] 1 Ch. 311, affirmed [1909] A. C. 442.

(*k*) *Simpson* v. *Westminster Palace Hotel* (1860), 8 H. L. C. 712.

(*l*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 55, p. 69.

of the company's assets (*m*). In such an action, in which the company and the directors were defendants, and the basis of the action was an allegation that the directors had conspired to defraud the company, it was held that discovery might be had by the plaintiff against the defendant company, although the action was brought for the advantage of the company (*n*).

A plaintiff cannot join in one action a personal claim against directors for fraudulently inducing him to become a shareholder with a claim on behalf of himself and all other shareholders that certain payments by them out of the company's money are *ultra vires* (*o*).

If a company is a party to any cause or matter any opposite party may obtain an order allowing him to administer interrogatories to any member or officer of such company (*p*). The proper person to answer is as a rule the secretary (*q*). Discovery of documents against a company litigant is procured by obtaining an order against its secretary or other officer to make an affidavit as to documents in its possession or power (*r*).

Any judgment or order against an incorporated company wilfully disobeyed may by leave of the Court or a judge be enforced by writ of sequestration against the company's property or by attachment against the directors or other officers thereof, or by writ of sequestration against their property (*s*).

(*m*) *Silber Light Co.* v. *Silber* (1879), 12 C. D. 717. A shareholder may be personally disqualified from bringing such an action: *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558.

(*n*) *Spokes* v. *Grosvenor Hotel*, [1897] 2 Q. B. 124.

(*o*) *Stroud* v. *Lawson*, [1898] 2 Q. B. 44.

(*p*) Order XXXI. r. 5. See *Welsbach Co.* v. *New Sunlight Co.*, [1900] 2 Ch. 1, and notes to this Rule in the Annual Practice.

(*q*) Per Jessel, M.R., in *Berkely* v. *Standard Discount Co.* (1879), 13 C. D. at p. 79.

(*r*) Seton on Decrees, 6th Ed. p. 54.

(*s*) Order XLII. r. 31. See *Lewis* v. *Pontypridd & Co.* (1895), 11 T. L. R. 203, where directors were attached, but an order for attachment cannot be made unless the directors have been personally served with the judgment or order: *McKeown* v. *Joint Stock Institute*, [1899] 1 Ch. 671.

LEGAL PROCEEDINGS BY AND AGAINST COMPANIES.

CANADIAN NOTES.

A corporation is liable for the acts of its agents as in the case of a private individual. A corporation is not, however, liable for the unauthorized acts of its agents or for acts done outside of the business of the corporation. In a somewhat peculiar case it was held that where acts are done in the presence of the corporation, *i.e.* of the members of the corporation, and while it is convened in meeting and while its principal officers and many of its members present, under these circumstances the wrongful acts must have been taken to be done by and with the consent of the corporation, which is accordingly liable for damages for injury sustained. *Kinver* v. *Phœnix Lodge*, 1 O. O. F.; 7 O. R. 377.

Action for deceit. See *Moore* v. *Ontario Investment Association*, 16 O. R. 269.

A corporation may be liable for false imprisonment under an order of its agent within the scope of its authority. In *MacSorbey* v. *Mayor of St. John*, 6 S. C. R. 531, Ritchie, C. J., said, 552: "But there must be evidence justifying the jury in finding that the parties actually imprisoning him had authority from the corporation."

A company is liable for libel. *Carroll* v. *Pemberthy Injector Co.* (1889), 16 A. R. 446; *Tench* v. *G. W. Ry. Co.*, 32 U. C. R. 452.

Internal Management.

It is an elementary principle of law relating to joint stock companies that the Court will not interfere with the internal management of companies acting within their powers. *Burland* v. *Earle*, [1902] A. C. 93. But see *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 175.

The Court will not interfere to restrain by injunction the doing of an act by a company which should have been sanctioned by a

majority of the shareholders before the act was done if such sanction can afterwards be obtained. 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 which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having litigation about it, the ultimate end of which is only that a meeting has to be called and ultimately the majority gets its wishes. *Purdon* v. *Ontario Loan and Debenture Co.*, 22 O. R. 597.

Action by Shareholders in Name of Company.

See *Essery* v. *Court Pride of the Dominion*, 2 O. L. R. 596.

A sale by directors to one of themselves is open to question in an action by a shareholder. Such a sale, on the other hand, may be entirely validated by resolution of the shareholders. Where an action was brought, the Court considered it proper before deciding the action to direct that a meeting of shareholders be called for consideration of the sale and that they be asked to ratify it or express their disapproval of it. An order was made directing the calling of a meeting on a specified date, the president of the company to report fully to the registrar upon affidavit of the result of such meeting. *Ellis* v. *Norwich Broom*, 8 O. W. R. 25.

In the case of an irregular election of directors the Court will not interfere at the instance of individual shareholders, and unless the individuals can secure the consent of the company to sue in the company's name, an action by them to test the election should be dismissed. *Kelly* v. *Electrical Construction Co.*, 10 O. W. R. 704.

A shareholder who has participated in the benefit of an illegal act cannot either individually or suing on behalf of the general body of creditors maintain an action against the directors of the company. *Stickney* v. *Bucknel*, 6 O. W. R. 751.

The company is a necessary party in an action to call upon the directors to account for their profits. *Meyers* v. *Cain*, 6 O. W. R. 297, 834.

Where the holder of a large number of shares of a company had been restrained by an interim injunction from voting on his shares pending the result of an action, and in the meantime a meeting of shareholders was held and directors elected, the Court refused to set aside the election of directors. It was said that the shareholders

might have applied to the Court for an injunction against the election proceeding or to have the injunction against him suspended so far as to allow him to vote for an adjournment of the meeting, but having done neither, and neglected such ordinary precautions, he was not entitled to have the election set aside. *Beaudry* v. *Read*, 10 O. W. R. 622.

As to the jurisdiction of the Court of Chancery to intervene in internal affairs of the company, see *Marsh* v. *Huron College*, 27 Gr. 605; *Woodruff* v. *Colwell*, 8 O. W. R. 302, 314, 493; *Hamilton Canal Co.*, 1 Gr. 1; *Boulton* v. *Church Society*, 14 Gr. 123, 15 Gr. 450; *International Wrecking Co.* v. *Murphy*, 12 P. R. 423; and *Saskatchewan Land Co.* v. *Leadley*, 4 O. W. R. 39.

In *David* v. *Ryan*, 1 O. W. N. 322, the plaintiff, a shareholder in a company, brought an action against the president and general manager whose wrongful and illegal act as such manager had injured the business of the company and depreciated the value of the plaintiff's shares. The plaintiff's statement of claim was struck out; leave was given to the plaintiff to amend by alleging that he was a minority shareholder and that the defendant controlled the majority of the stock.

The theory has been advanced in Canada that what is known as a one-man company may be treated as a dummy, and that the Court should ignore its corporate existence and hold that the acts of the shareholders are the acts of the corporation itself. The tendency of American courts is to refuse to be bound by the logic derived from the corporate existence where it serves only to distort or hide the truth. *Anthony* v. *American Glucose Co.*, 146 N. Y. 407. In the case of *Rielle* v. *Reid*, 28 O. R. 497, where one shareholder and his wife owned all the shares of the company except three, two of which were held by employées, and the third by his solicitor, the Court said that the company was and had been the mere agent of the debtor, and held that the conveyance by the debtor to the company of his assets was fraudulent and void, and that all the assets of the company were part of the assets of the debtor and liable to be seized by his creditors. On appeal this decision was reversed, and the Ontario Court of Appeal took the view that the company was a distinct legal entity, the rights and liabilities of which were not capable of being dealt with on the principle that it was an agent or alias of the debtor, 26 A. R. 54.

Action against Shareholders.—Unsatisfied Judgment against Company.

Section 68 of the Ontario Companies Act provides that a shareholder shall not be liable in an action by a creditor for the amount unpaid on his shares before an execution against the company has been returned unsatisfied in whole or part. In *Grills* v. *Farah*, 21 O. L. R. 457, the plaintiff placed a writ of *fi. fa.* in the sheriff's hands and requested a return of *nulla bona*. The sheriff, without inquiring as to the assets, endorsed on the writ a certificate of *nulla bona*. Held, that the plaintiff had not brought himself within the section.

CHAPTER XXXI.

WINDING-UP OF COMPANIES.

I.—*Generally.*

An incorporated company being capable of indefinite duration, continues to exist until it is duly dissolved. Any company incorporated by a special Act or charter may be wound up under the Companies Act, 1908, except a railway company not registered under the Companies Acts, and a railway company may be wound up by another special Act, and such Act usually makes the provisions of the Companies Acts applicable to such winding-up. A company incorporated by charter may also be dissolved for either of these two causes, misuse or abuse, and the Court may avoid the charter by the prerogative writ of *scire facias*, and for this purpose *scire facias* may be brought in the ordinary way by a relator, with the sanction of the Attorney-General's fiat (*a*). Where the charter *inter alia* provided that the corporation should not begin business until it had been certified to the President of the Board of Trade by at least three of the directors, that at least one-half of the capital had been subscribed, and at least 50,000*l.* paid up, and a false certificate was given, it was adjudged that the charter of incorporation should be repealed (*a*). A company governed by the Companies Acts can be dissolved by a winding-up proceeding, or without a winding-up, under or in pursuance of the Companies Act, 1908, s. 242, but whether, in a case where the certificate of incorporation has been obtained by fraud, it can be dissolved by a proceeding in the nature of *scire facias*, has not been decided (*b*). The winding-up of a company may be desirable on many grounds, even although the company is solvent. The business of a company may be a losing business, and the shareholders may be desirous of realizing its assets, paying its debts, and dividing the surplus among themselves. Again, the company may have sold all its under-

(*a*) *Eastern Archipelago Co.* v. *R.* (1853), 2 El. & Bl. 856.

(*b*) *Salomon* v. *Salomon*, [1897] A. C. 22, 30. See *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176, 193.

taking and assets, and be desirous of distributing its assets among its shareholders; and as the Court will not sanction a reduction of capital which is equivalent to a division of all the company's assets among the shareholders (*c*), it is necessary to resort to a winding-up. A company may also be desirous of selling its undertaking and assets, and be unable to do so except under sect. 192 of the Companies Act, 1908, which also requires a winding-up. If a company is insolvent or in difficulties the shareholders may require a winding-up for the purpose of reconstruction or making an arrangement with its creditors, although an arrangement may now be made without a winding-up. On the other hand, a winding-up may be the only method of enabling a creditor to obtain payment of his debt, *e.g.*, where all the property of a company is mortgaged, but there is uncalled capital not so mortgaged.

There are three kinds of winding-up, viz., winding-up by the Court or compulsory winding-up, voluntary winding-up, and voluntary winding-up continued under the supervision of the Court. A compulsory order and a supervision order, *i.e.*, an order to continue the winding-up under the supervision of the Court, may be obtained upon the petition of a member or creditor of a company, or of the company, or of the official receiver (*d*). A voluntary winding-up is effected by a special or extraordinary resolution of the shareholders to wind up voluntarily. The pendency of a voluntary winding-up, or the fact that a supervision order has been made, does not prevent the making of a compulsory winding-up order (*e*).

Where there are winding-up proceedings in different countries in regard to the same company, one of such liquidations will be the principal liquidation, and the others ancillary liquidations. Thus, where an order is made for winding-up a foreign company, the English Courts assume that the principal liquidation will take place abroad, and confine the liquidator's powers to the English assets (*f*). On the other hand, where a company registered in England, but having a branch office and the bulk of its business in Australia, is being wound up voluntarily in this country, a subsequent compulsory winding-up in Australia is merely regarded as ancillary to the winding-up in this country (*g*). It is necessary for a company to go into voluntary liquidation for the following purposes, viz., to make an arrangement with its creditors under sect. 191 of the Act of 1908, or to acquire the power conferred by sect. 192 of the Act to transfer or sell the whole or a portion of

(*c*) *Wallasey Brick and Land Co.* (1894), 63 L. J. Ch. 415.

(*d*) C. A. 1908, s. 137.

(*e*) *Ibid.* s. 197; *Gold Co.* (1879), 11 C. D. 701; *Haycraft Gold Reduction Co.*, [1900] 2 Ch. 230; *Gutta Percha Co.*, [1900] 2 Ch. 665; *National Distribution of Electricity Co.*, [1902] 2 Ch. 34; *Jubilee Sites Syndicate*, [1899], 2 Ch. 204.

(*f*) *Federal Bank of Australia*, W. N. (1893), 46.

(*g*) *North Australian Territory Co.* v. *Goldsborough* (1889), 61 L. T. 716.

its business or property to another company for other than a cash consideration.

In the case of a compulsory order the winding-up commences at the date of the presentation of the petition on which the order is made (*h*), even although there is a pending voluntary winding-up (*i*), but the Court has power to order the adoption of all or any of the proceedings in the voluntary winding-up (*k*). In the case of a voluntary winding-up, although a supervision order is subsequently made, the winding-up commences at the date of the passing of the extraordinary resolution or special resolution for winding-up the company (*l*). In the case of a special resolution the winding-up begins at the passing of the confirmatory resolution (*m*), although upon a petition on which a supervision order is subsequently made, a provisional liquidator is appointed before the passing of the resolution (*n*).

II.—*What Companies may be Wound Up.*

The following companies can be wound up under the Companies Act, 1908, and, except where otherwise stated, either by the Court or voluntarily, or subject to the supervision of the Court (*o*).

(1) Any company formed and registered, or only registered under any of the following Acts, viz. :—The Joint Stock Companies Act, 1856 (19 & 20 Vict. c. 47); The Joint Stock Companies Acts, 1856, 1857 (20 & 21 Vict. c. 14); The Joint Stock Banking Companies Act, 1857 (20 & 21 Vict. c. 49), and "The Act to enable joint stock banking companies to be formed on the principle of limited liability" (21 & 22 Vict. c. 91), but not a company formed under "an Act for the registration, incorporation, and regulation of joint stock companies" (7 & 8 Vict. c. 110) (*o*).

(2) All companies formed and registered, or only registered, under the Companies Act, 1862, or the Companies Act, 1908 (*o*).

It is immaterial that the company has been registered under the Act 7 & 8 Vict. c. 110 (*p*), or has only been registered for the purpose of winding-up the company (*q*), or is a railway company incorporated by

(*h*) C. A. 1908, s. 139.

(*i*) *Taurine Co.* (1883), 25 C. D. 118, doubting *United Service Co.* (1869), 7 Eq. 76.

(*k*) C.A. 1908, s. 198; *Cleve* v. *Financial Corporation* (1873), 16 Eq. 363; *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250; *Taurine Co., supra.*

(*l*) C. A. 1908 s. 183; *Weston's Case* (1868), 4 Ch. 20, overruling *Hydraulic Tube Co.* (1867), 16 W. R. 572; *Hodgkinson* v. *Kelly* (1868), 6 Eq. 496.

(*m*) *Dawe's Case* (1868), 6 Eq. 232; *Hornby's Case* (1868), 37 L. J. Ch. 929; *Ex parte Colborne and Strawbridge* (1871), 11 Eq. 478.

(*n*) *Emperor Life Assurance* (1885), 31 C. D. 78; *West Cumberland Steel Co.* (1889), 40 C. D. 361, overruling *Ex parte Bradshaw* (1879), 15 C. D. 465.

(*o*) C. A. 1908, ss. 129, 246 and 285; *London Indiarubber Co.* (1866), 1 Ch. 329.

(*p*) *Bowes* v. *Hope, &c., Guarantee Co.* (1865), 11 H. L. Cas. 389.

(*q*) C. A. 1908, s. 249; *Southall* v. *British Mutual Society* (1871), 6 Ch. 614.

a special Act (*r*). The certificate of incorporation of a company governed by the Companies Acts is conclusive evidence of that fact, and any such company may be wound up under the Act of 1908 (*s*).

(3) Any partnership, association, or company (except railway companies incorporated by Act of Parliament, and companies (*t*) included in classes (1) or (2)) consisting of more than seven members, hereinafter referred to as an unregistered company, and any trustees savings bank certified under the Trustees Savings Bank Act, 1863, and any limited partnership may be wound up by the Court, but not voluntarily or subject to the supervision of the Court (*u*). The provisions of the Companies Act, 1908, with respect to winding-up and of the Companies (Winding-Up) Rules, 1909, apply, with certain modifications, to the winding-up of limited partnerships (*x*).

Unregistered companies not being trading companies cannot be wound up under the Companies Act, 1908, *e.g.*, a literary or scientific institution not established for the purpose of gain (*y*), or a club (*z*). A docks company incorporated by special Act, although it has power to make and work a branch railway for the purposes of its docks, may be wound up as an unregistered company (*a*). If there are fewer than eight members at the date of the presentation of a winding-up petition, a winding-up order of an unregistered company cannot be made; and "members" do not include legal representatives of deceased members, trustees of bankrupt members, or past members (*b*), but the word "members" does not necessarily mean shareholders (*c*). A company may be wound up as an unregistered company although after the presentation of the petition it is registered under the Companies Acts (*d*). An unregistered association which is illegal within the meaning of the Companies Act, 1908, cannot be wound up as an unregistered company either on the application of members (*e*) or of creditors (*f*), nor can a foreign company which has no assets in this country (*g*).

The following are examples of companies and associations which have

(*r*) *Ennis and West Clare Rail. Co.* (1879), 3 L. R. Ir. 94.

(*s*) C. A. 1908, s. 17; *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176.

(*t*) *London Indiarubber Co.* (1866), 1 Ch. 329.

(*u*) C. A. 1908, ss. 267, 268.

(*x*) Limited Partnership (Winding-Up) Rules, 1909.

(*y*) *Bristol Athenæum* (1889), 43 C. D. 236.

(*z*) Cf. *St. James's Club* (1852), 2 De G. M. & G. 383.

(*a*) *Exmouth Docks Co.* (1873), 17 Eq. 181.

(*b*) C. A. 1908, s. 267; *Bolton Benefit Loan Society* (1879), 12 C. D. 679; *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*c*) *South London Fish Market Co.* (1888), 39 C. D. 324.

(*d*) *Hercules Insurance Co.* (1871), 11 Eq. 321.

(*e*) *Padstow Total Loss Association* (1882), 20 C. D. 137. Cf. *South Wales Atlantic S. S. Co.* (1876), 2 C. D. 763.

(*f*) *Ilfracombe, &c., Building Society*, [1901] 1 Ch. 102.

(*g*) *Lloyd Générale Italiano* (1885), 29 C. D. 219.

been wound up as unregistered companies, viz., a company incorporated by a royal charter (*h*), a company provisionally registered under the Act 7 & 8 Vict. c. 110, but not completely registered under that Act (*i*), a friendly and provident society (*k*), a mutual marine insurance association (*l*), savings banks (*m*), foreign companies having branch offices and assets in this country, even although a foreign liquidation is pending (*n*), and the following companies respectively incorporated by special Acts, viz., a railway company as to which a warrant for the abandonment of the whole of the railway has been granted, if the petitioner is a shareholder (*o*), but not if he is a creditor (*p*), a tramway company (*q*), a canal company (*r*), a fish market company (*s*), a docks company (*t*), a ferry company (*u*), a telegraph company (*x*), and a waterworks company (*y*).

The Court has jurisdiction under sect. 15 of the Assurance Companies Act, 1909, to wind up an assurance company (*z*), and under sect. 16 to wind up a subsidiary company with an assurance company as if they were one company, and under sect. 58 of the Industrial and Provident Societies Act, 1893, to wind up an industrial and provident society, and to such winding-up the provisions of the Companies Acts are made applicable.

A society registered under the Building Societies Acts may be wound up under the Companies Act, 1908 (*a*). A company which has been dissolved, other than an unregistered company or a company dissolved under sect. 242 of the Act of 1908, cannot be wound up by the Court (*b*), unless, the dissolution has been declared void by the Court (*c*).

(*h*) *Oriental Bank Corporation* (1885), 54 L. J. Ch. 481.

(*i*) *Bank of London, &c., Insurance Association* (1871), 6 Ch. 421.

(*k*) *Alfreton District, &c., Society* (1863), 7 L. T. 817; *Irish Mercantile Loan Soc.*, [1907] Ir. R. 98.

(*l*) *Andrew's Case* (1869), 8 Eq. 176.

(*m*) Trustee Savings Bank Act, 1887, s. 3; *Cardiff Savings Bank* (1890), 45 C. D. 537. See now C. A. 1908, ss. 267, 268.

(*n*) *Commercial Bank of India* (1868), 6 Eq. 517; *Matheson Bros., Ltd.* (1884), 27 C. D. 225; *Commercial Bank of South Australia* (1886), 33 C. D. 174; *Mercantile Bank of Australia*, [1892] 2 Ch. 204.

(*o*) Abandonment of Railways Act, 1850, s. 31, as amended by the Railway Companies Act, 1867, s. 31.

(*p*) *North Kent, &c., Rail. Co.* (1869), 8 Eq. 356. This company was subsequently wound up (see *Kincaid's Case* (1870), 11 Eq. 194), apparently on the petition of a shareholder.

(*q*) *Brentford, &c., Tramway Co.* (1884), 26 C. D. 527; *Portsmouth, &c., Tramway Co.*, [1892] 2 Ch. 362; *Portstewart Tramway Co.*, [1896] 1 Ir. R. 265.

(*r*) *Basingstoke Canal Co.* (1886), 14 W. R. 956; *Wey and Arun Canal Co.* (1867), 4 Eq. 197; *Bradford Navigation Co.* (1870), 10 Eq. 331.

(*s*) *South London Fish Market Co.* (1888), 39 C. D. 324.

(*t*) *Exmouth Docks Co.* (1873), 17 Eq. 181.

(*u*) *Isle of Wight Ferry Co.* (1865), 2 H. & M. 597.

(*x*) *Electrical Telegraph Co. of Ireland* (1856), 22 B. 471.

(*y*) *Barton Water Co.* (1889), 42 C. D. 585; *St. Neots Water Co.*, [1906] 22 L. T. 478.

(*z*) See *ante*, p. 296, as to what is an assurance company, and *post*, p. 438; *Great Britain Mutual Life Assurance Society* (1880), 16 C. D. 246.

(*a*) Building Societies Act, 1894, s. 8.

(*b*) *Pinto Silver Mining Co.* (1878), 8 C. D. 273; *London and Caledonian Insurance Co.* (1879), 11 C. D. 140.

(*c*) C. A. 1908, s. 223.

III.—*Liquidators.*

The liquidator is the person appointed for the purpose of collecting and realizing the assets of the company in a winding-up, and distributing them amongst the persons entitled thereto, and generally of conducting the proceedings in the winding-up (*d*). The liquidator in the case of a compulsory winding-up is either a person appointed by the Court or the official receiver attached to the winding-up Court for bankruptcy purposes (*dd*), and in a voluntary winding-up is a person appointed by the shareholders. On a compulsory order being made, the official receiver becomes the provisional liquidator of the company by virtue of his office, and continues to act as such until he or another person becomes liquidator, and is capable of acting as such (*e*). The official receiver or any other person (*f*) may be appointed by the Court provisional liquidator at any time after the presentation of the petition and before (when the proceedings are in England) the winding-up order has been made or (when the proceedings are in Scotland or Ireland) the first appointment of liquidators (*e*), but after a winding-up order the Court can only appoint the official receiver provisional liquidator (*g*).

It is the duty of the official receiver (*h*) to summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court (1) for appointing a liquidator in the place of the official receiver, and (2) for the appointment of a committee of inspection to act with the liquidator, and also for determining who are to be members of such committee if appointed. 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 creditors and contributories the Court is to decide such difference and make such order thereon as the Court may think fit (*i*). Until the meetings have been held no person can be appointed liquidator by the Court (*k*). The Court has power to order first meetings to be re-summoned (*l*). No defect or irregularity in the appointment of a receiver, liquidator, or member of a committee of inspection vitiates any act done by him in good faith (*m*).

The Court is not bound to appoint as liquidator the nominee approved

(*d*) C. A. 1908, s. 149.

(*dd*) See *ibid.* s. 146, and C. (W.-U.) Rules, 1909, r. 2, as to Official Receiver.

(*e*) C. A. 1908, s. 149.

(*f*) *Unionist Club, Ltd.*, W. N. (1891) 64; *Re Bound & Co.*, W. N. (1893) 1. But see *Mercantile Bank of Australia*, [1892] 2 Ch. 204; and *North Wales Gunpowder Co.*, [1892] 2 Q. B. 220.

(*g*) *North Wales Gunpowder Co.*, *supra*.

(*h*) C. A. 1908, s. 152; C. (W.-U.) Rules, 1909, rr. 115-138, and Forms 21 and 22.

(*i*) C. (W.-U.) Rules, 1909, r. 55.

(*k*) *John Reid & Sons, Ltd.*, [1900] 2 Q. B. 634.

(*l*) *Radford & Bright, Ltd.*, [1901] 1 Ch. 735.

(*m*) C. (W.-U.) Rules, r. 217 (2).

by a majority of the creditors and contributories (*n*), but generally does so if he is the official receiver (*o*). If no appointment is made the official receiver becomes the liquidator of the company (*p*), and is styled "official receiver and liquidator" (*q*). Any other person appointed liquidator is styled the liquidator. The Court may in a proper case, on the application of the official receiver, when he becomes the liquidator either provisionally or otherwise apply to the Court to appoint a special manager of the estate or business of the company other than himself (*r*). Any person appointed a special manager or liquidator other than the official receiver must at his own expense give such security as the Board of Trade may direct, and in default of his doing so or keeping up the security the official receiver has to report the failure to the Court, and the Court may rescind the order appointing him (*s*). The Court may, without appointing the official receiver a provisional liquidator, confer upon him by the winding-up order power to carry on the business of the company so far as necessary for the purposes of the winding-up (*t*).

Usually the resolution to wind up a company voluntarily proceeds to appoint the liquidator, and the notice to convene the meeting or meetings to pass the resolution either sets out the terms of the resolution, or expressly mentions that the appointment of a liquidator will be part of the business of the meeting. The appointment of a person as liquidator at the first of the two meetings necessary for passing a special resolution is really inoperative, as, if it is not confirmed at the second meeting at or after the time when the confirmatory resolution to wind up is passed, it is of no effect, as a liquidator cannot be appointed before the commencement of the winding-up (*u*). On the other hand, a special resolution is not necessary for the appointment of a liquidator, and a person may be lawfully appointed liquidator at the meeting at which the voluntary winding-up is resolved upon, although no notice of a resolution to appoint him or any other person as liquidator has been given (*x*). A company about to wind up voluntarily, or in course of being wound up voluntarily, may, by an extraordinary resolution delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and of supplying any vacancies among the liquidators (*y*). The liquidator in a voluntary winding-up must within twenty-one days after

(*n*) *Bank of South Australia* (1895), 2 Manson, 148.

(*o*) *Bloxwich Steel Co.* (1894), 1 Manson, 350.

(*p*) C. A. 1908, s. 152.

(*q*) C. (W.-U.) Rules, 1909, r. 56.

(*r*) C. A. 1908, s. 161.

(*s*) *Ibid.* and C. (W.-U.) Rules, 1909, rr. 57 and 58.

(*t*) *General Service Co-operative Stores* (1891), 64 L. T. 228.

(*u*) *Indian Zoedone Co.* (1884), 26 C. D. 70.

(*x*) *Welsh Flannel Co.* (1875), 20 Eq. 360; *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325, 354; *Trench Tubeless Tyre Co.*, [1900] 1 Ch. 408; overruling *Stearic Acid Co.* (1863), 11 W. R. 980.

(*y*) C. A. 1908, s. 190.

his appointment file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade (*z*).

Every liquidator appointed by a company in a voluntary winding-up must, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of 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 the notice, and is to 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 is situate. At such meeting 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 appointment of a committee of inspection, and shall appoint any creditor to make such application within fourteen days after the date of the meeting. On such application the Court may either remove the liquidator appointed by the company and appoint another liquidator or appoint another liquidator to act jointly with the liquidator appointed by the company, in either case with or without appointing a committee of inspection, or may make such other order as, having regard to the interests of the creditors and contributories of the company, may seem just. Any order so made cannot be appealed against. The Court may order the costs of the application to be paid out of the assets of the company even although the application is dismissed or otherwise disposed of adversely to the applicant (*a*).

When several liquidators are appointed the resolution appointing them may determine that their powers may be exercised by one or more of them, but, in default of such determination, at least two of them must join in exercising their powers, and they are unable to delegate their powers generally to one of themselves, even although they all concur in making the delegation (*b*), and when two liquidators are appointed the survivor cannot exercise such powers (*c*).

Where a supervision order is made the Court may, in such order or any subsequent order, appoint any additional liquidator, and any liquidator so appointed has the same powers, is subject to the same obligations, and in all respects stands in the same position as if he had been appointed by the company. The Court, in making a supervision order, has appointed a liquidator where the shareholders did not make the appointment (*d*).

In the case of the death, removal, or resignation of a liquidator

(*z*) C. A. 1908, s. 187. As to penalty on default, see *ante*, p. 406.

(*a*) *Ibid.* s. 188.

(*b*) *Ex parte Birmingham Banking Co.* (1868), 3 Ch. 651; *Ex parte Agra and Masterman's Bank* (1871), 6 Ch. 206.

(*c*) *Metropolitan Bank* v. *Jones* (1876), 2 C. D. 366.

(*d*) C. A. 1908, s. 202; *London Quays and Warehouses Co.* (1868), 3 Ch. 394.

appointed in a compulsory winding-up another may be appointed in his place in the same manner as directed in the case of a first appointment, and the official receiver must, 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 filled, but this does not apply where a liquidator has been released under sect. 157 of the Act, in which case the official receiver remains liquidator (*e*).

If any vacancy occurs in the office of liquidator appointed in a voluntary winding-up, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors (*f*), fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, or by any contributory of the company, and shall be held in manner prescribed by the articles of the company, or in such manner as may, on application by the continuing liquidators, or by a contributory of the company, be determined by the Court (*g*). If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators (*h*). Where liquidators have been appointed by the Court by a supervision order or after a supervision order, the Court may fill up any vacancy occasioned by the removal, death, or resignation of any liquidator so appointed (*i*). On an application to remove a voluntary liquidator the Court may appoint another liquidator in his place if he is willing to retire (*k*).

Any liquidators appointed in a winding-up by the Court, or in a voluntary winding-up, may be removed by the Court on due cause shown (*l*), but only on the application of a liquidator, contributory, or creditor (*m*). The Court may also from time to time remove any liquidators appointed by the Court in a winding-up under the supervision of the Court (*n*). The Board of Trade may inquire into the conduct of a liquidator appointed by the Court, and presumably may, in a proper case, apply to the Court to remove him (*o*). "Due cause shown" is not confined to cases of personal unfitness, but include every case in which it is for the general advantage of the creditors and contributories that the liquidator should be removed, but a liquidator may appeal against

(*e*) C. (W.-U.) Rules, 1909, r. 55.

(*f*) C. A. 1908, s. 190.

(*g*) *Ibid.* s. 189.

(*h*) *Ibid.* s. 186. An additional liquidator has been appointed under this section, but the apointment appears to have been unopposed: *Sunlight Incandescent Gas Lamp Co.*, [1900] 2 Ch. 728.

(*i*) C. A. 1908, s. 202.

(*k*) *Sheppy Portland Cement Co.* (1892), 68 L. T. 83.

(*l*) C. A. 1908, ss. 149 (6), 186 (9).

(*m*) *New De Kaap*, [1908] 1 Ch. 589.

(*n*) C. A. 1908, s. 202; *Montrotier Asphalte Co.* (1874), 22 W. R. 895; *Scotch Granite Co.* (1867), 17 L. T. 533.

(*o*) C. A. 1908, s. 159.

his removal (*p*). A lunatic liquidator may be removed (*q*). The issue by the applicant for the order of a circular to the other shareholders stating the alleged facts on which he relies, and asking them to support his application, is not a contempt of Court (*r*).

IV.—*Stay of Actions and Proceedings.*

The Court has jurisdiction at any time after the presentation of a petition for winding-up a company (*s*), or an unregistered company (*t*), or of a petition for a supervision order (*u*), and before making a winding-up order or supervision order, or at any time after the passing of an effective resolution for winding-up voluntarily (*x*) to restrain further proceedings in any action or proceeding against the company, or, in respect of any debt of the company, against any contributory of a company registered under Part VII. of the Companies Act, 1908 (*y*), upon such terms as the Court thinks fit. In the case of an unregistered company, the application can only be made by a creditor (*t*), but in the other cases by a member as well. When the action or proceeding is in the High Court or Court of Appeal in England or Ireland, the application must be made to that Court, and in other cases to the winding-up Court (*s*). After a winding-up order (*z*) or a supervision order (*a*) has been made, no action or proceeding can be proceeded with or commenced against the company, or, in respect of any debt of the company, against any contributory of the company so registered as aforesaid, except with the leave of the Court, and subject to such terms as the Court may impose (*b*), and any attachment, sequestration, distress, or execution put in force against the estate or effects of a company registered in England or Ireland after the commencement of the winding-up is void (*c*), unless the Court otherwise directs (*d*), and the Court will set aside any judgment

(*p*) *Adam Eyton, Ltd.* (1887), 36 C. D. 299; explaining *Sir John Moore Gold Mining Co.* (1879), 12 C. D. 325. See also *Association of Land Financiers* (1878), 10 C. D. 269; *Oxford Building Co.* (1883), 49 L. T. 495.

(*q*) *North Molton Mining Co.* (1886), 54 L. T. 602.

(*r*) *New Gold Coast Co.*, [1901] 1 Ch. 860.

(*s*) C. A. 1908, s. 140.

(*t*) *Ibid.* s. 270; *Rudow* v. *Great Britain, &c., Assurance Society* (1881), 17 C. D. 600.

(*u*) C. A. 1862, s. 200.

(*x*) *Ibid.* s. 193. See *post*, p. 509.

(*y*) *Ibid.* s. 265.

(*z*) *Ibid.* s. 142.

(*a*) *Ibid.* s. 203.

(*b*) *Ibid.* ss. 142, 266, 271.

(*c*) *Ibid.* s. 211. As to companies registered in Scotland, see s. 213.

(*d*) This exception is not contained in s. 211, but it has been decided that the section is controlled by s. 142, so that a distress or execution is not void if leave to proceed with it is given under the last-mentioned section: *Exhall Mining Co.* (1864), 4 De G. J. & S. 377; *Ex parte Carnelley* (1887), 35 C. D. 656; *Higginshaw Mills Co.*, [1896] 2 Ch. 544. See also *Ex parte Smith* (1867), 3 Ch. 125, 129.

obtained after the making of the order (*e*). An execution against a company is avoided altogether by sect. 211, so that the creditors have no interest in the goods even as against third persons (*f*). Sect. 142 is to be read as if the words "by a person capable of proving in the winding-up" had been inserted, so that it only applies to actions or proceedings against the company by a person capable of proving in the winding-up of the company (*g*).

The action or proceeding which may be restrained, or as to which leave to commence or proceed is to be obtained, must be against the company or against its liquidator in that capacity (*h*), or in the case of a contributory of a company registered under Part 7 of the Companies Act, 1908, or of an unregistered company being wound up under the Act, against such contributory in that capacity, to enforce a debt of the company (*i*).

These sections do not apply to actions or proceedings against directors of a company (*k*), or against a co-defendant with the company (*l*), but they apply to applications for rectification under sect. 32 of the Act of 1908 (*m*), executions (*n*), distresses for rent (*o*), distresses for rates (*p*), summonses before justices to enforce payment of rates (*q*), or in a police court to recover penalties (*r*), equitable executions (*s*), sequestrations (*t*), attachment of debts (*u*), an arrest of a vessel by the Admiralty Court (*x*), an embargo on foreign assets (*y*), and an arrestment of property of the company in Scotland *jurisdictionis fundandæ causâ*, followed up by arrestment on the dependence of an action (*z*). A "proceeding" does not include a counterclaim against the company, as that is in the nature of a defence (*a*), or an appeal by the defendant (*b*), or an inquiry under

(*e*) *Hartford* v. *Amicable Life Assurance Co.* (1871), Ir. R. 5 C. L. 368.

(*f*) *Ex parte Fourdrinier* (1882), 21 C. D. 510.

(*g*) *Trimsaran Coal Co.* (1876), 24 W. R. 900; *Lundy Granite Co.* (1871), 6 Ch. 462; *Regent United Service Stores* (1878), 8 C. D. 616.

(*h*) *Onward Building Society*, [1891] 2 Q. B. 463, 483.

(*i*) *South of France, &c., Syndicate* (1877), 37 L. T. 260.

(*k*) *New Zealand Banking Corporation* (1869), 39 L. J. Ch. 128.

(*l*) *Wells* v. *Estate Investment Co.* (1867), 15 W. R. 762.

(*m*) *Onward Building Society, supra.*

(*n*) *Great Ship Co.* (1863), 4 De G. J. & S. 63.

(*o*) *Exhall Coal Mining Co.* (1864), 4 De G. J. & S. 377.

(*p*) *Dry Docks Corporation* (1888), 39 C. D. 306.

(*q*) *Flint Coal Co.* (1887), 56 L. J. Ch. 232.

(*r*) *Briton Medical Association* (1886), 32 C. D. 503.

(*s*) *Croshaw* v. *Lyndhurst Ship Co.* (1896), 66 L. J. Ch. 576.

(*t*) C. A. 1908, s. 211.

(*u*) *Ex parte Hawkins* (1868), 3 Ch. 787.

(*x*) *Australian Steam Navigation Co.* (1875), 20 Eq. 325.

(*y*) *Central Sugar Factories of Brazil*, [1894] 1 Ch. 369.

(*z*) *West Cumberland Steel Co.*, [1893] 1 Ch. 713.

(*a*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648.

(*b*) *Humber & Co.* v. *John Griffiths Corporation* (1901), 85 L. T. 141.

sect. 42 of the Tramways Act, 1870, as to the solvency of the promoters of a tramways company in liquidation (*c*).

The jurisdiction to stay proceedings is discretionary (*d*), and in exercising it regard is to be had to the primary object of winding-up proceedings, viz. the collection and distribution of the assets of the company *pari passu* amongst its unsecured creditors after payment of preferential debts (*e*). Where execution or process in the nature of execution has been duly levied or put in force before the commencement of the winding-up, so as to make the creditor a secured creditor, a stay will be refused or leave to proceed given (*f*), unless the liquidator pays the debt (*g*). Service of a garnishee order *nisi* on the debtor is for this purpose equivalent to execution (*h*); but an order for the appointment of a receiver by way of equitable execution obtained by a judgment creditor in respect of his debt does not make him a secured creditor (*i*).

A writ of execution is not put in force until possession is taken under it (*k*), but if the sheriff is in possession under such a writ and other creditors lodge their writs of execution with him, such writs are thereby put in force.

When any such execution, distress, or process as aforesaid is levied or put in force after the commencement of the winding-up, a stay will be granted or leave to proceed refused (*l*), except under very special circumstances, *e.g.* where after the winding-up, the company, without taking any objection, allows the plaintiff to go on and alter his position (*m*), or where the execution would have been put in force before the commencement of the winding-up but for resistance made to the sheriff's officer (*n*).

A landlord is allowed to distrain for rent accrued due before or during

(*c*) *Pontypridd, &c., Tramways* (1889), 58 L. J. Ch. 536.

(*d*) *Great Ship Co.* (1863), 4 De G. J. & S. 63; *Currie* v. *Consolidated Kent Collieries*, [1906] 1 K. B. 134.

(*e*) *Smith, Fleming & Co.'s Case* (1866), 1 Ch. 538, 545; *International Pulp and Paper Co.* (1876), 3 C. D. at p. 598.

(*f*) *Great Ship Co., supra; Milwood Colliery Co.* (1876), 24 W. R. 898, overruling *Hill Pottery Co.* (1866), 1 Eq. 649, and *Plas-yn-Mhowys Coal Co.* (1867), 4 Eq. 689; *West Cumberland Steel and Iron Co.*, [1893] 1 Ch. 713; *Opera, Ltd.* (1890), 62 L. T. 859.

(*g*) *Withernsea Brickworks* (1880), 16 C. D. 337; *Dry Docks Corporation of London* (1888), 39 C. D. 306; *Hille India Rubber Co.* (No. 2), W. N. (1897), 20; *Roundwood Colliery Co.* (1896), 66 L. J. Ch. 186.

(*h*) *Ex parte Hawkins* (1868), 3 Ch. 787; *Stanhope Silkstone Co.* (1879), 11 C. D. 160; *National United Investment Corporation*, [1901] 1 Ch. 950.

(*i*) *Croshaw* v. *Lyndhurst Ship Co.* (1896), 66 L. J. Ch. 576.

(*k*) *London and Devon Biscuit Co.* (1871), 12 Eq. 190; *Waterloo Life Assurance Co.* (1862), 31 B. 589.

(*l*) *London and Devon Biscuit Co., supra; Dimson's Co.* (1874), 19 Eq. 202; *Universal Disinfector Co.* (1875), 20 Eq. 162; *Vron Colliery Co.* (1882), 20 C. D. 442 (doubting *Bastow & Co.* (1867), 4 Eq. 681; *Imperial Steam Coal Co.* (1868), 37 L. J. Ch. 52; *Ex parte Taylor* (1878), 8 C. D. 183; and *Re Richards & Co.* (1879), 11 C. D. 676); *Ex parte Fourdrinier* (1882), 21 C. D. 510; *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154.

(*m*) *Rudow* v. *Great Britain Mutual Society* (1881), 17 C. D. 601.

(*n*) *London Cotton Co.* (1866), 2 Eq. 53.

the winding-up where, not being a creditor of the company, he is unable to prove for the amount of the rent against the company, *e.g.* where the company is not legally or equitably entitled to the lease (*o*), or where the company is only equitably entitled to the lease (*p*), even although the company has given a collateral security for the rent (*q*). A landlord is not allowed to distrain for rent accrued due before the commencement of the winding-up in respect whereof he is a creditor of the company, but must prove his debt (*r*); but if at the time of the commencement of the winding-up he is in possession under a distress previously put in, he is a secured creditor, and the distress will be allowed to proceed unless the liquidator pays the amount of the debt (*rr*). A landlord is allowed to distrain in respect of rent accrued due after the winding-up where the company, with a view to its own benefit in working its property or carrying on its business, is in possession of the demised property (*s*), but not where possession is retained by the company for the benefit of all persons interested in the property (*t*) or without a view to its own benefit (*u*), unless the liquidator has agreed to pay rent. Where the liquidator refuses to pay the rent of the demised premises, leave will be given to the landlord to determine the tenancy by re-entry (*x*).

A landlord will be allowed to distrain upon the goods of a company where they are mortgaged for more than their value (*y*). The liquidator, although he retains possession of the demised property, does not become personally liable for the rent (*z*). The 10th section of the Judicature Act, 1875, does not, by making applicable in the winding-up of an insolvent company the rules in bankruptcy as to the respective rights of secured

(*o*) See *Traders' North Staffordshire Carrying Co.* (1874), 19 Eq. 67, 68.

(*p*) *Exhall Coal Mining Co.* (1864), 4 De G. J. & S. 377; *Regent United Service Stores* (1878), 8 C. D. 616.

(*q*) *Ex parte Clemence* (1883), 23 C. D. 154.

(*r*) *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250, 257; *Brown, Bailey and Dixon* (1881), 18 C. D. 649; *Traders' North Staffordshire Carrying Co.* (1874), 19 Eq. 60; *Coal Consumers' Association* (1876), 4 C. D. 625.

(*rr*) *Roundwood Colliery Co.* (1897), 1 Ch. 373.

(*s*) *Lundy Granite Co.* (1871), 6 Ch. 462; *North Yorkshire Iron Co.* (1878), 7 C. D. 661; *Silkstone and Dodworth Coal Co.* (1881), 17 C. D. 158; *South Kensington Co-operative Stores, ibid.* 161; *Re Brown, Bailey and Dixon* (1881), 18 C. D. 649.

(*t*) *Progress Assurance Co.* (1870), 9 Eq. 370; *Bridgewater Engineering Co.* (1879), 12 C. D. 181; *Ex parte Carnelley* (1887), 35 C. D. 656; *Shackell & Co.* v. *Chorlton & Sons*, [1895] 1 Ch. 378; *Higginshaw Mills Co.*, [1896] 2 Ch. 544.

(*u*) *North Yorkshire Iron Co.* (1878), 7 C. D. 661; *South Kensington Co-operative Stores* (1881), 17 C. D. 161; *Re Brown, Bailey and Dixon* (1881), 18 C. D. 649; *Oak Pits Colliery Co.* (1882), 21 C. D. 322; *House and Land Investment Trust* (1894), 42 W. R. 572.

(*x*) *General Share and Trust Co.* v. *Wetley Brick Co.* (1881), 20 C. D. 260. Frequently, as in this case, the landlord applies by summons for leave to distrain or, in the alternative, to re-enter.

(*y*) *New City Constitutional Club* (1886), 34 C. D. 646; *Harpur's Cycle Co.*, [1900] W. N. 187.

(*z*) *Graham* v. *Edge* (1888), 20 Q. B. D. 683.

and unsecured creditors, give to a landlord the right of distraining for any rent accrued due before the commencement of the winding-up (*a*). Where there is at the time of the commencement of the winding-up a distress upon the demised premises for rates, the distress will be allowed to proceed unless the liquidator pays the rates (*b*). When there has been a beneficial occupation by the liquidator of premises within the ordinary meaning of those words in rating cases he must pay in full the rates becoming due in respect of such premises after the commencement of the liquidation, and if not paid leave will be given to distrain for them (*c*).

An owner of a tithe rent-charge is allowed to distrain for arrears thereof, as he cannot prove for the same in the winding-up (*d*). Leave to commence or proceed with an action or proceeding will be given or a stay thereof will be refused, where the action is to enforce a mortgage or security upon the property of the company, unless the liquidator offers to give all that the mortgagee can get by his action, or there is already an order in the winding-up giving him that relief (*e*), or where the company is a necessary party to an action against the company and third parties (*f*), or where an action is the most convenient method of trying the question (*g*); and leave to proceed with an action will be given when it is brought by a shareholder for rescission and rectification of the register and was commenced before the winding-up (*h*). The application should be made to the winding-up Court (*i*), and should not be made *ex parte* (*k*). The Court of Appeal will not interfere where the winding-up judge has given leave to commence or to proceed with an action (*l*).

In granting a stay of proceedings or refusing leave to proceed, the Court usually requires the liquidator to admit the creditor to prove in the winding-up for the amount of his claim, and his costs of the action

(*a*) *Coal Consumers' Association* (1876), 4 C. D. 625; *Bridgewater Engineering Co.* (1879), 12 C. D. 181.

(*b*) *Dry Docks Corporation* (1888), 39 C. D. 306.

(*c*) *International Marine Hydropathic Co.* (1885), 28 C. D. 470; *National Arms Co.* (1885), 28 C. D. 474; *Blazer Fire Lighter Co.*, [1895] 1 Ch. 402.

(*d*) *Trimsaran Coal Co.* (1876), 24 W. R. 900.

(*e*) *Re David Lloyd & Co.* (1877), 6 C. D. 339; *Hamilton's Windsor Ironworks* (1879), 27 W. R. 827; *Moor* v. *Anglo-Italian Bank* (1879), 10 C. D. 681; *Henry Pound, Son and Hutchings* (1889), 42 C. D. 402 (debenture-holders); *Wanzer, Ltd.*, [1891] 1 Ch. 305; *West Cumberland Iron Co.*, [1893] 1 Ch. 713; *Barney* v. *Stubbs*, [1891] 1 Ch. 475 (debenture-holders); *Strong* v. *Carlyle Press*, [1893] 1 Ch. 268 (debenture-holders).

(*f*) *Rio Grande do Sul Steamship Co.* (1877), 5 C. D. 282.

(*g*) *Wyley* v. *Exhall Coal Mining Co.* (1864) 33 B. 539, an action to restrain a trespass; *Ex parte Bateman* (1866), 15 W. R. 118, 245.

(*h*) *Henderson* v. *Lacon* (1867), 5 Eq. 249; *Hall* v. *Old Talagoch Co.* (1876), 3 C. D. 749.

(*i*) *Wilson* v. *Natal Investment Co.* (1867), 36 L. J. Ch. 312.

(*k*) *Western and Brazilian Telegraph Co.* v. *Biddy* (1880), 42 L. T. 821.

(*l*) *Thames Plate Glass Co.* v. *Land, &c., Telegraph Construction Co.* (1871), 6 Ch. 643.

and of the application to stay (*m*), or until he had notice of the winding-up (*n*). If the action is commenced after notice, the creditor may be ordered to pay these costs (*o*); and if the company has offered to allow the creditor to prove for his debt and costs of action, he will not be allowed his costs of appearing upon the application to stay (*p*). The winding-up Court in England will restrain a person within its jurisdiction from taking or continuing actions or proceedings out of the jurisdiction (*q*), and will, by virtue of the Companies Act, 1908, s. 180, restrain a person domiciled in Scotland or Ireland from taking or continuing proceedings in those countries (*r*), unless by means of the proceeding he has, before the commencement of the winding-up, become a secured creditor (*s*).

The application to stay an action, execution or proceeding must in the High Court be made to the Division where the action is pending (*t*), and may be made *ex parte* (*u*). It is generally made by summons but sometimes by motion, and may be made by the company or its liquidator or by a creditor or shareholder of the company, unless the application is made under the Companies Act, s. 265, when it can only be made by a creditor.

V.—*Stay of Winding-up.*

The Court may, upon the application of any creditor or contributory of a company, and upon proof that all proceedings in the winding-up thereof ought to be stayed, make an order staying the same either altogether or for a limited period on such terms and conditions as it thinks fit (*x*). The order can be made whether the winding-up is compulsory or under supervision or voluntary (*y*). Sometimes the order to stay reserves liberty to any dissentient creditor or the official receiver

(*m*) *Poole Firebrick, &c., Co.* (1873), 17 Eq. 268; *Walker* v. *Banagher Distillery Co.* (1875), 1 Q. B. D. 129.

(*n*) *Life Association of England* (1864), 34 L. J. Ch.; *Keynsham Co.* (1863), 33 B. 123.

(*o*) *East Kent Shipping Co.* (1868), 18 L. T. 748; *Freeman* v. *General Publishing Co.*, [1894] 2 Q. B. 380.

(*p*) *Rose & Co.* v. *Gardden Lodge Coal Co.* (1878), 3 Q. B. D. 235.

(*q*) *Oriental Inland Steam Co.* (1874), 9 Ch. 557; *North Carolina Estate Co.* (1889), 5 T. L. R. 328; *Central Sugar Factories of Brazil*, [1894] 1 Ch. 369 (where terms were imposed upon the company); *Belfast Shipowners' Co.*, [1894] 1 Ir. R. 321.

(*r*) *Middlesbrough Fire Brick Co.* (1885), 52 L. T. 98; *Hermann Loog, Ltd.* (1887), 36 C. D. 502; *Queensland Mercantile Agency Co.* (1888), 58 L. T. 878; *International Pulp Co.* (1876), 3 C. D. 594.

(*s*) *West Cumberland Steel and Iron Co.*, [1893] 1 Ch. 713.

(*t*) *Walker* v. *Banagher Distillery Co.* (1875), 1 Q. B. D. 129; *People's Garden Co.* (1875), 1 C. D. 44; *Artistic Colour Printing Co.* (1880), 14 C. D. 502; *General Service Stores*, [1891] 1 Ch. 496.

(*u*) *Mashbach* v. *James Anderson & Co.* (1877), 26 W. R. 100.

(*x*) C. A. 1908, s. 144. See *Telescriptor Syndicate*, [1903] 2 Ch. 174, as to when this power should be exercised.

(*y*) *South Barrule Slate Quarry Co.* (1869), 8 Eq. 688; *Titian S. S. Co.* (1888), 58 L. T. 178.

to apply within a limited time to remove the stay (*z*). Frequently a stay is applied for in pursuance of a scheme of arrangement sanctioned under section 120 of the Companies Act, 1908. Where a compulsory order has been made after the commencement of a voluntary winding-up, the proceedings on the order may be stayed (if no creditor objects) so as to allow the voluntary winding-up to continue (*a*).

VI.—*Dissolution.*

The dissolution of a company which is in course of being wound up compulsorily is effected by an order of the Court (*b*), or, in the case of a voluntary winding-up, in the manner prescribed by sect. 195 of the Act of 1908 (*c*); or, where a company has ceased to carry on business, in the manner prescribed by sect. 242 of the Act, although there are no winding-up proceedings in existence (*d*). The dissolution of a company which has been wound up either by the Court or voluntarily (*e*), unless the dissolution has been declared void by the Court (*f*), prevents any proceedings being taken against promoters, directors, or officers of the company, in respect of any misfeasance or breach of trust (*g*); or a creditor proving his debt against the company (*h*); but does not prevent a voluntary liquidator being sued by a creditor of whose existence he is aware, or, *semble*, a shareholder, upon the ground that the liquidator has distributed the assets of the company without making provision for his rights (*i*). A judgment obtained against a company after it has been dissolved is invalid, and the solicitor acting for the company is liable to pay the plaintiff's costs of the action, as between solicitor and client, after the date at which he knew, or by using due diligence might have known, that the company was dissolved (*k*). It has, however, been held in two cases that, although the company has been dissolved, the Court has jurisdiction to make an order upon an application made but not heard before the dissolution. In one case, Lord Romilly made an order for a call upon contributories in order to adjust the rights of contributories, *inter se* (*l*), and in the other case, North, J., varied a taxing master's certificate made in pursuance of an order directing the company to pay costs (*m*).

(*z*) *Re Baxter's, Ltd.*, W. N. (1898) 60.

(*a*) *Bristol Victoria Potteries Co.* (1872), 20 W. R. 569.

(*b*) C. A. 1908, s. 172. See *post*, p. 535.

(*c*) See *post*, p. 537.

(*d*) See *post*, pp. 538-540.

(*e*) *Pinto Silver Mining Co.* (1878), 8 C. D. 273; *London and Caledonian Insurance Co.* (1879), 11 C. D. 140.

(*f*) C. A. 1908, s. 223.

(*g*) *Cozon* v. *Gorst*, [1891] 2 Ch. 73.

(*h*) *Westbourne Grove Drapery Co.* (1878), 39 L. T. 30.

(*i*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.

(*k*) *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43.

(*l*) *Crookhaven Mining Co.* (1866), 3 Eq. 69.

(*m*) *Whiteley Exerciser, Ltd.* v. *Gamage*, [1898] 2 Ch. 405.

The dissolution of a company determines a lease granted to the company and not assigned, and therefore no action can be brought against sureties who have guaranteed the performance of the lessee's covenants, in respect of rent not due and owing at the time of the dissolution (*n*).

(*n*) *Hastings Corp.* v. *Letton*, [1908] 1 K. B. 378.

CHAPTER XXXII.

WINDING-UP BY THE COURT.

I.—*Jurisdiction.*

THE winding-up by the Court of companies in England or Wales is regulated by the Companies Act, 1908, and the rules made under that Act and the Judicature Act, 1891.

The following are the Courts which have jurisdiction to wind up companies (*b*), building societies (*c*), and industrial and provident societies (*d*) in England (*e*) :—

(1) As to companies with a capital paid-up or credited as paid-up of more than £10,000 :—

The High Court of Justice.

The Chancery Courts of the counties palatine of Lancaster and Durham, which have concurrent jurisdiction in the case of companies whose registered offices (*f*) are situate within their respective jurisdiction.

(2) As to companies with a paid-up capital of not more than £10,000 :—

The County Court having jurisdiction in bankruptcy in whose jurisdiction the registered office (*f*) of the company is situate (*g*), or, if there is no such Court, the Courts mentioned in class (1).

(*b*) C. A. 1908, s. 131, but nothing in this section is to invalidate a proceeding by reason of its being taken in a wrong Court (sub-s. 7).

(*c*) Building Societies Act, 1894, s. 8.

(*d*) Industrial and Provident Societies Act, 1893, s. 58.

(*e*) The Lord Chancellor has power from time to time by general order to assign the winding-up jurisdiction of the High Court to any judge or judges of the Chancery Division or to the judge exercising the bankruptcy jurisdiction (C. A. 1908, s. 132).

(*f*) "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 (C. A. 1908, s. 131 (8)).

(*g*) See County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, for list of County Courts excluded from bankruptcy jurisdiction. Neither the City of London Court nor any of the Metropolitan County Courts has bankruptcy jurisdiction. *Court Bureau, Ltd.* (No. 2), W. N. (1891), 15.

The jurisdiction of the Stannaries Court with regard to companies formed for working mines within the Stannaries was by the Stannaries Court (Abolition) Act, 1896, abolished and transferred to certain County Courts. And where a company is formed for working mines within the Stannaries and is not shown to be actually working mines or engaged in any other undertaking beyond those limits or to have entered into a contract for such working or undertaking a petition to wind up the company must be presented to the Court exercising the Stannaries jurisdiction whatever its capital or wherever its registered office (*h*) may be (*i*).

The English Courts have no jurisdiction to wind up companies registered in Scotland or Ireland, although they have branch offices in England (*j*). The Court having jurisdiction to wind up companies registered in (1) Scotland is the Court of Session in either division thereof or in the event of a remit to a permanent Lord Ordinary that Lord Ordinary during session and in the time of vacation the Lord Ordinary on the bills (*k*); and (2) Ireland, is the High Court (*l*).

Sect. 133 of the Act enables the winding-up of a company in England or any proceedings therein at any time and at any stage, and either with or without application from any of the parties thereto, to be transferred from one Court to another Court, or to be retained in the Court in which proceedings were commenced although it may not have been the Court in which proceedings ought to have been commenced (*m*). A transfer can be made before any order has been made upon a petition (*n*), but a transfer cannot be made to the City of London Court or to any other Court not having bankruptcy jurisdiction (*o*). The power of transfer given by sect. 133 may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or any judge of the High Court having jurisdiction under the Act, or as regards any case within the jurisdiction of any other Court, by the judge of that Court (sub-sect. (2)). If any question arises in any winding-up proceeding in a County Court which all the parties, or one of them and the judge, desire to have determined in the first instance in the High Court, a special case for the High Court must be stated by the judge (sub-sect. (3)).

Societies incorporated under the Industrial Societies Acts cannot be wound up as unregistered companies under the Companies Acts (*p*), but they can be wound up under the Industrial and Provident Societies Act, 1893, s. 58, and the provisions of the Companies Acts are made applicable to the winding-up of such societies.

(*h*) See note (*f*), *ante*, p. 430.
(*i*) C. A. 1908, s. 131 (4).
(*j*) *Scottish Joint Stock Trust*, [1900] W. N. 114.
(*k*) C. A. 1908, s. 135.
(*l*) *Ibid.* s. 134.
(*m*) C. (W.-U.) Rules, 1909, rr. 42-47.
(*n*) *Laxon & Co.* (No. 1), [1892] 3 Ch. 31.
(*o*) *Real Estates Co.*, [1893] 1 Ch. 398
(*p*) (*Chatham Co-operative Industrial Society* (1864), 33 L. J. Ch. 737; *London & Suburban Bank*, [1892] 1 Ch. 604.

II.—*Grounds for making Winding-up Orders.*

The Court may order a company (*q*) to be wound up compulsorily (*r*)—

(1) If the company has by special resolution resolved that the company be wound up by the Court.

(2) If default is made in filing the statutory report or in holding the statutory meeting (*s*).

(3) If the company does not commence its business within a year from its incorporation or suspends its business for a whole year.

(4) If the number of members is reduced in the case of a private company (*t*) below two or in the case of any other company below seven.

(5) If the company is unable to pay its debts.

(6) If the Court is of opinion that it is just and equitable that the company should be wound up.

The Court may make a compulsory order for winding-up an unregistered company (*u*) in cases (5) and (6) above mentioned, and also if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.

(1) and (2) The writer is not aware of any order having been made on either of these grounds.

(3) This sub-paragraph does not refer to doing merely formal business such as allotting shares, but it means that the company must actually set to work (*x*). In a recent case an order was made where a company had not commenced business within a year from its incorporation (*y*), and an order was made on the petition of a shareholder although the majority of the shareholders opposed the petition (*z*); but an order will not be made where the company has commenced business abroad within the year and there is a *bonâ fide* intention to commence business in this country (*a*). A company registered after the 31st December, 1900, which invites the public to subscribe for its shares, cannot commence business until it complies with sect. 87 of the Companies (Consolidation) Act, 1908; but it is submitted that this does not by implication make the year to commence from the time of compliance instead of the date of the certificate of incorporation given by the registrar. An order will not be made on the

(*q*) See *ante*, p. 415, as to what companies may be wound up.

(*r*) C. A. 1908, s. 129.

(*s*) See *ante*, p. 326. Only a shareholder can petition on this ground, and not before the expiration of fourteen days after the last day on which the meeting ought to have been held. C. A. 1908, s. 137.

(*t*) As to what is a private company, see *ante*, p. 7.

(*u*) C. A. 1908, s. 268. As to what is an unregistered company, see *ante*, p. 416.

(*x*) *South Luipaards Vlei Gold Mines*, (1897), 13 T. L. R. 504.

(*y*) *Cæmentium (Parent) Co.*, [1908] W. N. 257.

(*z*) *Tumacacori Co.* (1874), 17 Eq. 534.

(*a*) *Capital Fire Insurance Association* (1882), 21 C. D. 209.

ground that the company has suspended its business for a year if the petitioner is a shareholder and is opposed by a large majority of the shareholders, and there is a *bonâ fide* intention to proceed with the business of the company (*b*). A company does not cease to carry on business because it has given up part of its business, *e.g.*, where a company formed to work a colliery in England and an iron mine in Norway sold the colliery (*c*), or where a company formed to acquire and work patents for the manufacture of gas, ceased to work under the patents but manufactured gas by another process (*d*).

(4) The writer is not aware of any order having been made upon the sole ground that the number of members has been reduced to less than two or seven as the case may be.

(5) By sect. 130 of the Companies Act, 1908, a company is to 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 50*l.* then due, has served on the company by leaving the same at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has, for the space of three weeks (*e*) thereafter neglected (*f*) to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor (*g*) ; or

(ii) If, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained of any Court in favour of a creditor of the company, is returned unsatisfied in whole or in part ;

(iii) If, in Scotland, the *inducice* 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 ;

(iv) If, it is proved to the satisfaction of the Court that the Company is unable to pay its debts, and in determining whether a company is unable to pay its debts the Court is to take into account the contingent and prospective liabilities of the company.

By sect. 268 of the Act an unregistered company is to be deemed to be unable to pay its debts in the events above stated (except that in (ii) the judgment may be a judgment against the company or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, and that in (iv) nothing is said about taking into account contingent and prospective liabilities), and in the following event—

(v) 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

(*b*) *Middlesborough Assembly Rooms* (1880), 14 C. D. 104 ; *Metropolitan Warehousing Co.* (1867), 36 L. J. Ch. 827 ; *Tomlin Patent Horse Shoe Co.* (1886), 55 L. T. 314.

(*c*) *Norwegian Titanic Iron Co.* (1865), 35 B. 223.

(*d*) *New Gas Co.* (1877), 37 L. T. 111 ; 5 C. D. 703.

(*e*) The three weeks must elapse before the presentation of the petition. *Catholic Publishing Co.* (1864), 2 De G. J. & S. 116.

(*f*) Mere omission does not amount to negligence, *e.g.* where the omission is owing to the company *bonâ fide* disputing the debt. *London and Paris Banking Corporation* (1874), 19 Eq. 444.

(*g*) Any other creditor or any contributory may petition. *Ex parte Owen* (1861), 4 L. T. 684.

from him in his character of member, and notice in writing of the institution of the action, or proceeding having been served upon 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 such notice, paid, secured, or compounded for the debt or demand, or procured the action, or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action, suit, or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same.

A company is unable to pay its debts within the meaning of the Act of 1908 whenever it is unable to pay its debts as they become due (*h*), that is, whenever it is commercially insolvent (*i*), although, if its assets, including its uncalled capital, could be realized there would be a balance of assets over liabilities. As in determining whether a company is unable to pay its debts its contingent and prospective liabilities must be taken into account, a company, although able to pay its debts as they become due, is liable to be wound up if the total value of its assets is less than the valuation of its liabilities. A life insurance company may be wound up if insolvency of this kind is proved, and, in estimating the value of uncalled capital as an asset, the Court will have regard not merely to the nominal amount of uncalled capital, but to the amount which, on the evidence, is likely to be realized (*k*). It is sufficient evidence of commercial insolvency if bills of the company held by the petitioner (*l*), or by some other creditor (*m*), have been dishonoured (*l*), or if the company has informed the petitioner, being a judgment creditor, that there are no assets on which execution can be levied (*n*).

(6) For many years the tendency of the Court was to hold that this placitum must be construed as only applying to matters *ejusdem generis* as those mentioned in the preceding part of the section (*o*), but recently there have been decisions in which the view has been maintained that the jurisdiction given by this "just and equitable" clause is not limited by reference to the other grounds for winding-up mentioned in the section (*p*). The class of cases in which orders under this sub-section are most frequently made are those in which it is proved that the substratum of the company has failed, *e.g.* where a company has been formed having for its main object the acquisition and working of a gold mine, or patent, or concession, and the company has been unable to obtain

(*h*) *European Life Assurance Society* (1869), 9 Eq. 122.

(*i*) *National Funds Assurance Co.* (1876), 24 W. R. 1066.

(*k*) *National Funds Assurance Co., supra.*

(*l*) *Globe, &c., Steel Co.* (1875), 20 Eq. 337.

(*m*) *Great Northern, &c., Co., of Australia* (1869), 20 L. T. 264.

(*n*) *Flagstaff, &c., Co., of Utah* (1875), 20 Eq. 268.

(*o*) *Suburban Hotel Co.* (1867), 2 Ch. 737.

(*p*) *Amalgamated Syndicate*, [1897], 2 Ch 600; *Thomas Edward Brinsmead & Sons*, [1897] 1 Ch. 406; *Sailing Ship Co.*, W. N. (1897) 58.

such patent, or gold mine, or concession, or the patent is invalid, or the mine is worthless, or the concession has lapsed (*q*); in the case of bubble companies (*r*); where the company's only business is *ultra vires* of the company (*s*); where the company was a bank and its paid-up capital was exhausted, and its uncalled capital could only be called up in the event of a winding-up (*t*); where the company's principal object was an adventure in providing seats for the Diamond Jubilee (*u*); where a company was fraudulent in its inception and carried on a small business at a loss, having no capital of its own (*x*); where a company carried on business at a loss and its remaining assets were insufficient to pay its debts (*y*); or where a company is desirous of going into liquidation with a view to the sanctioning of a scheme of arrangement, and it is proved that unless the scheme is sanctioned insolvency must shortly ensue (*z*). The misconduct of directors (*a*) or liquidators (*b*) is not *per se* a "just and equitable" ground for winding-up, nor is the fact that the business of the company has been carried on at a heavy loss if the company is not insolvent (*b*), nor is the issue of shares at a discount (*c*).

Default by any assurance company (*cc*) in complying with any of the requirements of the Assurance Companies Act, 1909, which is continued for a period of three months after notice of default by the Board of Trade, is a ground for winding-up the company (sect. 23).

III.—*Who may be Petitioners.*

The persons entitled to apply for an order to wind up a company are the company, any creditor or creditors of the company, including any contingent or prospective creditor (*d*), and any contributory or contributories of the company, or all or any of those parties together or separately (*e*), and the official receiver, but only where the company is

(*q*) *Haven Gold Mining Co.* (1882), 20 C. D. 151; *German Date Coffee Co.* (1882), 20 C. D. 169; *Red Rock Gold Mining Co.* (1889), 1 Meg. 436; *International Cable Co.* (1890), 2 Meg. 83. Cf. *New Gas Co.* (1877), 37 L. T. 111; and *Norwegian Titanic Iron Co.* (1865), 35 B. 223. See *contra Langham Skating Rink* (1877), 5 C. D. 669.

(*r*) *London and County Coal Co.* (1866), 3 Eq. 355.

(*s*) *Crown Bank* (1890), 44 C. D. 634.

(*t*) *Bristol Joint Stock Bank* (1890), 44 C. D. 703.

(*u*) *Re Amalgamated Syndicate, supra.*

(*x*) *Thos. E. Brinsmead & Sons, supra; London and County Coal Co., supra.*

(*y*) *Wey Canal Co.* (1867), 4 Eq. 197; *Diamond Fuel Co.* (1879), 13 C. D. 400; *Great Northern Copper Mining Co.* (1869), 17 W. R. 462; *Bristol Joint Stock Bank* (1890), 44 C. D. 703.

(*z*) *Australian Joint Stock Bank*, W. N. (1897), 48.

(*a*) *Anglo-Greek Steam Co.* (1866), 2 Eq. 1; *Welch-y-Plwm Co.* (1867), 17 L. T. 235; *Gold Co.* (1879), 11 C. D. 701.

(*b*) *London and Mediterranean Banking Co.* (1866), 15 W. R. 33.

(*c*) *Pioneers of Mashonaland Syndicate*, [1893] 1 Ch. 731.

(*cc*) See *ante*, p. 296, as to what is an assurance company.

(*d*) The Court must not give a hearing to a petition by a contingent or prospective creditor until reasonable security for costs has been given and a *primâ facie* case established (C. A. 1908, s. 137).

(*e*) C. A. 1908, s. 137 (1).

being wound up voluntarily or subject to supervision in England (*f*). The application must be by petition (*ff*). The Court has jurisdiction in a proper case to hear the petition in Chambers, *e.g.* where publicity would injure the value of the company's assets.

It has been held that the following persons are entitled as creditors of a company to present a petition for winding-up the company: the assignee, legal or equitable, of a debt (*g*), the executor of a creditor of a company before probate, but probate must be obtained before an order is made (*h*), a creditor in respect of a debt incurred by voluntary liquidators (*i*), a secured creditor (*k*), a judgment creditor (*l*), the holder of a debenture payable to bearer (*m*), and holders of debentures of a public company incorporated by special Act and not registered under the Companies Acts (*n*). On the other hand, it has been held that the following creditors of the company cannot petition, viz. a creditor in respect of a claim for unliquidated damages (*o*), a landlord in respect of rent not yet due (*p*), a debenture stock holder when the company has not made default in payment of either interest or principal (*q*), or, although it has made default in payment of his interest, there is no direct covenant with him to pay such interest (*r*), a creditor whose debt is very small (*s*), unless supported by other creditors (*t*), a surety for a mortgage debt, which, together with the security, had been assigned to the company, the surety having paid part of the debt (*u*), a creditor whose debt is *bonâ fide* disputed (*x*), but the winding-up Court will sometimes decide the question in order to save expense (*y*), or will order the petition to

(*f*) C. A. 1908, s. 137 (2); *Jubilee Sites Syndicate*, [1899] 2 Ch. 204.

(*ff*) C. A. 1908, s. 137 (1).

(*g*) *London and Birmingham Alkali Co.* (1859), 1 De G. F. & J. 257; *Montgomery Moore & Co.* (1903), 51 W. R. 644; but not if the assignment is made by the creditor while his petition is pending. *Paris Skating Rink* (1877), 5 C. D. 959.

(*h*) *Masonic Life Assurance Co.* (1885), 32 C. D. 373.

(*i*) *Bank of South Australia*, [1895] 1 Ch. 578.

(*k*) *Portsmouth Tramways Co.*, [1892] 2 Ch. 362.

(*l*) But the judgment is not conclusive evidence that the petitioning creditor is entitled to present the petition. *United Stock Exchange* (1885), 51 L. T. 687.

(*m*) *Olathe Silver Mining Co.* (1884), 27 C. D. 278.

(*n*) *Portsmouth Tramways Co.*, [1892] 2 Ch. 362; disapproving *Herne Bay Waterworks Co.* (1878), 10 C. D. 42; and *Exmouth Docks Co.* (1873), 17 Eq. 181.

(*o*) *Pen-y-van Colliery Co.* (1877), 6 C. D. 477.

(*p*) *United Club and Hotel Co.* (1889), 60 L. T. 665; but since the 1st July, 1908, such a creditor may petition.

(*q*) *Melbourne Brewery and Distillery*, [1901] 1 Ch. 453, distinguishing *Australian Joint Stock Bank*, W. N. (1867) 48, where payment of the creditor's debt was suspended under a scheme.

(*r*) *Sunderland Iron Ore Co.*, [1900] 1 Ch. 446.

(*s*) *Herbert Standring & Co.*, W. N. (1895) 99; *Fancy Dress Balls Co.*, W. N. (1899) 109.

(*t*) *Leyton, &c., Cycle Co.* (1901), 50 W. R. 93.

(*u*) *Law Courts Chambers* (1889), 61 L. T. 669.

(*x*) *Re Brighton, &c., Hotel Co.* (1865), 35 B. 204; *London Wharfing Co.* (1865) *ibid.* 37; *Rhodesian Properties*, [1901] W. N. 130.

(*y*) *London and Paris Banking Corporation* (1874), 19 Eq. 444.

stand over until the debt has been established in an action (*z*), a landowner the amount of whose claim for land taken by the company has been assessed by arbitration under the Lands Clauses Act, 1845, but whose title has not been investigated and accepted (*a*), a judgment creditor who has obtained a garnishee order absolute in respect of a debt due from the company to his judgment debtor (*b*), and the holder of a bill of the company not due, although he has notice from the company that it will not be met at maturity (*c*).

A pending voluntary winding-up does not prevent a creditor obtaining a compulsory order, but he is bound to allege and prove that the continuance of the voluntary winding-up will be prejudicial to his rights (*d*), or that a majority of creditors desire a compulsory order (*e*). It is immaterial that the voluntary winding-up resolution has been passed after the presentation but before the hearing of the petition (*f*), but it is a contempt of Court to procure the passing of the resolution by fraud for the purpose of preventing a compulsory order being made (*g*). As shareholders often prefer a voluntary winding-up to a compulsory winding-up, it frequently happens that an extraordinary resolution for winding-up voluntarily is passed in order to prevent a compulsory order being made. Compulsory orders have been made on the application of creditors notwithstanding the pendency of a voluntary liquidation, where the same person had been appointed receiver in a debenture holders' action against the company and also its liquidator (*h*), where a *primâ facie* case of fraud was established with reference to the formation of the company or the conduct of its business (*i*), where there had been great delay in conducting the liquidation (*k*), where the liabilities of the company were enormous (*l*), and where the conduct of the liquidation was unsatisfactory (*m*). A compulsory order can be made in a proper case although a supervision order has been made (*n*). With the petitioner's consent a compulsory order may be made on a

(*a*) *Imperial Guardian Assurance Society* (1869), 9 Eq. 447; *Inventors' Association* (1865), 12 L. T. 840; but the Court is bound to see that the debt is disputed on some substantial ground. *King's Cross Industrial Dwellings Co.* (1870), 11 Eq. 149.

(*a*) *Milford Docks Co.* (1883), 23 C. D. 292.

(*b*) *Combined Weighing Machine Co.* (1889), 43 C. D. 99; discussed in *Pritchett and Young* v. *English and Colonial Syndicate*, [1899] 2 Q. B. 428.

(*c*) *W. Powell & Sons*, W. N. (1892) 94; but now a contingent or prospective creditor can petition. See *ante*, p. 435.

(*d*) C. A. 1908, s. 197; *Russell, Cordner & Co.*, [1891] 3 Ch. 171.

(*e*) *E. Bishop & Sons*, [1900] 2 Ch. 254.

(*f*) *New York Exchange* (1888), 39 C. D. 415; *Electrical Engineering Co.* (1891), 64 L. T. 658; *Medical Battery Co.*, [1894] 1 Ch. at p. 445.

(*g*) *Septimus Parsonage & Co.*, [1901] 2 Ch. 424.

(*h*) *Medical Battery Co.*, [1894] 1 Ch. 444.

(*i*) *Varieties, Ltd.*, [1893] 2 Ch. 235.

(*k*) *Manchester Queensland Cotton Co.* (1867), 16 L. T. 583; *Fire Annihilator Co.* (1863), 32 B. 561.

(*l*) *Barned's Banking Co.* (1866), 14 L. T. 451.

(*m*) *Caerphilly Colliery Co.* (1875), 32 L. T. 15.

(*n*) *London and Mediterranean Bank* (1866), 15 L. T. 153.

petition for a supervision order, or such other order as to the Court shall seem meet (*o*), or *vice versâ*, but not without his consent (*p*). Until the Companies Act, 1900, came into operation, a creditor was entitled as of right to a supervision order, because in a voluntary winding-up he was unable to make any application to the Court with reference to the winding-up, as sect. 138 of the Act of 1862 only permitted the liquidator or a contributory to make such an application, but as since the Act of 1900 came into operation he has been able to make such an application, a creditor will have more difficulty in obtaining a supervision order.

The persons entitled as contributories to present a winding-up petition include a fully paid-up shareholder (*q*), if it is alleged and proved that, unless the number of contributories is less than two in the case of a private company (*r*) or seven in the case of any other company, he is the original allottee of some of the shares registered in his name, or that some of such shares have been registered in his name and held by him for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder (*s*), also a person who has obtained a decree for specific performance of an agreement to allot shares to him (*t*), a holder of scrip certificates entitling him to be a shareholder (*u*), and a shareholder, although the articles of association purport to take away his right to petition (*x*). An assurance company may be wound up under the Companies Act, 1908, on the petition of ten or more policy-holders owning policies to an aggregate value of not less than 10,000*l.* (*xx*). The Court, in the case of an assurance company which has been proved to be unable to pay its debts, may reduce the amount of the company's contracts upon such terms and subject to such conditions as the Court thinks just in place of making a winding-up order (sect. 18).

It has been decided that a shareholder whose interest in the company

(*o*) *Electric Magnetic Co.* (1881), 50 L. J. Ch. 491.

(*p*) *Chepstow Bobbin Mills* (1887), 36 C. D. 563.

(*q*) *National Savings Bank* (1866), 1 Ch. 547; *Diamond Fuel Co.* (1879), 13 C. D. 400; *Rica Gold Washing Co.* (1879), 11 C. D. 36. See *post*, p. 442.

(*r*) As to what is a private company, see *ante*, p. 7.

(*s*) C. A. 1908, s. 137; *Wala Wynaad Co.* (1882), 21 C. D. 849. But where under Part 4 of the 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 held by or registered in the name of the wife, or of a trustee for the wife or the husband, the share for the puposes of s. 137 is deemed to have been held by and registered in the name of the husband.

(*t*) *Patent Steam Engine Co.* (1878), 8 C. D. 464.

(*u*) *Littlehampton S. S. Co.* (1865), 2 De G. J. & S. 521.

(*x*) *Peveril Gold Mines*, [1898] 1 Ch. 122.

(*xx*) See *ante*, p. 296, as to what is an assurance company, and s. 15 of the Assurance Companies Act, 1909. A petition cannot be presented under s. 15 except by leave of the Court, which cannot be given until a *primâ facie* case has been established and reasonable security for costs given.

is trifling (*y*) cannot petition for a winding-up order, and that a shareholder who has not paid calls duly made on his shares although he may petition will not as a rule be heard until the calls have been paid or secured (*z*).

It was formerly held that the pendency of a voluntary winding-up was, as a general rule, a bar to a contributory obtaining a compulsory order or a supervision order, unless the resolution to wind up had been passed fraudulently or by undue influence, or creditors appeared in support of the petition (*a*); but that such an order could be made under exceptional circumstances although fraud or undue influence was not proved, and no creditor appeared in support (*b*). Now, it is expressly provided that a voluntary winding-up shall not be a bar if the rights of the contributories will be prejudiced by its continuance (*bb*).

IV.—*Petitions and Orders.*

Every petition for winding-up must be advertised seven clear (*c*) days before the hearing as follows (*d*):—

1. In the case of a company whose registered office, or if there shall be no such 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 London daily morning 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 such registered office, or principal or last known place of business, as the case may be, of such company is or was situate, or in such other newspaper as the Court shall direct.

The advertisement (*e*) is generally entitled in the matter of the Companies (Consolidation) Act, 1908 (*d*), and of the company, and states the date of the presentation of the petition, the nature of the order asked for, the Court to which it is presented, the name and

(*y*) *London and Suburban Bank* (1871), 6 Ch. 641.

(*z*) *Diamond Fuel Co.* (1879), 13 C. D. 400, 406; *Crystal Reef Co.*, [1892] 1 Ch. 408, explaining *European Life Assurance Society* (1870), 10 Eq. 403, and *Steam Stoker Co.* (1875), 19 Eq. 416.

(*a*) *London & Mercantile Co.* (1865), 1 Eq. 277; *Bank of Gibraltar* (1865), 1 Ch. 69; *Imperial Mercantile Credit Association* (1866), 12 Jur. N. S. 739; *St. David's Gold Mining Co.* (1866), 14 L. T. 539; *Beaujolais Wine Co.* (1867), 3 Ch. 15; *Madras Coffee Co.* (1869), 17 W. R. 643; *Irrigation Co. of France* (1870), 39 L. J. Ch. 663; *London & Suburban Bank* (1871), 6 Ch. 641; *Star & Garter Hotel Co.* (1873), 42 L. J. Ch. 374; *Sir John Moore Gold Mining Co.* (1877), 37 L. T. 242; *Re Gold Co.* (1879), 11 C. D. 701.

(*b*) *Varieties, Ltd.*, [1893] 2 Ch. 235; *Haycraft* v. *Gold Reduction Co.*, [1900] 2 Ch. 230; *Gutta Percha Co.*, [1900] 2 Ch. 665; *National Distribution of Electricity Co.*, [1902] 2 Ch. 34; *Rand Consolidated Gold Mines*, [1909] 1 Ch. 491; *Littlehampton S. S. Co.* (1865), 34 L. J. Ch. 237.

(*bb*) C. A. 1908, s. 197.

(*c*) *City and County Bank* (1875), 10 Ch. 471; *Cork & Youghal Co.* (1866), 14 L. T. 750. This term may be extended or abridged by the Court: C. (W.-U.) Rules, 1909, rr. 27, 216.

(*d*) C. (W.-U.) Rules, 1909, r. 27.

(*e*) See *Ibid.* Form 6.

address of the petitioner and of his solicitor and London agent, if any, the date at which the petition is directed to be heard, and that any creditor or contributory of the company desirous to support or oppose the making of an order on the petition may appear at the hearing by himself or his counsel (or in a county court, his solicitor) for that purpose, and that a copy of the petition will be furnished to any such creditor or contributory requiring the same by the person whose name is subscribed to the notice on payment of the regulated charge for the same (*f*). The notice is usually signed by the petitioner's solicitor, but may be signed by the petitioner himself if he has no solicitor. The advertisement must contain a note (*i*) at the foot thereof stating that any person who intends to appear on the hearing of the petition either to oppose or support, must serve on or send by post to the person signing the advertisement notice in writing of his intention so to do, so that the notice shall reach him not later than six o'clock in the afternoon of the day therein specified (*h*), and such notice must state the name and address (*i*) of the person or firm and be signed by the person or firm or his or their solicitor, if any. In the notice sent it must be stated whether the person is a creditor or contributory, and if a creditor, the amount of his debt or claim, and whether he intends to support or oppose the petition (*k*). A person who fails to comply with the rule is only entitled to appear on the hearing of the petition by leave of the Court (*k*), which is generally granted, although he may be unable to obtain any costs. The petitioner or his solicitor or London agent must 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, and a fair copy of the list must, on the day appointed for hearing, be handed to the Court prior to the hearing of the petition (*l*). Any material error in the advertisement may invalidate the advertisement, *e.g.* in the name of the company (*m*), but not when no one could be deceived (*n*), or as to the day of hearing (*o*), or the title of the petition (*p*). If the petition is presented after the commencement of a voluntary winding-up and only asks for a compulsory order, the Court may refuse to make a supervision order until the petition

(*f*) It is the duty of the petitioner's solicitor to ascertain that the applicants are either contributories or creditors: *Cheltenham Carriage Co.* (1869), 8 Eq. 583. The charge is 4*d.* per folio of seventy-two words. The copy must be supplied within twenty-four hours after it is required: C. (W.-U.) Rules, 1909, r. 30.

(*h*) This is the day before the day appointed for the hearing: *ibid.* r. 33.

(*i*) *Descours, Parry & Co.*, [1909] W. N. 50.

(*k*) C. (W.-U.) Rules, 1909, r. 33, Form 11.

(*l*) *Ibid.* r. 34, Form 12.

(*m*) *City and County Bank* (1875), 10 Ch. at p. 477.

(*n*) *Army and Navy Hotel, Ltd.* (1886), 31 C. D. 644; *Consolidated Mines Co.*, W. N. (1876) 234; *Newcastle Machinists' Co.*, W. N. (1888), 246.

(*o*) *Re Joint Stock Companies Winding-up Act* (1849), 13 B. 434.

(*p*) *Marezzo Marble Co.* (1874), 43 L. J. Ch. 544.

has been re-advertised, so that notice may be given of the intention to apply for such an order (*q*). If it is presented before the commencement of the voluntary winding-up and the affidavits prove the passing of the winding-up resolution, the Court may dispense with re-advertising or amending the petition (*r*).

Every petition must, unless presented by the company, be served upon the company at its registered office, if any, and if none, then at its principal or last known principal place of business, if any 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 there, then by being left at such registered office or principal place of business, or by serving it upon such member or members of the company as the Court may direct, and when the company is being wound up voluntarily the petition must also be served upon the liquidator, if any, appointed for the purpose of winding up the affairs of the company (*s*).

The petition must be verified by an affidavit referring thereto made by the petitioner or one of the petitioners, or, if the petitioner is a corporation, by some director, secretary, or other principal officer thereof, and sworn and filed within four days after the petition is presented, and such affidavit is sufficient *primâ facie* evidence of the statements in the petition (*t*). By an affidavit made in the statutory form (*u*) the deponent swears that such of the statements in the petition as relate to his own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons he believes to be true. This affidavit is necessary and sufficient if no evidence is filed against the petition, but if any further evidence has to be filed evidence based on information and belief is not admissible. If fraud is alleged in the petition it should be verified by strict evidence, the statutory affidavit is not sufficient (*x*). Notice of the filing is to be given to the company. Affidavits in opposition to a petition are to be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing thereof is to be given to the petitioner or his solicitor (*y*). An affidavit in reply to an affidavit filed in opposition is to be filed within three days of the date on which notice of such affidavit is received by the petitioner or his solicitor (*y*). It is a contempt of

(*q*) *New Oriental Bank Corporation*, [1892] 3 Ch. 563. See Practice Note, [1902] W. N. 77.

(*r*) *Marine, &c., Investment Co.* (1890), 62 L. T. 723.

(*s*) C. (W.-U.) Rules, 1909, r. 28.

(*t*) *Ibid.* r. 29. This affidavit cannot be made by an agent of the petitioner when an individual and compliance with this rule cannot be dispensed with (*Charterland Stores Co.*, [1900] 2 Ch. 870), except when the Attorney-General is petitioner: *Brandy Distilleries*, [1901] W. N. 37. But see *African Farms*, [1906] 1 Ch. 640, as to this rule being merely directory.

(*u*) Form 9 appended to the Winding-Up Rules of 1909.

(*x*) *London and Hull Soap Works, Ltd.* [1907] W. N. 254.

(*y*) C. (W.-U.) Rules, 1909, r. 35.

Court to issue misleading circulars while a petition is pending for the purpose of deceiving the Court as to the real wishes of the shareholders (*z*).

The petitioner must both allege in his petition and prove (1) that he is a person entitled to present the petition, and (2) that one or more of the grounds specified in the Companies Act, 1908, for making a compulsory order exist. Unless the allegations before mentioned are contained in the petition it is demurrable and the Court will dismiss the petition (*a*), except in the case of a shareholder who has not complied with sect. 137, sub-s. 1 (*a*) of the Companies Act, 1908 (*b*). Formerly a fully paid shareholder must have alleged in his petition and proved that there were assets of the company of such an amount that, in the event of a winding-up, there would be a surplus left for fully paid-up shareholders (*c*).

As one effect of presenting a petition is to seriously impair the credit of a company and to paralyse its business, the Court will, if a person whose debt is *bonâ fide* disputed threatens to present a petition for winding-up a solvent company, in an action for that relief, restrain such presentation (*d*), or, if such a petition has been presented by a person not entitled to petition, will, without the necessity of another action, upon motion to the winding-up judge, dismiss it (*e*), or restrain the advertisement of the petition and all further proceedings therein (*f*). The petitioner is *dominus litis* and may ask for a supervision order although his petition is for a compulsory order (*g*), or may, but only at the hearing (*h*), withdraw his petition subject to his liability to pay the costs of the persons appearing thereon (*i*). It is within the discretion of the judge whether any, and if so what, costs should be ordered to be paid by the petitioner. Where the petitioner refused to give any reason for his withdrawal he was ordered to pay a separate set of costs to each creditor and shareholder appearing, whether to support or oppose the petition (*k*), but as a rule one set is given to creditors and one set to

(*z*) *Septimus Parsonage & Co.*, [1901] 2 Ch. 424.

(*a*) *Spence's Patent Co.* (1869), 9 Eq. 9; *Wear Engine Works Co.* (1875), 10 Ch. 188; *Langham Skating Rink Co.* (1877), 5 C. D. 669.

(*b*) *City and County Bank* (1875), 10 Ch. 470; *Glendower S.S. Co.*, W.N. (1899), 114.

(*c*) *Rica Gold Washing Co.* (1879), 11 C. D. 36; *Diamond Fuel Co.* (1879), 13 C. D. 400. These decisions appear to be overruled by s. 141 of the C. A. 1908, which extends the principle of *Crigglestone Coal Co.*, [1906] 2 Ch. 327, to a contributory's petition.

(*d*) *Cadiz Waterworks Co.* v. *Barnett* (1874), 19 Eq. 182; *Niger Merchants Co.* v. *Capper* (1877), 18 C. D. 557, n.; *Cercle Restaurant Co.* v. *Lavery* (1881), 18 C. D. 555; *New Travellers Chambers* v. *Cheese* (1894), 70 L. T. 271.

(*e*) *Gold Hill Mines* (1882), 23 C. D. 210.

(*f*) *Re A Company*, [1894] 2 Ch. 349.

(*g*) *Chepstow Bobbin Mills Co.* (1887), 36 C. D. 563; *New Oriental Bank Corporation*, [1892] 3 Ch. 563.

(*h*) *Mid Wales Hotel Co.* (1868), 17 L. T. 597; *An Insurance Co.* (1875), 33 L. T. 49.

(*i*) *Home Assurance Association* (1871), 12 Eq. 59; *Hereford, &c., Engineering Co.* (1874), 17 Eq. 423; *British Electric Street Tramways, Ltd.*, [1903] 1 Ch. 725.

(*k*) *North Brazilian Sugar Factories* (1886), 56 L. T. 229; explained in *Peckham Tramways Co.* (1881), 57 L. J. Ch. 462; *Paper Bottle Co.* (1888), 40 C. D. 52; *Nacupai Gold Mining Co.* (1884), 28 C. D. 65.

contributories appearing to support the petition (*l*), or the Court may allow the petition to be withdrawn without costs (*m*), or may refuse costs to the persons represented by the same solicitor as the petitioner (*n*). When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or to the hearing being adjourned, or fails to appear in support of his petition, 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 thinks 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 (*o*). Under the former rule it was held that where the petitioner did not appear upon the hearing no order for substitution could be made (*p*). Where two petitions are presented for the winding-up of the same company they will have priority according to the dates of their presentation (*q*), and if one order is made on both petitions the carriage of the order is generally given to the first petitioner (*r*). The second petitioner is usually allowed his costs up to the time he has notice of the presentation of the first petition (*s*), but if he proceeds with the second petition he may be ordered to pay the subsequent costs unless he can show that there was some good ground for his doing so, *e.g.*, that the first petition was not presented *bonâ fide* but in collusion with the company (*t*), or that some benefit was secured for creditors by the second petition (*u*). If good ground is shown, and the order is made on the first petition, he would be allowed to share in the set of costs given to the class supporting the petition whom he represents, or to have the costs of his petition (*x*). On hearing the petition, the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or may make any interim order or any other order that it deems just, but the Court is not to refuse to make an order 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 (*y*). Any creditor or contributory of the company may appear on the hearing of a petition either to support or oppose the

(*l*) *Criterion Gold Mining Co.* (1889), 41 C. D. 146. Provided they have duly given notice of their intention to appear: *British Electric Street Tramways, Ltd.*, [1903] 1 Ch. 725.

(*m*) *District Bank of London* (1887), 35 C. D. 587.

(*n*) *British Guardian, &c., Association* (1876), 24 W. R. 637.

(*o*) C. (W.-U.) Rules, 1909, r. 36.

(*p*) *Vanguard Motorbus Co.*, [1908] W. N. 99.

(*q*) *Building Societies Trust* (1890), 44 C. D. 140; *Standard Portland Cement Co.* (1890), 59 L. J. Ch. 408.

(*r*) *Storforth Lane Colliery Co.* (1879), 10 C. D. 487.

(*s*) *General Financial Bank* (1882), 20 C. D. 276.

(*t*) *Norton Iron Co.* (1877), 47 L. J. Ch. 9; *Building Societies Trust, supra.*

(*u*) *Commercial Bank of South Australia* (1886), 33 C. D. 174.

(*x*) *General Financial Bank, supra; Marron Bank Paper Mill* (1878), 38 L. T. 140.

(*y*) C. A. 1908, s. 141 (1); *Crigglestone Coal Co.*, [1906] 2 Ch. 327; *Alfred Melsom & Co.*, [1906] 1 Ch. 841; *Chic, Ltd.*, [1905] 2 Ch. 345.

petition, but no other person (*z*). If a creditor or contributory does not give the prescribed notice of his intention to appear, he is only allowed to be heard by special leave of the Court (*a*); but leave is usually granted upon the terms of not being allowed any costs.

The Court may, as to all matters relating to the winding-up, including the making or refusing a winding-up order or a supervision order, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence (*b*), and may, if it thinks expedient (*c*), direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court (*d*).

Under rules 121 to 138 of the Companies Winding-up Rules, 1909, in addition to the first meetings of creditors and contributories, and also to meetings of creditors and contributories directed to be held by the Court under sect. 219 of the Act, the liquidator may himself, subject to the Act of 1908, and to the control of the Court, from time to time, when he thinks expedient, summon, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up. At any meetings of creditors or contributories a resolution is to be deemed to be passed when a majority in number and value of the creditors or contributories present personally or by proxy at the meeting 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 (*dd*).

Although a creditor has a right *ex debito justitiæ* to a winding-up order (*e*), unless it is proved (*ee*) that no useful purpose will result from the order (*f*), yet as between himself and other creditors the Court may refuse to make an order if the majority of creditors oppose the petition (*g*), or may adjourn the hearing so as to give time to the company to arrange

(*z*) *New Gas Co.* (1877), 37 L. T. 111; *Bradford Navigation Co.* (1870), 5 Ch. 600.

(*a*) C. (W.-U.) Rules, 1909, r. 33.

(*b*) C. A. 1908, ss. 145, 201; *West Hartlepool Iron Co.* (1875), 10 Ch. 618.

(*c*) *Joint Stock Coal Co.* (1869), 8 Eq. 146.

(*d*) C. A. 1908, s. 219.

(*dd*) *Ibid.* s. 219; C. (W.-U.) Rules, 1909, rr. 122, 128.

(*e*) *Western of Canada, &c., Co.* (1873), 17 Eq. 1.

(*ee*) The onus of proof was on the company: *Krasnapolsky Restaurant Co.* (1892), 3 Ch. 174; *International Commercial Co.* (1897), 75 L. T. 639.

(*f*) *Uruguay Central Rail. Co.* (1879), 11 C. D. 372; *Chapel House Colliery* (1883), 24 C. D. 259; *Free Fishermen of Faversham* (1887), 36 C. D. 329; *Greenwood & Co.*, [1900] 2 Q. B. 306; *London Health Electrical Institute* (1897), 76 L. T. 98; *Ilfracombe Building Society*, [1901] 1 Ch. 111.

(*g*) *Brighton Hotel Co.* (1868), 6 Eq. 339; *Langley Mill Co.* (1871), 12 Eq. 26; *Uruguay Central Rail. Co.* (1879), 11 C. D. 372; *Chapel House Colliery Co.* (1883), 24 C. D. 259; *Universal Drug Supply Association* (1874), 22 W. R. 675; *London Flour Co.* (1868), 19 L. T. 136.

for the payment of its debts (*h*), in which case the company usually gives the undertaking given in the case of *The St. Thomas Dock Co.* (*i*), or may, if there is a voluntary winding-up and the majority of creditors desire it, make a supervision order (*k*), even although the voluntary winding-up commenced after the petition for a compulsory order was presented (*l*). So, too, on a contributory's petition, the Court may refuse to make an order not only if the majority of the creditors oppose it, but if the majority of the contributories oppose it. In the case of an insolvent company the wishes only of creditors (*m*), and as between fully secured creditors and unsecured creditors the wishes of the latter only, will be regarded (*n*).

Where creditors and contributories have given the prescribed notice to appear on the hearing of a petition, the usual order now made as to costs is to give the company its costs; and if the order is made, to give one set of costs to the contributories and one set of costs to the creditors who appear to support the petition (*o*). This is so although the petitioner at the hearing accepts a supervision order instead of a compulsory order (*p*). If the petition, not being the company's petition, is dismissed, the petitioner is ordered to pay the costs of the company and one set of costs to contributories and one set of costs to creditors appearing to oppose the petition (*q*). Secured creditors appearing are entitled to share in the set of costs given to creditors (*r*), but persons who appear by the petitioner's solicitors, where an order is made, are not entitled to receive any costs (*s*). Where a personal charge is made against a director by the petition, he is entitled to appear separately and, if free from blame, to be paid a separate set of costs (*t*). Calls owing by a petitioning shareholder cannot be set off against the costs of a petition ordered to be paid to him (*u*). Where a petitioner refuses an offer by the company to pay the amount claimed into Court and to pay to him such costs of

(*h*) *Western of Canada Oil Co.* (1873), 17 Eq. 1.

(*i*) (1876), 2 C. D. 116. The company undertook not to consent to a winding-up order on another petition or to a voluntary winding-up, to give notice to the petitioner of the presentation of any other petition, and to consent in that case to the pending petition being brought on: *Great Western Coal Consumers' Co.* (1882), 21 C. D. 769.

(*k*) *West Hartlepool Ironworks Co.* (1875), 10 Ch. 618; *Owen's Patent Wheel Co.* (1874), 29 L. T. 672.

(*l*) *Simon's Reef Co.* (1883), 31 W. R. 238.

(*m*) *Lonsdale Vale Ironstone Co.* (1868), 16 W. R. 601.

(*n*) *Krasnopolsky Restaurant Co.* (1892), 3 Ch. 174.

(*o*) *Criterion Gold Mining Co.* (1889), 58 L. J. Ch. 277; *Peckham Tramways Co.* (1888), 57 L. J. Ch. 462.

(*p*) *Chepstow Bobbin Mills* (1887), 36 C. D. 563.

(*q*) *New Gas Co.* (1877), 5 C. D. 703. As to what is included in the common order for costs, see *Ibo Investment Trust*, [1904] 1 Ch. 26.

(*r*) *Carmarthenshire Anthracite Co.* (1875), 45 L. J. Ch. 200.

(*s*) *Military, &c., Tailoring Co.* (1877), 47 L. J. Ch. 141.

(*t*) *Anglo-Greek, &c., Trading Co.* (1866), 2 Eq. 1.

(*u*) *General Exchange Bank* (1867), 4 Eq. 138; *Equestrian and Public Buildings Co.* (1888), 1 Meg. 115.

the petition as the Court shall adjudge, he will be ordered to pay all costs of the petition subsequently incurred (*x*).

A petitioner has been ordered to give security for costs of petition in the following cases: where he ordinarily resides out of the jurisdiction (*y*), although he is temporarily resident within the jurisdiction (*z*), unless he is a judgment creditor (*a*); where he has given an address at which he cannot be found (*b*); and where he has filed his petition in the Bankruptcy Court (*c*). A shareholder opposing a petition cannot be made to give security for costs (*d*).

An appeal against a winding-up order may be brought by a creditor or contributory or by the company although a liquidator has been appointed; but the company, if the only appellant, must give security for costs of the appeal (*e*). The notice of appeal must be served on the respondent within fourteen days after the order has been signed, entered, or otherwise perfected, or of the dismissal of the petition (*f*). An appeal may be brought without the leave of the Court as the order is not an interlocutory order or interlocutory judgment within the meaning of the Judicature Act, 1894, and the notice of the appeal must be a fourteen days' notice (*g*). The Court of Appeal has power to extend the term for appealing, but this power is rarely exercised and only on special grounds (*h*). If an appellant appeals against the whole of a winding-up order and serves notice of appeal on the creditors or contributories who appeared and supported the successful party, they are entitled to separate costs if the appeal is dismissed. If, however, he does not appeal against that part of the winding-up order giving them their costs and by letter informs them he does not intend to do so and does not serve them with notice of appeal, but they appear on the appeal, the rule awarding one set of costs between the creditors or contributories will apply if the appeal is dismissed (*i*).

V.—*Effect of Winding-up Order.*

A winding-up order operates in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor

(*x*) *Imperial Guardian Assurance Co.* (1869), 9 Eq. 447. See also *Langley Mills, &c., Co.* (1871), 12 Eq. 26.

(*y*) *Royal Bank of Australia* (1850), 3 De G. & S. 186; *Home Assurance Association* (1871), 25 L. T. 199.

(*z*) R. S. C., Ord. LXV. rr. 6, 6a.

(*a*) *Contract and Agency Corporation* (1887), 57 L. J. Ch. 5.

(*b*) *Sturgis Motor Power Syndicate* (1886), 53 L. T. 715.

(*c*) *Malcolm* v. *Hodgkinson* (1873), 8 Q. B. 209; *Brocklebank* v. *King's Lynn S. S. Co.* (1878), 3 C. P. D. 365; *Carta Para Gold Co* (1881), 19 C. D. 457.

(*d*) *Percy and Kelly Co.* (1876), 2 C. D. 531.

(*e*) *Diamond Fuel Co.* (1879), 13 C. D. 400; *Photographic Artists' Assurance* (1883), 23 C. D. 370; *Consolidated South Rand Gold Mines*, [1909] W. N. 66.

(*f*) R. S. C., Ord. LVIII. rr. 9, 15; *National Funds Assurance Co.* (1876), 4 C. D. 305.

(*g*) R. S. C., Ord. LVIII. r. 3; *Stockton Iron Furnace Co.* (1879), 10 C. D. 335, 349.

(*h*) Ord. LVIII. r. 15; *Bastow & Co.* (1868), 37 L. J. Ch. 51; cf. *Re Crosley* (1887), 34 C. D. 664.

(*i*) *Ibo Investment Co.*, [1903] 2 Ch. 373.

and of a contributory (*k*). A winding-up order operates as a notice of discharge to the servants of the company as on the day when the order is made (*l*). If the liquidator continues to carry on the business of the company, he and the company's servants may agree to waive the notice of discharge, in which case a fresh notice of discharge must be given by the liquidator (*m*); but such an agreement must be clearly proved, and it is not sufficient evidence of such an agreement that the liquidator, without continuing the business, employs the servants with a view to the reconstruction of the company (*n*).

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 and before the order is made are void unless the Court otherwise orders (*o*). The Court may give its sanction prior to the disposition (*p*). *Bonâ fide* dispositions of the property of the company in the ordinary course of its trade made and completed during this period will be confirmed, as where a charge on calls is given to prevent the ruin of an insurance company (*q*), or a contract for sale of goods is completed by payment and delivery (*r*). Directors, are, however, *primâ facie* liable for all moneys expended by them during this period otherwise than in the ordinary course of business (*s*), as are also the persons receiving such payments (*t*). In deciding whether a payment should be sanctioned, the Court will be guided by the principle of the protective sections of the Bankruptcy Act, 1883 (*u*). A payment to a petitioning creditor on account of his debt is void and the money can be recovered back from him, if subsequently an order is made on the petition (*x*). Sect. 205 (2) does not avoid contracts entered into by the company but only dispositions of its property, and contracts entered into by the officers of a foreign branch of a banking company on its behalf before they receive notice of stoppage of the bank are binding (*y*).

Where after the commencement of a winding-up shareholders with notice that a petition has been presented advance money to the company

(*k*) C. A. 1908, s. 138.

(*l*) *Chapman's Case* (1866), 1 Eq. 346.

(*m*) *Ex parte Harding* (1867), 3 Eq. 341.

(*n*) *MacDowall's Case* (1886), 32 C. D. 366.

(*o*) C. A. 1908, s. 205 (2); cf. *post*, p. 506.

(*p*) *Carden* v. *Albert Palace Association* (1887), 56 L. J. Ch. 166.

(*q*) *International Life Assurance Society* (1870), 10 Eq. 312.

(*r*) *Wiltshire Iron Co.* (1868), 3 Ch. 443.

(*s*) *Neath Harbour Works* (1887), 56 L. T. 727; *Re Bentinck* (1888), 1 Meg. 12.

(*t*) *Daly & Co.* (1887), 19 L. R. Ir. 83; *Civil Service and General Store* (1888), 57 L. J. Ch. 119.

(*u*) *Repertoire Opera Co.* (1895), 2 Manson 314.

(*x*) *Ex parte Greenwood* (1874), 9 Ch. 511.

(*y*) *Oriental Bank Corporation* (1884), 28 C. D. 634.

under an agreement that the advance may be treated, at the lender's option, either as a loan or a payment upon shares in anticipation of calls, the amount advanced cannot be considered as a payment upon shares, because it would constitute an alteration in the status of the members of the company after the commencement of the winding-up (*z*).

An agreement to purchase shares entered into by both parties, in ignorance that a petition for winding-up the company has been presented, is not enforceable or valid so as to make the purchaser a contributory (*a*), and the purchaser is entitled to have the list of contributories rectified by striking out his name therefrom (*a*). A contract for the purchase of shares entered into but not completed by transfer before the presentation of the petition is not void as between the parties to the contract (*b*).

Where shares have been transferred after the presentation of a petition to wind up the company, the transferor, and not the transferee, is the proper person to be placed on the list of contributories in respect of the shares; but where the transfer is completed before the commencement of the winding-up and left for registration, the register and the list of contributories will be ordered to be rectified by the Court by substituting the name of the transferee for that of the transferor (*c*).

Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed, in his bankruptcy, a fraudulent preference, is to be deemed, if made or done by or against a company, in the event of its being wound up, a fraudulent preference of its creditors, and is invalid accordingly; and any conveyance or assignment by a company governed by the Companies Acts of all its property to trustees for the benefit of all its creditors is void (*d*). If the payment is made more than three months before the commencement of the winding-up it is not a fraudulent preference (*e*). For the purposes of sect. 210 the commencement of the winding-up corresponds with an act of bankruptcy in the case of an individual (*f*).

Sect. 48 of the Bankruptcy Act, 1883, provides that every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor (*g*),

(*z*) *Barge's Case* (1868), 5 Eq. 420.

(*a*) *Emmerson's Case* (1866), 1 Ch. 433.

(*b*) *Chapman* v. *Shepherd* (1867), 2 C. P. 228; *Rudge* v. *Bowman* (1868), L. R. 3 Q. B. 689; cf. *Biedermann* v. *Stone* (1867), 2 C. P. 504.

(*c*) *Ward and Garfitt's Case* (1867), 4 Eq. 189.

(*d*) C. A. 1908, s. 210.

(*e*) *Liverpool and London, &c., Assurance Co.* (1882), 46 L. T. 54.

(*f*) See *ante*, p. 415, as to when a winding-up commences.

(*g*) "Any creditor" means any person who at the date when the conveyance, &c., is made would be entitled if the person making the conveyance, &c., became bankrupt, to prove in his bankruptcy, and therefore includes a surety who has not been called upon to pay as surety: *Blackpool Motor Car, Ltd.*, [1901] 1 Ch. 77.

with a view of giving such creditor a preference over the other creditors, shall, if the persons making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of the making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in bankruptcy; but so that this section is not to affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt. In order to constitute a fraudulent preference, the company must be unable to pay its debts as they become due from its own money, the payment or act must be voluntary and preferential, and the substantial motive therefor must be the preference of the creditor (*h*) —*e.g.* where the directors think it would be a hardship on the creditor to have to prove for his debts (*i*), or where the issue of a debenture agreed to be given whenever called for is postponed until the company is insolvent (*k*). The issue of debentures as collateral security for a debt of the company guaranteed by its chairman for the purpose of relieving him from liability is not a fraudulent preference (*l*). A security given by an insolvent company for payment of a debt due to a director cognisant of the state of the company's affairs is an undue preference although he may have pressed for payment of the debt (*m*); but where the company has acquired an insolvent business, and has agreed to indemnify the vendor against its debts, the issue of debentures in satisfaction thereof is not a fraudulent preference, although a winding-up order is made within three months after the incorporation of the company (*n*).

A claim in respect of a fraudulent preference can only be made in the winding-up and for the benefit of the whole body of creditors. It cannot be made by a creditor or class of creditors for their own benefit while the company is a going concern, even although the company is in an insolvent condition (*o*). A payment of directors' fees within three months of the commencement of the winding-up for the purpose of enabling a director to pay his unpaid calls, the company then being in embarrassed circumstances, is a fraudulent preference (*p*).

It is not a fraudulent preference where directors pay in advance the amount of their shares in order to reduce the amount of an overdraft which they had guaranteed, and in respect whereof the bank had recovered judgment against them, although the company goes into liquidation within

(*h*) *Ex parte Taylor* (1886), 18 Q. B. D. 295; *Sharp* v. *Jackson*, [1899] A. C. 419; *London, Windsor & Greenwich Hotels* (1888), 1 Meg. 242.

(*i*) *W. Blackburn & Co.*, [1899] 2 Ch. 725.

(*k*) *Jackson* v. *Barsford, Ltd.*, [1906] 2 Ch. 467.

(*l*) *The Stenotyper, Ltd.*, [1901] 1 Ch. 250.

(*m*) *Gas Light Improvement Co.* v. *Terrell* (1870), 10 Eq. 168.

(*n*) *Seligmann* v. *Prince & Co.*, [1895] 2 Ch. 617.

(*o*) *Willmott* v. *London Celluloid Co.* (1886), 34 C. D. 14.

(*p*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

a few days thereafter (*q*). Where directors, at the request of a shareholder who was a creditor of the company in respect of a debt payable by instalments none of which was due, applied part of such debt in making a payment in advance of calls upon his shares after a winding-up petition had been presented, the payment was held to be a fraudulent preference (*r*). When the object of an issue of debentures is to avoid a winding-up, it cannot be regarded as a fraudulent preference (*s*).

When a winding-up order is made, all the powers of directors cease (*t*). The right conferred upon members and creditors of a company by statute or its regulations to inspect its register of shares or mortgages ceases at the commencement of the winding-up of the company (*u*), and a creditor or contributory can only obtain inspection of the books and papers of the company in pursuance of an order of the Court (*x*). Under the usual order to inspect and take copies, the applicant can take copies himself without paying for them (*y*). If the winding-up is for the purposes of reconstruction, the Court may, in its discretion, refuse to make an order for inspection of books in the case of a company whose articles do not permit inspection by shareholders (*z*). The Court always refuses to make an order for inspection if it is proved that the applicant requires inspection for the purpose of enabling him or other people to establish claims for their personal benefit against the directors or promoters of a company (*a*), and sect. 221 only applies to books and papers in the possession or power of the company, and does not enable the Court to decide any question of right against third parties who have the books in their possession and claim a right to possession of them (*a*).

(*q*) *Winchham Shipbuilding Co.* (1878), 9 C. D. 322.

(*r*) *Kent's Case* (1888), 39 C. D. 259.

(*s*) *Inns of Court Hotel Co.* (1868), 6 Eq. 82.

(*t*) *Fowler & Broad's Patent Night Light Co.*, [1893] 1 Ch. 724; cf. C. A. 1908, s. 186 (3).

(*u*) *Yorkshire Fibre Co.* (1870), 9 Eq. 650; *Birmingham Banking Co.* (1867), 36 L. J. Ch. 150.

(*x*) C. A. 1908, s. 221.

(*y*) *Arauco Co.*, W. N. (1899), 134.

(*z*) *Morgan's Case* (1884), 28 C. D. 620.

(*a*) *North Brazilian Sugar Factories* (No. 2) (1887), 37 C. D. 83.

CHAPTER XXXIII.

WINDING-UP.

COLLECTION AND DISTRIBUTION OF ASSETS.

I.—*Powers of the Court.*

THE Companies Act, 1908, confers upon the Court and liquidators ample powers for collecting and realizing the assets of the company, including therein, if required for the purpose of the winding-up, the uncalled capital of the company or any portion thereof; and it is the duty of the liquidator in a compulsory winding-up to exercise the powers conferred upon the Court of causing the assets of the company to be collected and applied in discharge of its liabilities (*a*), and for the purpose of acquiring or retaining possession of the property of the company, the liquidator is in the same position as if he were a receiver of the property appointed by the High Court, and the Court may on his application enforce such acquisition or retention accordingly (*b*). The Court, or in a compulsory winding-up the liquidator (*c*), may, at any time after an order for winding-up a company is made, require any contributory for the time being settled on the list of contributories (*d*), and any trustee (*e*), receiver, banker or agent, or officer of the company, within such time as the liquidator shall, by notice in writing specify to pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money (*f*) or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *primâ facie* entitled (*g*).

The Court may also, at any time after making an order for

(*a*) C. A. 1908, s. 163 (1); C. (W.-U.) Rules, 1909, r. 75.

(*b*) *Ibid.* As to the position of a receiver, see *ante*, p. 275, *et seq.*

(*c*) C. A. 1908, s. 173; C. (W.-U.) Rules, 1909, r. 76.

(*d*) See *post*, p. 468.

(*e*) "Trustee" does not include a constructive trustee. *Ex parte Hawkins* (1868), 3 Ch. 787.

(*f*) This must be money belonging to the company. *Imperial Land Co. of Marseilles* (1870), 10 Eq. 298.

(*g*) C. A. 1908, s. 164.

winding-up, make an order on any contributory for the time being settled on the list of contributories (*h*) to pay in manner directed by the order any money due to the company from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call made in pursuance of the Act; and it may, in making such order, where the company is unlimited, or he is a director or manager with unlimited liability of a limited company, to such contributory by way of set-off any money due to him, or to the estate which he represents, from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any money due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call (*i*).

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, and 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, and may require him to produce any books, papers, accounts, deeds, writings or other documents in his custody or power relating to the company; but where he claims any lien on such documents, the production is to be without prejudice to the lien, the Court having jurisdiction in the winding-up to determine all questions relating to that lien; and 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 such person to be apprehended and brought before the Court for examination (*k*).

The attendance of a witness for examination (*l*) or the production of documents (*m*) under sect. 174, should be procured by summons

(*h*) See *post*, p. 468.

(*i*) C. A. 1908, s. 165; cf. s. 123.

(*k*) C. A. 1908, ss. 174, 285.

(*l*) *Westmoreland Slate Co.* (1892), 66 L. T. 52.

(*m*) *Credit Co.* v. *Webster* (1885), 53 L. T. 419.

and not by subpœna; a summons can be obtained either upon the application of the liquidator or of a creditor or contributory of the company (*n*). It is the usual course to entrust the examination to the liquidator, but there may be cases in which he declines to interfere, or an application may be made for his examination (*o*), in which case the judge may commit the examination to some creditor or contributory (*n*). Where the application is made by the liquidator it is made *ex parte* and is not supported by an affidavit, but the liquidator submits a written statement to the registrar. Where the application is not made by the liquidator notice of the application must be given to him, and the application must be supported by an affidavit (*n*). An examination under sect. 174 is a proceeding in the Supreme Court within the meaning of the Judicature Act, 1890, sect. 5. The Court may therefore order the persons procuring the examination to pay the costs of the examinee when he is not a mere witness, but a person against whom legal proceedings in reference to the company are pending or intended (*p*). Examinations of persons summoned before the High Court under sect. 174, are held in Court or in Chambers as the Court directs (*q*). In a winding-up under supervision the Court can, of its own motion, direct an examination under sect. 174 (*r*). In a voluntary winding-up the application must be made under sects. 193 and 174 of the Companies Act, 1908 (*s*). *Semble*, that the person upon whom the summons is served may appeal against the order directing the summons to issue (*t*). If the witness refuses to attend he is liable to pay the costs of compelling him to do so, and if he attends but refuses to answer proper questions, an order will be made compelling him to attend again at his own expense (*u*). The only matters as to which the witness can refuse to answer are matters in which he may incriminate himself, and matters involving professional confidence. If the question involves disclosure of matters with which the litigant parties have nothing to do, he may appeal to the judge to release him from answering the question, but the decision of the judge ought to be final and not subject to

(*n*) *Whitworth's Case* (1881), 19 C. D. 118.

(*o*) *Sir John Moore Gold Mining Co.* (1877), 37 L. T. 242.

(*p*) *Appleton French & Scratton, Ltd.*, [1905] 1 Ch. 749.

(*q*) C. (W.-U.) Rules, 1909, r. 5 (2).

(*r*) *Land Securities Co.* (1894), 42 W. R. 624.

(*s*) *Heiron's Case* (1880), 15 C. D. 139.

(*t*) *North Australian Territory Co.* (1890), 45 C. D. 87, dissenting from a dictum in *Gold Co.* (1879), 12 C. D. 77. See also *Heiron's Case*, *supra*, and *London, &c., Paper Mills Co.* (1888), 57 L. J. Ch. 766.

(*u*) *Land Credit Co. of Ireland* (1872), 14 Eq. 8.

appeal (*x*). The witness must answer questions as to matters of hearsay (*y*). He cannot refuse to be examined because there is an action by the company pending against him (*z*), but a witness may object to answer questions which are not put for the purposes of the winding-up of the company, but to aid the company or the applicant in an action against the witness or a third party (*a*), unless the witness is an officer of the company (*b*). Notes should only be taken by or for the parties for the purposes of the examination, and should then be destroyed (*c*). Under this section a person cannot be examined touching the formation of the company (*d*). A witness is entitled to have counsel and solicitor, but no other person (*e*), present on his behalf during his examination, and to be re-examined for the purpose of explaining his examination in chief (*f*). By leave of the registrar, contributories or creditors may attend and take part in the examination of a witness, subject to their entering an appearance (*g*), but they cannot attend as of right (*h*). It is a contempt of Court to publish prematurely the proceedings on a private examination under sect. 174 (*i*). The depositions of the witness cannot be used as evidence (*k*), except against himself as admissions by him (*l*). Examinations under sect. 174 are generally held in private before the registrar (*m*), but they may be held in public before the Court, as in the case of the Industrial Contract Corporation in Michaelmas Sittings, 1899. Notes of the depositions taken under sect. 174 cannot be placed on the file of proceedings or be open to the inspection of any person except the official receiver or liquidator, unless and until the Court so direct (*n*). Under this rule leave has been given to one of several defendants, in an action by a company against them for misfeasance, before answering interroga-

(*x*) Buckley on Companies, 8th ed. p. 406, approved by Baggallay, L.J., in *Whitworth's Case*, *supra*.

(*y*) *Ottoman Co.* (1867), 15 W. R. 1069.

(*z*) *Ex parte Leaver* (1885), 51 L. T. 817; *Massey* v. *Allen* (1878), 9 C. D. 164.

(*a*) *Heiron's Case* (1880), 15 C. D. 139; *Imperial Continental Water Corporation* (1886), 33 C. D. 314; *North Australia Territory Co.* (1890), 45 C. D. 87.

(*b*) *Archer's Case*, [1901] W. N. 247.

(*c*) *W. Heseltine & Son*, W. N. (1891), 25.

(*d*) *London, &c., Paper Mills Co.* (1888), 59 L. T. 362.

(*e*) *Western of Canada Oil Co.* (1877), 6 C. D. 109.

(*f*) *Breech-loading Armoury Co.* (1867), 4 Eq. 453; *Cambrian Mining Co.* (1881), 20 C. D. 376.

(*g*) *Grey's Brewery Co.* (1883), 25 C. D. 400.

(*h*) *Norwich Equitable Fire Assurance Co.* (1884), 27 C. D. 515.

(*i*) *American Exchange* v. *Gillig* (1889), 58 L. J. Ch. 706. See also *Sir John Moore Gold Mining Co.* (1877), 37 L. T. 242.

(*k*) *Crawshay and Carter's Case* (1885), 54 L. J. Ch. 506.

(*l*) *Pugh and Sharman's Case* (1872), 13 Eq. 566.

(*m*) *Hoyle's Case*, [1901] 2 Ch. 73.

(*n*) C. (W.-U.) Rules, 1903, r. 73.

tories to inspect and take an office copy of his deposition, he having put in a full defence in the action (*o*). The Court may order production of books in the custody of the company's solicitor, although it may in fact prejudice his lien (*p*).

Orders have been made under sect. 174 for the examination of stockbrokers who have acted for transferors or transferees of shares in the company (*q*), of relatives of contributories (*r*), of the banker of a contributory (*s*), and of a debtor to a contributory (*t*).

Sections 147 and 175 of the Companies Act, 1908, impose liabilities of a stringent character upon directors, promoters, and officers of companies in England governed by the Companies Acts. Section 147 provides that where the Court in England has made a winding-up order there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities; the names, residences and occupations 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 prescribed or as the official receiver may require. The statement must 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 order, as the official receiver, subject to the direction of the Court, may require to submit and verify the same. The statement must be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint. Any person making or concurring in making the statement and affidavit shall be paid by the official receiver out of the assets of the company such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court. Any person

(*o*) *Merchant's Fire Office*, [1899] 1 Ch. 432.

(*p*) *Re Paine* (1869), 4 Ch. 215.

(*q*) *Ex parte Clement* (1868), 18 L. T. 596; *Re Aston* (1859), 27 B. 474; *Mercantile Credit Association* (1868), 37 L. J. Ch. 295; *Ex parte Carter* (1870), 40 L. J. Ch. 15.

(*r*) *Fricker's Case* (1871), 13 Eq. 178; *Swan's Case* (1870), 10 Eq. 675.

(*s*) *Druitt's Case* (1872), 14 Eq. 6; *Smith, Knight & Co.* (1869), 4 Ch. 421.

(*t*) *Trower and Lawson's Case* (1872), 14 Eq. 8.

stating himself in writing to be a creditor or contributory of the company may, by himself or his agent on payment of the prescribed fee, inspect the statement and obtain a copy thereof, or extract thereupon. Any person untruthfully stating that he is a creditor or contributory may be punished for contempt of Court on the application of the liquidator or official receiver. If the person required to make the statement, without reasonable excuse, makes default, he is liable to a fine not exceeding 10*l.* for every day during which the default continues. The Court may make an order directing him to submit such statement, and enforce such order by attachment (*u*). The person required to make the statement is furnished by the official receiver with forms and instructions for its preparation. The statement is made out in duplicate, one copy of which is verified by affidavit, and the copy so verified is filed with the registrar in winding-up. The official receiver may from time to time, both before and after such statement has been submitted to him, hold personal interviews with such person for the purpose of investigating the company's affairs, and it is his duty 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. If such person requires any extension of time for submitting the statement of affairs he must apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate is filed and renders an application to the Court unnecessary. Any default in complying with the requirements of sect. 147 may be reported by the official receiver to the Court. A person who is required to make or concur in making any statement of affairs must, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person is to be allowed out of the assets of the company any costs or expenses which have not, before being incurred, been so sanctioned (*x*).

The form of the statement of affairs is appended to the Rules (*y*), and the particulars required are very full and elaborate. It includes, amongst other things, a statement of the capital, liabilities, and assets of the company under distinguishing heads, lists of unsecured creditors, creditors fully secured other than debenture-holders, creditors partly secured, debenture-holders, preferential creditors,

(*u*) *New Par Consols*, [1898] 1 Q. B. 573.

(*x*) C. (W.-U.) Rules, 1909, rr. 50-54.

(*y*) Form 26.

particulars of the property of the company, its debts, bills discounted, bills receivable, unpaid calls, lists of holders of founders' shares, ordinary shares, and preference shares, and a deficiency account. The person required to make the statement of affairs will, no doubt, be able to get the particulars, including the names, addresses, descriptions, &c., of the various classes of creditors, debenture holders, and shareholders of the company from the books of the company, which for that purpose are open to the inspection of himself and his assistants.

Section 148 of the Companies Act, 1908, provides that where the Court in England has made a winding-up order, the official receiver is, as soon as practicable after receipt of the statement of the company's affairs, to submit a preliminary report to the Court as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, and as to the causes of the failure of the company, and 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 its business; and may also, if he thinks fit, make a further report or reports, 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 since its formation, and any other matters which in his opinion it is desirable to bring to the notice of the Court. Section 175 provides that the Court may, after consideration (*z*) of any such further report by the official receiver stating that in his opinion such a fraud has been committed, 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 for that purpose, and be publicly examined on oath as to the promotion or formation of the company, or as to the conduct of its business, or as to his conduct and dealings as director or officer of the company. The official receiver must take part in the examination, and for that purpose may, if so authorized by the Board of Trade, employ a solicitor with or without counsel. The liquidator, if the official receiver is not the liquidator, and any creditor or contributory of

(*z*) The consideration of the report is before the judge personally in chambers and the official receiver personally, or by his counsel or solicitor attends and gives the Court any further information or explanation required. C. (W.-U.) Rules, 1909, rr. 59-62.

the company, may, either personally or by their solicitor or counsel, take part in the examination. The person examined must answer on oath all such questions as the Court may put or allow (*a*) to be put to him, but is entitled, at his own cost, prior to such examination, to be furnished with a copy of the official receiver's report, and to employ at such examination a solicitor, with or without counsel, who is at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him, and if the examinee is in its opinion exculpated from any charges made or suggested against him may allow him such costs as the Court in its discretion may think fit. Notes of the examination must be taken down in writing, and read over to or by and signed by the examinee, and may be used in evidence against him, and such notes are open to the inspection of any creditor or contributory of the company at all reasonable times (*b*). The Court may adjourn the examination from time to time. An examination under the section may, if the Court so direct, and subject to general rules, be held before any county court judge or an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court 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 holding the examination (*c*). If proceedings are taken against the witness and other persons under sect. 215 of the Act, such notes may also, subject to certain restrictions, be used as evidence against the other persons, but they are to be at liberty to cross-examine or re-examine the witness (*d*). To enable the Court to make an order for examination there must be a further report (*e*) stating the manner in which the company was formed, and that in the opinion of the official receiver fraud has been committed by the person whom it is proposed to examine either in the formation or promotion of the company, or, if he is a director or officer of the company, in relation

(*a*) As to the discretion of the Court in allowing or refusing questions to be put, see *London and Globe Finance Co.*, [1902] W. N. 16.

(*b*) The notes so signed must be filed with the winding-up registrar. C. (W.-U.) Rules, 1909, r. 67.

(*c*) As to making the order fixing a day for the public examination and advertising the time and place, see C. (W.-U.) Rules, 1909, rr. 62-65. As to the arrest of a person disobeying the order or absconding or being about to abscond to avoid an examination, see *Ibid.* r. 66.

(*d*) C. (W.-U.) Rules, 1909, r. 70. This rule is not *ultra vires*, although the Act only makes the notes evidence against the witness himself. *London and General Bank* (1894), 63 L. J. Ch. 853.

(*e*) *Ex parte Barnes*, [1896] A. C. 147.

to the company since its formation (*ee*), and also stating facts showing that there is such a substantial basis for the official receiver's opinion as to warrant the Court in directing a public examination (*f*). The report is absolutely privileged, so that no action for defamation lies in respect of any statement made in it (*g*). A person applying to discharge an order for his public examination must apply within a reasonable time after service of the order upon him, and a delay of two months is unreasonable; but *quære* whether he is bound to apply within fourteen days (*h*). Upon such an application the statements in the further report cannot be contradicted by evidence filed in support of the application (*i*). The order for examination may be made *ex parte* (*k*). Official receivers in performing their duties under this section must not act under the direction of, nor are they subject in any way to, the Board of Trade (*l*).

The public examination in the High Court generally takes place before the Registrar in Companies Winding-up. Sections 147 and 175 of the Companies Act, 1908, only apply to companies governed by the Companies Acts in England, and do not apply to companies which are being wound up voluntarily or under the supervision of the Court.

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 put or allow to be put, the registrar or officer is to report in writing such refusal to the judge, setting forth the question put and the answer, if any, given by the person examined, and upon such report being made, the person in default is to be in the same position and be dealt with in the same manner as if he had made default in answering before the judge. The registrar or officer must before the conclusion of the examination at which the default is made name the time when and the place where the default will be reported, and the judge may take such action on the report as he thinks fit. The report may be made immediately to the judge if sitting when default is made (*m*).

The Court, at any time before or after making a winding-up

(*ee*) See note (*e*) on p. 458.

(*f*) *Civil, &c., Outfitters, Ltd.*, [1899] 1 Ch. 215.

(*g*) *Bottomley* v. *Brougham*, [1908] 1 K. B. 584.

(*h*) *National Stores, Ltd.*, [1900] 1 Ch. 27.

(*i*) *New Travellers' Chambers*, [1895] 1 Ch. 395.

(*k*) *Ex parte Barnard*, [1892] 3 Ch. 307; *Trust, &c., Corporation of South Africa*, [1892] 3 Ch. 332.

(*l*) Per Vaughan Williams, J., W. N. (1894) 44. See also *New Zealand Loan, &c., Co.*, W. N. (1894), 200.

(*m*) C. (W.-U.) Rules, 1909, r. 72.

order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause such contributory to be arrested, and his books, papers, accounts, deeds, writings and documents, and moveable personal property to be seized and him and them to be safely kept until such time as the Court may order (*n*). Any powers conferred by the Companies Act, 1908, on the Court are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company or their respective estates for the recovery of any call or other sums (*o*).

Where an order has been made in the High Court for the winding-up of a company, the judge exercising the winding-up jurisdiction of the High Court has power without further consent to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against such company; and any action or proceeding by a mortgagee or debenture-holder for the purpose of realizing his security, or by any other person for the purpose of enforcing 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 exercising the jurisdiction of the High Court to wind-up companies, and the registrar in winding-up may, under the general or special directions of the judge, hear, determine, and deal with any application, matter or proceeding which, if the action had not been transferred, would have been determined in chambers (*p*). Every writ or summons in a debenture-holder's action is to be entitled in the matter of the company, and where a company is being compulsorily wound up in the High Court, every debenture-holder's action is to be assigned to the judge having jurisdiction in the matter of the winding-up (*q*).

Under sect. 215 of the Companies Act, 1908, summary relief is obtainable in the winding-up of any company against any of its directors, officers or promoters who have been guilty of any misfeasance or breach of trust in relation to the company, but so much

(*n*) C. A. 1908, s. 176. See s. 285 as to meaning of "books and papers." *Imperial Mercantile Credit Co.* (1877), 5 Eq. 264; *Ulster Land Co.* (1887), 17 L. R. Ir. 591.

(*o*) C. A. 1908, s. 177.

(*p*) C. (W.-U.) Rules, 1909, rr. 42 and 2.

(*q*) Practice Masters' Rules, 3.

of this section as refers to promoters and to property of a company other than money does not apply to a winding-up in Scotland or Ireland.

Section 215 provides that where in the course of winding-up 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 any officer of the company, has misapplied or retained or become liable or accountable for any money 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, examine into the conduct of the 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 such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just, notwithstanding that the offence is one for which the offender may be criminally responsible.

An order for payment of money made under this section shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-sect. 1 of sect. 4 of the Bankruptcy Act, 1883, where the winding-up is in England (*r*).

The decisions under sect. 165 of the Companies Act, 1862, which closely resemble sect. 215 of the Act of 1908 (*s*), are useful in construing sect. 215.

The following points were decided under sect. 165. This section did not create any new liability or any new right, but only provided a summary mode of enforcing rights which must otherwise have been enforced by the ordinary jurisdiction of the Court, but acting as a director without a qualification was not *per se* a misfeasance (*u*). It is difficult to conceive anything more large or comprehensive than the words of this section, and the instances were rare in which the jurisdiction given by it should not be enforced (*x*). Proceedings under this section might have been taken against directors of an

(*r*) See *Re Bassett* (1895), 2 Mans. 177.

(*s*) Sect. 215 re-enacted s. 10 of the Companies (Winding-Up) Act, 1890.

(*u*) *Coventry and Dixon's Case* (1880), 14 C. D. 660.

(*x*) *Stringer's Case* (1869), 4 Ch. 475, 487, 494.

unregistered association which was being wound up under the Companies Acts (*y*). The Court had no jurisdiction to order the service of a summons under this section out of the jurisdiction (*z*). Proceedings under this section could not be taken against the personal representatives of any member of the different classes of persons named in it (*a*); but a director *de facto* was within the section (*b*). A director could not set-off a debt due to him from the company against moneys ordered to be paid by him to the company under this section upon the technical ground that set-off was only permitted in an action (*c*). The liability of directors for breach of trust being joint and several, proceedings under this section might have been taken against any one or more of the directors who were charged with breach of trust (*a*). Neither the banker (*d*) nor the solicitor (*e*) of a company was an officer of the company within this section, but a secretary was (*f*), and an auditor might have been (*g*). It was doubtful whether a shareholder whose shares were fully paid up could apply under this section, unless he showed that the breach of duty he complained of had resulted in loss to the company's assets, and that he had a direct pecuniary interest in the result of the application (*h*). A claim against a director for breach of trust was a chose in action; and if the liquidator of a company had sold all his property, he could not, unless and until the sale was set aside, take proceedings against its directors, but the right of action passed to the purchaser (*i*).

The following points were decided under sect. 10 of the Companies (Winding-Up) Act, 1890, now repealed, and replaced by sect. 215 of the Companies Act, 1908. This section applies in the winding-up of Industrial and Provident Societies (*k*). In a debenture-holders' action, the receiver may be ordered to sell a claim for misfeasance for the benefit of such holders (*l*). The word misfeasance in this

(*y*) *Davies' Case* (1890), 45 C. D. 537.

(*z*) *Anglo-African S. S. Co.* (1886), 32 C. D. 348.

(*a*) *Feltom's Case* (1865), 1 Eq. 219; *British Guardian Life Assurance Co.* (1880), 14 C. D. 335.

(*b*) *Coventry and Dixon's Case* (1880), 14 C. D. pp. 664, 665, 673.

(*c*) *Pelly's Case* (1882), 21 C. D. 492; *Flitcroft's Case* (1882), *ibid.* 519.

(*d*) *Imperial Land Co. of Marseilles* (1870), 10 Eq. 298.

(*e*) *Great Wheal Polgooth Co.* (1883), 53 L. J. Ch. 42; *Great Western Coal Consumers' Co.* (*Carter's Case*) (1886), 31 C. D. 496. Cf. *Liberator, &c., Society* (1894), 71 L. T. 406, *infra*.

(*f*) *Ex parte James* (1883), 49 L. T. 530.

(*g*) See *post*, p. 463.

(*h*) *Bentinck* v. *Fenn* (1887), 12 A. C. 652.

(*i*) *Park Gate Waggon Co.* (1881), 17 C. D. 234.

(*k*) *Ferndale Industrial Society*, [1894] 1 Q. B. 828.

(*l*) *Wood* v. *Woodhouse and Rawson*, W. N. (1896), 4.

section includes a breach by an officer of the company of his duty thereto, the direct consequence of which has been a misapplication of its assets for which he could be made responsible by an action (*m*). A solicitor who is paid by a fixed salary, out of which he is to provide offices, clerks, stationery, &c., is an officer within the meaning of the section (*n*). An auditor of a banking company appointed under sect. 7 of the Companies Act, 1879, and referred to in its articles as an officer of the company, is within the section (*o*); so is an auditor of other companies whose articles respecting auditors are similar to those in Table A in the first schedule to the Companies Act, 1862 (*p*); but the performance of an auditor's work upon two occasions by persons never appointed auditors by the company does not bring them within the section (*q*). As the provisions of the Companies Act, 1908, sects. 112 and 113, are similar to those of the Companies Act, 1879, sect. 7, it follows that the auditors of all companies governed by the Companies Acts will be "officers" within the meaning of sect. 215 of the Companies Act, 1908. Where debentures are charged upon all the property of the company and the security is insufficient, moneys recovered by the liquidator under this section belong to the debenture holders and are not assets of the company (*r*). On a misfeasance summons to repay dividends paid out of capital, the Court has no jurisdiction, by analogy, to the third party procedure in an action, to give leave to the directors to serve notice, claiming contribution, on the shareholders who have received the dividends (*s*).

An application under sect. 215 is in the High Court made by summons, returnable in the first instance to chambers, but in any other Court it is to be made by motion to the Court. Where the application is made by an official receiver or liquidator, he may make a report to the Court stating any facts and information on which he proceeds which are either verified by affidavit or derived from sworn evidence in the proceedings. Where an application is made by a creditor or contributory it must be supported by affidavit. The summons must state the nature of the declaration or order asked for and the grounds of the application, and unless the Court otherwise directs is to be served in the same manner as an

(*m*) *Kingston Cotton Mill Co.* (No. 2), [1896] 2 Ch. at p. 283.

(*n*) *Liberator, &c., Society* (1894), 71 L. T. 406.

(*o*) *London and General Bank*, [1895] 2 Ch. 166.

(*p*) *Kingston Cotton Mill Co.* (No. 1), [1896] 1 Ch. 6.

(*q*) *Western Counties Bakeries*, [1897] 1 Ch. 617.

(*r*) *Anglo-Austrian Printing Union*, [1895], 2 Ch. 891.

(*s*) *Land Securities Co.* (1895), 2 Mans. 127.

originating summons. The summons or notice of motion must be served on every respondent not less than eight days before the day named in the summons or notice for hearing the application. The application may be heard either on affidavit evidence or orally, but is generally ordered to be heard with witnesses in Court (*t*). It is not the practice of the Court to order a liquidator on the ground of poverty to give security for the costs of the summons when he is the applicant (*u*).

II.—*Powers of Liquidator.*

The liquidator or official receiver and liquidator in a compulsory winding-up has the following powers (*y*):—

I. Powers only exercisable with the sanction of the Court or in England of the Court or of the committee of inspection (*z*)—

(1) To bring or defend any action or other legal proceeding in the name and on behalf of the company (*z*).

(2) To carry on the business of the company so far as may be necessary for the beneficial winding-up of the same.

(3) To pay any classes of creditors in full, or 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.

(4) To compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent, 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 any way relating to or affecting the assets or the winding-up of the company on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claims, and give a complete discharge in respect thereof.

(*t*) C. (W.-U.) Rules, 1909, rr. 68 and 69. *New Mashonaland Exploration Co.*, [1892] 3 Ch. 577. As to the costs allowed on the hearing of the summons, see *Anglo-Austrian Printing Union*, [1894] 2 Ch. 622.

(*u*) *Strand Wood Co.*, [1904] 2 Ch. 1.

(*y*) An order may be made empowering the liquidator to exercise all these powers without the previous sanction of the Court: *Rochdale Property Co.* (1879), 12 C. D. 775.

(*z*) C. A. 1908, ss. 151 and 214.

(5) In the case of a winding-up in England to employ a solicitor or other agent to undertake any proceedings or to do any business which the liquidator is unable to take or do himself (*a*).

(6) In the case of a winding-up in Scotland or Ireland to appoint a solicitor or law agent to assist him in the performance of his duties.

(7) To make a call on contributories (*b*).

II. Power only exercisable with the special sanction of the Court.

(8) To rectify the register of members (*c*).

III. Powers exercisable without the sanction of the Court or of the committee of inspection, but as an officer of and subject to the control of the Court in the case of a winding-up in England—

(9) To convene, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up (*d*).

(10) To collect the assets of the company and apply the same in discharge of the company's liabilities (*e*).

(11) To settle the list of contributories (*f*).

(12) To require delivery to the liquidator of any property to which the company is *primâ facie* entitled (*g*).

(13) To sell all or any part of the property of the company by public auction or private contract (*h*).

(14) To do all acts and 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 (*h*).

(15) 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 respect of

(*a*) 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: C. A. 1908, s. 151 (1 c).

(*b*) C. A. 1908, s. 173, and C. (W.-U.) Rules, 1909, rr. 83-87. See *post*, p. 476.

(*c*) C. A. 1908, s. 173. See *ante*, p. 212, and *post*, p. 474.

(*d*) C. A. 1908, s. 173, and C. (W.-U.) Rules, 1909, rr. 115-138.

(*e*) C. A. 1908, ss. 163 and 173; C. (W.-U.) Rules, 1909, r. 75. See *ante*, p. 451.

(*f*) C. A. 1908, ss. 163 and 173; and C. (W.-U.) Rules, 1909, rr. 83-87. See *post*, p. 468.

(*g*) C. (W.-U.) Rules, 1909, r. 76. See *ante*, p. 451.

(*h*) C. A. 1908, s. 151. Sect. 151 enables any creditor or contributory to apply to the Court as to the exercise or proposed exercise of any of the powers referred to in that section. In the case of a winding-up in Scotland or Ireland the powers numbered 1 and 2 and 13-18 are only exercisable with the sanction of the Court unless the Court provides by order that the liquidator may exercise any of those powers.

that balance as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors (*i*).

(16) To draw, accept, make, and endorse 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, or endorsed by or on behalf of the company in the course of its business, and to raise on the security of the assets of the company any money requisite (*i*).

(17) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be 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 so that 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 (*i*).

(18) To do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets (*i*).

(1.) The following are the principal rules with regard to the liability of the liquidator for costs incurred in bringing or defending legal proceedings. Where in legal proceedings the company sues or is sued in its own name no order for costs can be made against the liquidator (*k*), but where the company, being a limited company, is the plaintiff or applicant, or counterclaims, the opposite party is *primâ facie* entitled to obtain security for costs (*l*). Where the liquidator sues or is sued in his own name he is only liable, if unsuccessful, to be ordered to pay the costs personally where he has so acted as to make himself personally liable, otherwise the costs are ordered to be paid out of the assets of the company (*m*); security for costs will not be ordered where the liquidator is the applicant (*n*). Where the liquidator is desirous of commencing

(*i*) See note (*h*), p. 465.

(*k*) *Fraser* v. *Brescia Trams* (1887), 56 L. T. 771.

(*l*) C. A. 1862, s. 69; *Moscow Gas Co.* v. *International Financial Society* (1872), 7 Ch. 225; *Northampton Coal Co.* v. *Midland Waggon Co.* (1878), 7 C. D. 500; *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235; *Strong* v. *Carlyle Press* (No. 2), W. N. (1893), 51.

(*m*) *Marseilles Extension Rail.* (1885), 30 C. D. 598; *R. Bolton & Co.*, [1895] 1 Ch. 333, overruling *Staffordshire Gas and Coke Co.*, [1893] 3 Ch. 523. See *post*, p. 559.

(*n*) *W. Powell & Sons*, [1896] 1 Ch. 681.

proceedings or of appealing against an order, it is advisable for his protection that before doing so he should obtain the leave of the judge in the winding-up (*o*). A liquidator or official receiver ordered to pay costs personally can appeal against the order (*p*).

(2.) The liquidator cannot carry on the business of the company for the purpose of thereby making a profit for the company (*q*) or with a view to the reconstruction of the company (*r*), but only for the purpose of beneficially winding-up the company (*s*). Thus beneficial contracts can be made (*t*), and the onus of proving that a contract is not required for the beneficial winding-up of the company lies upon the party raising that defence (*u*). In performing his duties the liquidator should have regard to the fact that his principal duty is to realize the assets of the company and distribute such assets *pari passu* amongst the unsecured creditors of the company after having satisfied the preferential creditors.

(3.) and (4.) A liquidator cannot be compelled against his will to consent to a compromise with a creditor (*x*), or a contributory (*y*). Where the sanction of the Court is asked to a proposed compromise, any creditor or contributory may appear either to support or oppose the application. If the sanction of the Court to a compromise has been obtained by misrepresentation, the compromise will be rescinded (*z*).

(5.) A solicitor employed by the liquidator can only look to the assets of the company for payment of his costs, and has no claim against the liquidator (*a*).

(13.) The power of sale given to the liquidator by sect. 151 enables him to sell for a consideration other than cash (*b*). All the assets may be sold *en bloc*. Where a sale is sanctioned by the judge, the Court of Appeal will only interfere in exceptional cases (*c*). Under the section a claim of misfeasance against directors or promoters can be sold (*d*). In

(*o*) *City and County Investment Co.* (1879), 13 C. D. 475; *Silver Valley Mines* (1882), 21 C. D. 381.

(*p*) *Silver Valley Mines, supra; Raynes Park Golf Club*, [1899] 1 Q. B. 961.

(*q*) Cf. *Ex parte Emanuel* (1881), 17 C. D. 35.

(*r*) *Wreck Recovery Co.* (1880), 15 C. D. 353.

(*s*) *British Waggon Co.* v. *Lea & Co.* (1880), 5 Q. B. D. 149.

(*t*) *Ibid.*

(*u*) *Hire Purchase Furnishing Co.* v. *Richens* (1887), 20 Q. B. D. 387. See *Bateman* v. *Ball* (1887), 56 L. J. Q. B. 291.

(*x*) *Hankey's Case* (1872), 41 L. J. Ch. 385.

(*y*) *Pearson's Case* (1872), 7 Ch. 309.

(*z*) *Ex parte Clarke* (1866), 14 W. R. 856. Cf. *Central Darjeeling Tea Co.*, W. N. (1866) 361.

(*a*) *Ex parte Watkin* (1875), 1 C. D. 130; *Trueman's Estate* (1872), 14 Eq. 278. See *post*, p. 559. As to necessity of obtaining sanction for the employment of a solicitor, see *London Metallurgical Co.*, [1897] 2 Ch. 262; C. A. 1908, s. 151; C. (W.-U.) Rules, 1909, r. 187 (2).

(*b*) *Re Agra and Masterson's Bank* (1866), 12 Eq. 509, n.; *Bank of South Australia* (No. 2), [1895] 1 Ch. 578.

(*c*) *Oriental Bank Corporation* (1887), 56 L. T. 868.

(*d*) *Park Gate Waggon Co.* (1881), 17 C. D. 254.

bankruptcy all the property of the bankrupt passes upon his adjudication to his trustee in bankruptcy, but in the case of winding-up the property of the company does not pass to the liquidator. Therefore, a liquidator is not a necessary party to conveyances made by the company in liquidation, but he is frequently made a party for the purpose of obtaining the covenant implied by law from his conveying as trustee.

In exercising his powers the liquidator is the agent of the company, but is not, strictly speaking, a trustee for its creditors or contributories; and in the absence of fraud, *mala fides*, or personal misconduct, he is not liable to a creditor for delay in paying debts, or to a contributory for delay in distributing surplus assets (*e*), or for not having allotted shares to which he was entitled under a scheme of arrangement (*f*). He is, however, liable in damages, even after the dissolution of the company, if he has distributed the assets of the company without regard to the claims of a creditor of whose existence he was aware (*g*). The liquidator, however, is a trustee for the company, and is therefore incapable of contracting or dealing with the company unless so authorized by the Court, and any such contract or dealing may be set aside, or the liquidator may be made to account for all profits made by him in the transaction (*h*). Where the transaction set aside was a sale made by the liquidator to himself, by means of a new company, of the undertaking and assets of the old company, the liquidator was ordered to account for the profits made by him up to the time when the sale was set aside, but not to pay interest on such profits (*h*). An official liquidator, being an officer of the Court, is not bound to make an affidavit of documents, although he is bound to produce to the hostile litigant the documents in his possession which the latter desires to see (*i*).

III.—*Settlement of List of Contributories.*

As soon as may be after making a winding-up order the Court (*k*), or in England the liquidator (*l*), proceeds to settle a list of contributories of the company. An official receiver, when acting as a provisional liquidator, has power to settle a list of contributories (*m*). The term "contributory" means every person liable to contribute

(*e*) *Knowles* v. *Scott*, [1891] 1 Ch. 717.

(*f*) *Hill's Waterfall Estate Co.*, [1896] 1 Ch. 947.

(*g*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.

(*h*) *Silkstone, &c., Co.* v. *Edey*, [1900] 1 Ch. 167. See also C. (W.-U.) Rules, 1909, rr. 155–160.

(*i*) *Mutual Society* (1883), 22 C. D. 714.

(*k*) C. A. 1908, s. 163.

(*l*) C. A. 1908, s. 173. See C. (W.-U.) Rules, 1909, rr. 77–82.

(*m*) *English Bank of the River Plate*, [1892] 1 Ch. 391.

to the assets of a company in the event of its being wound up, and includes any person alleged to be a contributory in all proceedings for determining and prior to the final determination of the persons who are to be deemed contributories (*n*), and every holder of fully paid shares (*o*). There are two classes of contributories, viz. (1) present members, that is, members of the company at the commencement of the winding-up (*p*), and (2) past members, that is, persons who within a year from that time have been members of the company (*q*). The list of present members is called the A. list, and the list of past members is called the B. list. Every present and past member is liable, subject as hereinafter mentioned, to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories amongst themselves. No contributory in a company limited by shares is liable for more than the amount remaining unpaid on the shares in respect whereof he is liable as a present or past member, or in a company limited by guarantee for more than the amount guaranteed by him, and nothing in the Act contained invalidates any provision contained in any policy of assurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract (*r*). No person can be placed on the B. list of contributories, in the case of any company, unless (1) he was a member of the company within the year ending at the commencement of the winding-up of the company; (2) the present members are unable to satisfy the contributions required to be made by them in pursuance of the Act; and (3) some debt or liability contracted before he ceased to be a member remains unpaid or unsatisfied (*s*). The relation between the A. contributory and the B. contributory is not that of principal and surety, but is a statutory primary liability, so that the B. contributory is not released from his liability by a compromise entered into between the liquidator and the A. contributory liable in respect of B.'s shares (*t*). The B. list is generally not settled until the liquidator

(*n*) C. A. 1908, s. 124.

(*o*) *National Savings Bank Association* (1866), 1 Ch. 547; *Anglesea Colliery Co.*, *ibid.* 555.

(*p*) As to when a winding-up commences, see *ante*, p. 415.

(*q*) C. A. 1908, s. 123. As to who are members, see *ante*, p. 155; and *Langer's Case* (1868), 37 L. J. Ch. 292.

(*r*) See C. A. 1908, s. 123 (1); *Weston's Case* (1868), 6 Eq. 17.

(*s*) *Ibid.*

(*t*) *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28; *Hudson's Case* (1871), 12 Eq. 1; *Nevill's Case* (1870), 6 Ch. 43; *Roberts* v. *Crowe* (1872), 7 C. P. 629. The liability

is satisfied that the amounts likely to be recovered by him from the A. contributories will not be sufficient with the assets of the company to pay its debts and liabilities and the costs of the winding-up (*u*). Where a B. contributory buys up and causes to be released to the company the only debts due when he ceased to be a member of the company, and remaining due when the winding-up order was made, no call can be made upon him in the winding-up (*x*), and in estimating the amount of those debts, all dividends paid in respect thereof under the winding-up must be deducted (*y*). On the other hand, contributions made by a B. contributory become part of the general assets of the company, and cannot be appropriated preferentially or exclusively to the payment of those debts which had been incurred before he ceased to be a member (*z*). Section 123 of the Companies Act, 1908, which makes past members liable, applies to insurance companies which had to register compulsorily in pursuance of sect. 209 of the Companies Act, 1862 (*a*). It is immaterial whether a member liable to be placed on the B. list ceased to be a member by a transfer of his shares, or by his shares being forfeited (*b*), or that his shares were forfeited after he ceased to be a member (*c*). Where shares have been transferred with the consent of the liquidator in a voluntary winding-up, the transferor's name should be placed on the B. list, and that of the transferee on the A. list. There may be several persons' names on the B. list in respect of the same shares, although not joint holders thereof (*d*).

The list of contributories, whether an A. list or a B. list, must obtain the address of and the number of shares or the extent of interest of each contributory, and distinguish between persons who are contributories in their own right and persons who are contributories in their representative capacity as being representatives of or liable to the debts of other persons (*e*). Subject to the power of the Court to rectify the register of members and also the list of contributories, the liquidator, in settling the list of contributories in their own

of a B. contributory only arises if the A. contributory is unable to pay in full the calls made upon him in respect of B.'s shares, and cannot exceed (1) the amount left unpaid thereon, or (2) the balance of the debt or liability contracted before he ceased to be a member which remains after the assets of the company, including the contributions of the A. contributories, have been duly applied in payment of the debts and liabilities, *ibid.*

(*u*) *Helbert* v. *Banner*, *supra*; *Needham's Case* (1867), 4 Eq. 135.

(*x*) *Brett's Case* (1837), 8 Ch. 800.

(*y*) *Morriss' Case*, *ibid.*

(*z*) C. A. 1908, s. 123 (1); *Webb* v. *Whiffen* (1872), L. R. 5 H. L. 711.

(*a*) *Ramsay's Case* (1876), 3 C. D. 388.

(*b*) *Creyke's Case* (1869), 5 Ch. 63.

(*c*) *Bridger's Case* and *Neill's Case* (1869), 4 Ch. 266.

(*d*) *National Bank of Wales*, [1897] 1 Ch. 298.

(*e*) C. A. 1908, s. 163 (2); C. (W.-U.) Rules, 1909, r. 77.

right, places upon that list the names of the persons who, at the commencement of the winding-up, were registered as members in the company's register of members. As against the contributories the register, as well as the other books, accounts, and documents of the company and of the liquidator, are *primâ facie* evidence of the truth of all matters purporting to be recorded therein (*f*). Unless the company has made default in registering a transfer before the commencement of the winding-up, the name of the transferor must be placed on the list of contributories, although the transfer duly executed was lodged with the company before the winding-up began (*g*).

Sect. 128 of the Companies Act, 1908, provides that the husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall during the continuance of the marriage be liable as respects any liability attached 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. Therefore, in the case of a female contributory married before 1883, or the 18th July, 1881, as the case may be, it is necessary to place upon the list of contributories the names of the husband and wife (*h*), and her name alone cannot be placed upon the list of contributories (*i*), and her husband is liable as a contributory in his own right (*k*).

The Married Women's Property Act, 1882, provides (sects. 6 and 7) amongst other things that all shares, stock, debentures, debenture stock, or other interests of or in any company, industrial, provident, friendly, benefit, building, or loan society which on the 1st January, 1883, were standing in the name of a married woman, or which after that date should be allotted or placed, registered or transferred in or into the sole name of any married woman should be deemed, unless and until the contrary be shown, to be her separate property in respect whereof so far as any liability might be incident thereto her separate estate should be alone liable, and (sect. 5) that every woman married before the same date should be entitled to have, hold, and dispose of as if she were a *feme sole* as her separate property all real and personal property her title to which, whether

(*f*) C. A. 1908, ss. 33, 220.

(*g*) *Chartre's Case* (1849), 1 De G. & S. 581.

(*h*) *Burlinson's Case* (1849), 3 De G & Sm. 18.

(*i*) *Lang's Case* (1879), 4 A. C. 547.

(*k*) *Ex parte Hatcher* (1879), 12 C. D. 284.

vested or contingent and whether in possession, reversion, or remainder, should accrue on or after such date (*l*), and (sect. 2) that every woman married on or after such date should be entitled to have and hold as her separate property all real and personal property belonging to her at the time of her marriage or acquired by or devolving upon her after marriage. Under the Married Women's (Scotland) Act, 1881, any woman married after the 18th July, 1881, to a husband whose domicile at the time of the marriage was in Scotland is entitled to all his movable or personal estate as her separate estate, whether acquired before or during the marriage.

Where, by reason of default in complying with sect. 25 of the Companies Act, 1867, shares registered in a member's name must be regarded as unpaid, it will still be necessary for the liquidator, for the purpose of distributing surplus assets, to treat the shares as unpaid although, having regard to sect. 33 of the Companies Act, 1900, repealing sect. 25, no calls can be made in respect of such shares (*m*).

The persons whose names are placed on the list of contributories in a representative capacity are the personal representatives or trustees in bankruptcy of any persons who at the commencement of the winding-up of the company were registered as members of the company, but who, either before or after such commencement, have died or become bankrupt (*n*). In the absence of any provisions in articles of association as to the liability of joint holders of shares, the survivor or survivors of them at the commencement of the winding-up will alone be liable as contributories, and the personal representatives of a deceased joint holder cannot be placed on the list (*o*). A company may, by its conduct, be estopped from placing the personal representative of a deceased contributory on the list of contributories or asserting any claim against his estate, *e.g.* where executors applied to the company to ascertain the extent of the liability of their testator to the company, and were informed he only held twenty shares, which they thereupon transferred to a purchaser and then distributed his estate; and eight years afterwards, a winding-up order having been made, the liquidator made a claim in respect of 500 other shares which the directors had cancelled soon after the testator's death (*p*). The devisees or heirs of a deceased member can be placed by the Court on the list of contributories in a representative capacity except in

(*l*) *Reid* v. *Reid* (1886), 31 C. D. 402.

(*m*) See *Brutton & Burney, Ltd.*, [1901] 1 Ch. 637.

(*n*) C. A. 1908, ss. 126, 127.

(*o*) *Hill's Case* (1875), 20 Eq. 595. See also *Kharaskhoma Syndicate* (1897), 66 L. J. Ch. 675, 681.

(*p*) *Meux's Executor's Case* (1852), 2 De G. M. & G. 522.

the case of real estate in England, but it is not necessary when the personal representatives of a deceased contributory are placed on the list (*q*).

If personal representatives of a deceased contributory have been registered with their consent as the holders of shares belonging to the deceased member, they become personally liable and are placed on the list of contributories in their own right, even although described as executors in the register (*r*). A notification by an executor that he is the executor of a deceased member does not authorize the company to place his name upon the register of shareholders so as to make him personally liable (*s*). Persons whose names are entered on the register as the holders of shares as trustees, or as trust disponees, are contributories in their own right, and their liability is not limited to the amount of the trust estate (*t*).

If a contributory becomes bankrupt either before or after he has been placed on the list of contributories, his trustee in bankruptcy represents him for all the purposes of the winding-up, and is a contributory accordingly, and may be called upon to admit to proof against the bankrupt's estate, or otherwise 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 there may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made (*u*). If the adjudication takes place before the commencement of the winding-up, the member cannot be placed on the list of contributories, nor can his trustee if he has disclaimed the shares, but if he has not disclaimed he can be placed thereon (*x*). If the member becomes bankrupt after he has been placed on the list of contributories, his name remains on such list, but he is represented by his trustee in bankruptcy (*y*). The question whether in such a case the trustee ought also to be placed on the list is of no importance, as trustees generally disclaim shares to which a liability is attached.

The rules (*z*) provide that the liquidator is to give notice in

(*q*) C. A. 1908, s. 126; *Hamer's Devisees' Case* (1852), 2 De G. M. & G. 366.

(*r*) *Cheshire Banking Co.* (1886), 32 C. D. 301.

(*s*) See *Buchan's Case* (1879), 4 A. C. at p. 589.

(*t*) *Muir* v. *City of Glasgow Bank* (1879), 4 A. C. 337; *Bell's Case*, *ibid.* 547; *Cunningham* v. *City of Glasgow Bank*, *ibid.* 607; *Gillespie* v. *City of Glasgow Bank*, *ibid.* 632; *Cree* v. *Somervail*, *ibid.* 648; *Ker's Case*, *ibid.* 549.

(*u*) C. A. 1908, s. 127.

(*x*) *Ex parte Budden and Roberts* (1879), 12 C. D. 288.

(*y*) *Cape Breton Co.* (1881), 19 C. D. 77.

(*z*) C. (W.-U.) Rules, 1909, rr. 78–82. Notice of the appointment may be served out of the jurisdiction. *Nathan, Newman & Co.* (1887), 35 C. D. 1.

writing of the time and place appointed for settling the list to every person whom he proposes to include in the list, stating in what character and for what number of shares or interest he is to be included. On the day so appointed the liquidator is bound to hear any person who objects to being settled as a contributory. The liquidator then finally settles the list. Notice in writing is then given to each contributory stating in what character and for what number of shares or interest he has been placed on the list, and informing him that any application to remove his name from the list or to vary the list must be made to the Court by summons within twenty-one days after posting the notice. Subject to the power of the Court to extend the time (*a*) or to allow an application to be made notwithstanding the expiration of the time limited for that purpose no such application will be entertained after the expiration of such twenty-one days. The official receiver is not in any case to be personally liable to pay any costs of or relating to such an application. The liquidator may from time to time vary or add to the list of contributories, but so that any such variation or addition shall be made in the same manner as the settlement of the original list.

IV.—*Rectification of List of Contributories.*

In a compulsory winding-up the Court has power to rectify the register of members both before and after the list of contributories has been settled, and to make any consequential alteration in the list of contributories (*b*). The liquidator cannot make such rectification without the special leave of the Court (*c*). Where a sale and transfer of shares are made after the date of a compulsory winding-up order, the Court will not direct the registration of the transferee as owner of the shares except on strong grounds (*d*). If such a sale and transfer are made after a voluntary winding-up, the voluntary liquidator may, without the sanction of the Court (*e*), register the transfer and rectify the list of contributories (*f*).

The rectification of the share register and list of contributories upon the application of persons other than the liquidator has already been dealt with in Chapter XIX.

The Court will, upon the application of the liquidator in the

(*a*) *Ex parte Weld-Blundell* (1890), 63 L. T. 383.

(*b*) C. A. 1908, ss. 32, 163.

(*c*) *Ibid.* s. 173.

(*d*) *Onward Building Society*, [1891] 2 Q. B. 463.

(*e*) C. A. 1908, s. 205.

(*f*) *National Bank of Wales*, [1897] 1 Ch. 298.

name of the company (*g*), rectify its register of members and, if necessary, the list of contributories, where a person's name is, without sufficient cause, entered in or omitted from the register or list, or if default has been made or unnecessary delay has taken place in entering on the register the fact of any person having ceased to be a member of the company (*h*). When, however, owing to the default of the company, a transfer has not been registered before the winding-up, the Court will not, at the instance of the liquidator, rectify the register (*i*). If a person's name is improperly entered or omitted, it must be considered to be entered or omitted "without sufficient cause," *e.g.* where a transfer is fraudulently made to escape liability and the transfer contains incorrect statements (*g*). But an out-and-out transfer to escape liability is good (*k*), even although there has been a misdescription of the transferee (*l*), provided that having regard to all the circumstances the transaction is *bonâ fide* (*m*). Where a person, with intent to deceive a company, takes shares in the name of a fictitious person, or of some other person but without his authority, the liquidator is entitled to place the name of the person taking the shares on the list of contributories, and the Court will rectify the list of members and, if necessary, the list of contributories (*n*). Rectification by substituting the name of the beneficiary for that of his trustee in whose name the shares are registered cannot be obtained (*o*), unless at the commencement of the winding-up the trustee is an infant (*p*). The liquidator is entitled to substitute the transferor for the transferee where the latter is an infant at the commencement of the winding-up (*q*), unless the company has been guilty of laches (*r*). After the company has once obtained an adult member, intermediate transfers to infants, cannot be avoided (*s*). The liquidator is not entitled to substitute the name of the husband for that of his wife although

(*g*) *Ex parte Kintrea* (1869), 5 Ch. 95.

(*h*) C. A. 1908, ss. 32, 163. See *ante*, p. 212.

(*i*) *Sichell's Case* (1867), 3 Ch. 119.

(*k*) *Hakim's Case* (1869), 7 Ch. 296, n.

(*l*) *Bishop's Case* (1869), *ibid.*; *Master's Case* (1872), 7 Ch. 292; *Williams' Case* (1875), 1 C. D. 576.

(*m*) *Discoveries Finance Corp.*, [1908] 1 Ch. 141. Appeal compromised. *Ibid.* 334.

(*n*) *Pugh and Sharman's Case* (1872), 13 Eq. 566; *Richardson's Case* (1875), 19 Eq. 588; *Manley's Case* (1890), 2 Meg. 74; *Savigny's Case*, W. N. (1899), 1; 5 Mans. 336.

(*o*) *King's Case* (1871), 6 Ch. 196; *National Bank of Wales*, [1907] 1 Ch. 582.

(*p*) *Weston's Case* (1870), 5 Ch. 614.

(*q*) *Curtis's Case* (1868), 6 Eq. 455; *Castello's Case* (1869), 8 Eq. 504; *Capper's Case* (1867), 3 Ch. 458; *Mann's Case* (1867), 3 Ch. 459, n.; *Symons' Case* (1870), 5 Ch. 298; *Richardson's Case* (1875), 19 Eq. 588.

(*r*) *Parsons' Case* (1869), 8 Eq. 656.

(*s*) *Gooch's Case* (1872), 8 Ch. 266.

she has no separate estate and the shares were given to her by him (*t*).

Where a binding agreement is made between a person and the company to take shares, but his name has not been entered on the register as the holder of such shares, the register may be rectified and his name entered on the list of contributories (*u*); but an agreement by a person to "place" shares is not an agreement to accept an allotment of shares, and his name cannot be entered on the register or list of contributories (*x*). Where fully paid shares have been given to a director by way of bribe he cannot be placed on the list of contributories in respect of such shares as if they were unpaid (*y*). Where the registration of a transfer has been procured by a material misdescription of the transferor contained in the transfer itself, and directors have the power of refusing to register a transfer, the Court will, if the transfer was made when the company was insolvent, rectify the register and list of contributories by substituting the name of the transferor for the transferee (*z*), but not after a lapse of years where the misdescription is made by the purchaser who has taken the transfer in the name of a nominee who is misdescribed in the transfer (*a*).

V.—*Calls on Contributories.*

The Court may, at any time, after making a winding-up order and either before or after ascertaining the sufficiency of the assets of the company (or before or after the claims made against the company are established as debts) (*b*), make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and may in making a call take into consideration the probability that some of the contributories may partly or wholly fail to pay the call (*c*). The powers and duties of the Court conferred by sect. 166 of the Act, must be exercised in a

(*t*) *London, Bombay, &c., Bank* (1881), 18 C. D. 581.

(*u*) *Ex parte Palmer* (1868), Ir. R. 2 Eq. 573.

(*x*) *Gorrisen's Case* (1873), 8 Ch. 507.

(*y*) *Forbes' Case* (1873), 8 Ch. 768; *Carling's Case* (1875), 1 C. D. 115.

(*z*) *Fayne's Case* (1869), 9 Eq. 223; *Williams' Case, ibid.* 225, n.

(*a*) *Williams' Case* (1875), 1 C. D. 576.

(*b*) *Contract Corporation* (1866), 2 Ch. 95; *Barned's Banking Co.* (1867), 36 L. J. Ch. 215.

(*c*) C. A. 1908, s. 166.

compulsory winding-up by the liquidator with the special leave of the Court or the sanction of the committee of inspection (*d*). Notice of the meeting of the committee of inspection called to sanction the call, or of the application to the Court for leave to make the call, must be given in the prescribed form, and any contributory may attend at the meeting, or upon the hearing of the application, and object to such call (*e*). A copy of the resolution or order sanctioning the call is forthwith served on each contributory included in such call, together with a notice from the liquidator specifying the amount due from such contributory in respect of such call (*e*). Payment of the amount of the call will, if necessary, be enforced by an order of the Court, called a balance order, made in chambers on a summons taken out by the liquidator (*f*). Where there is a pending action for calls at the time of the winding-up and the liquidator discontinues the action and applies by originating summons for a balance order in respect of calls against the alleged contributory he is not entitled to a stay of the application until his taxed costs of the action are paid by the liquidator, but they will be deducted from any sums recovered by the liquidator against him on the summons (*g*).

An order made in one part of the United Kingdom may be enforced in any other part of the United Kingdom by obtaining an order of the proper Court in the other part (*h*). A balance order is not a judgment (*i*), and a bankruptcy notice cannot be issued (*k*) nor an action instituted (*l*) in respect thereof; but the original debt in respect whereof the balance order is made is not merged in the order (*m*). The liability of a contributory creates a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing his liability (*n*) which binds the heir (*o*). In the case of the

(*d*) C. A. 1908, s. 173, and C. (W.-U.) Rules, 1909, r. 83, which also provides how the consent of the committee is to be obtained, and r. 84, which provides how the application to the Court for leave is to be made.

(*e*) C. (W.-U.) Rules, 1909, rr. 83–86.

(*f*) *Ibid.* r. 86; C. A. 1908, s. 168.

(*g*) *United Service Association*, [1901] 1 Ch. 97.

(*h*) C. A. 1908, s. 180; *Hollyford Copper Mining Co.* (1867), 5 Ch. 93; *City of Glasgow Bank* (1880), 14 C. D. 628.

(*i*) *Re Hubback* (1885), 29 C. D. 934.

(*k*) *Ex parte Mackay* (1888), 58 L. T. 237; *Ex parte Whinney* (1884), 13 Q. B. D. 476; *Ex parte Grimwade* (1886), 17 Q. B. D. 357.

(*l*) *Chalk and Co.* v. *Tennent* (1891), 57 L. T. 598.

(*m*) *Westmoreland, &c., Slate Co.*, [1891], 3 Ch. 15.

(*n*) C. A. 1908, s. 125. This section also applies to companies not registered under the C. A. 1908, but wound up under it. *Re Muggeridge* (1870), 10 Eq. 443.

(*o*) *Buck* v. *Robson* (1870), 10 Eq. 629.

bankruptcy of any contributory, or in the administration of the estate of a deceased contributory, if insolvent, the estimated value of his liability to future calls, as well as the amount of the calls already made, may be proved for against his estate (*p*). His trustee in bankruptcy may, however, disclaim the shares, and the liquidators can then only prove for the damages sustained by the company by reason of such disclaimer (*q*).

If any contributory dies, either before or after he has been placed on the list of contributories, his personal representatives, heirs and devisees are liable in a due course of administration to contribute to the assets of the company in discharge of his liability, and are to be contributories accordingly (*r*). The liability of personal representatives who are placed on the list in their representative capacity is limited to the amount of assets in their hands properly administered (*s*). If the personal representatives, without availing themselves of the protection afforded by Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 29, have paid a legacy without providing for the contingent liability on shares held by the deceased contributory, they are personally liable in respect of the shares to an amount not exceeding the legacy (*t*); but as against such legatee the personal representatives may claim repayment of the legacy, even although at the time of payment they had notice of the contingent liability (*u*), but not if it had then become an ascertained liability (*x*). Where the personal representatives are protected by Lord St. Leonards' Act, the liquidator can, under the proviso to sect. 29, of that Act, compel the legatee to refund the legacy. The real estate of the deceased is liable for calls (*y*).

The liability of a married woman who is placed on the list of contributories as a holder of shares which belong to her as her separate property is limited to that part of her separate estate to which no restraint on anticipation is attached (*z*). Although the uncalled capital of a company has been mortgaged in favour of

(*p*) C. A. 1908, s. 127; *Re McMahon* (1900), 1 Ch. 173; *Muggeridge's Case*, *supra*.

(*q*) Bankruptcy Act, 1883, s. 55; *Re Hooley, Ex parte United Ordnance Co.*, [1899] 2 Q. B. 579.

(*r*) C. A. 1908, s. 126.

(*s*) *Baird's Case* (1870), 5 Ch. 725; *Blakeley's Case* (1851), 3 Mac. & G. 726; *Gouthwaite's Case* (1851), 3 Mac. & G. 187; *Keene's Executors' Case* (1853), 3 De G. M. & G. 272; *Heward* v. *Wheatley*, *ibid.* 628. See also *Bulmer's Case* (1864), 33 Beav. 435; *Re Leeds Banking Co.* (1865), 1 Ch. 231.

(*t*) *Taylor* v. *Taylor* (1870), 10 Eq. 477.

(*u*) *Jervis* v. *Wolferstan* (1874), 18 Eq. 19.

(*x*) *Whittaker* v. *Kershaw* (1890), 45 C. D. 320.

(*y*) 3 & 4 Will. 4, c. 104; *Turquand* v. *Kirby* (1867), 4 Eq. 123.

(*z*) See *ante*, p. 130.

debenture-holders, the calls can only be made and enforced by or in the name of the liquidator in the winding-up for the benefit of the debenture-holders, he being indemnified by them (*a*). If the notice of call states that if the call is not paid at the time appointed interest thereon will be charged from such time, such interest must be paid (*b*). Provisions in articles as to payment of interest on calls (*c*), or as to joint and several liability for calls (*d*), or as to the time of payment and amount of calls (*e*), do not apply to calls made by a liquidator.

If the personal representatives of a deceased contributory make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased, or either of them, and of compelling payment thereout of the money due (*f*).

Calls will be made when necessary for the adjustment of the rights of contributories *inter se* (*g*), *e.g.* where the same amount has not been paid or called up upon all the shares where the shares rank *pari passu* in repayment of capital in a winding-up (*h*), or where the same amount has been paid up on all the shares but a class of shares have priority in repayment of capital in a winding-up (*i*).

The liquidators may, with the sanction of the Court or of the committee of inspection when a compulsory order has been made, and with the sanction of an extraordinary resolution of a company in voluntary liquidation, compromise *inter alia* all calls and liabilities to calls on such terms as may be agreed upon, and take any security for the discharge of any such call or liability, and give a complete discharge in respect thereof (*k*). A compromise by a voluntary liquidator not sanctioned by an extraordinary resolution is good until set aside (*l*). The Court has no jurisdiction to order a liquidator to make such a compromise (*m*). A general compromise of claims upon contributories as a class can be

(*a*) *Fowler* v. *Broad's Night Light Co.*, [1893] 1 Ch. 724. See *ante*, p. 279.

(*b*) 3 & 4 Will. 4, c. 42, s. 28; *Ex parte Lintott* (1867), 4 Eq. 184; *Barrow's Case* (1868), 3 Ch. 784.

(*c*) *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360.

(*d*) *Kharaskhoma Syndicate* (1897), 66 L. J. 675, 681.

(*e*) *Cordova Union Gold Co.*, [1891] 2 Ch. 580.

(*f*) C. A. 1908, s. 126; *Price* v. *Mayo* (1874), 43 L. J. Ch. 402.

(*g*) C. A. 1908, ss. 166, 170.

(*h*) *Anglesea Colliery Co.* (1866), 1 Ch. 555; *Ex parte Maude* (1870), 6 Ch. 51; *Provision Merchants' Co.* (1872), 26 L. T. 862; *Welton* v. *Saffery*, [1897] A. C. 299.

(*i*) See *post*, p. 502.

(*k*) C. A. 1908, s. 214. As to compromises in a winding-up under supervision, see *post*, p. 480.

(*l*) *Cyclemakers Co.* v. *Sims*, [1903] 1 K. B. 477.

(*m*) *Pearson's Case* (1872), 7 Ch. 309.

sanctioned (*n*). A compromise is good if both parties *bonâ fide* believe that there is a question in dispute, although it may not really be doubtful (*o*). Before sanctioning a compromise the Court must be informed as to the facts on which the compromise is based (*p*). A compromise with contributories on the A list does not release contributories on the B list (*q*), or affect the liability of other contributories on the A list (*r*). In a winding-up under supervision the liquidator can make a compromise with the sanction of the Court, and, unless in making the supervision order the Court has otherwise directed, the liquidator may without such sanction make any compromise he could have made in a voluntary winding-up (*s*). Such a compromise will not be set aside after 20 years on the ground that the contributories, in negotiating the compromise, did not make full disclosure as to their means (*t*).

VI.—*Proof of Debts.*

Every creditor of a company who is desirous of being paid his debt or claim wholly or partially out of the assets of the company must prove his debt or claim in the prescribed way (*u*) or be excluded from the benefit of any distribution made before such proof is made (*v*). A foreign creditor may be ordered to give security for the costs of a proceeding by him in the winding-up in assertion of his right of proof (*x*). In the winding-up of a solvent company, whether compulsory or voluntary, all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible of proof against the company; a just estimate being made so far as possible of the value of such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value (*y*). In the winding-up of an insolvent company registered in England or Ireland, whether

(*n*) *Bank of Hindustan* v. *Eastern Financial Association* (1869), L. R. 2 P. C. 489; *Smith, Knight & Co.* (1868), 37 L. J. Ch. 864.

(*o*) *Lucy's Case* (1853), 4 De G. M. & G. 356.

(*p*) *Ex parte Totty* (1860), 1 Dr. & Sm. 273.

(*q*) *Helbert* v. *Banner* (1872), L. R. 5 H. L. 28; *Hudson's Case* (1871), 12 Eq. 1; *Nevill's Case* (1870), 6 Ch. 43.

(*r*) *Accidental Death Insurance Co.* (1878), 7 C. D. 568.

(*s*) C. A. 1908, s. 214; *Ex parte Wright* (1870), 5 Ch. 437.

(*t*) *Watts* v. *Assets Co.*, [1905] A. C. 317.

(*u*) See C. (W.-U.) Rules, 1909, rr. 88–101.

(*v*) C. A. 1908, s. 169; C. (W.-U.) Rules, 1909, r. 88. This rule gives power to the judge in any particular winding-up by the Court to give directions that any creditor or class of creditor may be admitted without proof.

(*x*) *Pretoria, &c. Rail. Co.* (No. 2), [1904] 2 Ch. 359.

(*y*) C. A. 1908, s. 206. See Assurance Companies Act, 1909, s. 17, as to valuation of policies or of liabilities under policies.

compulsory or voluntary, the same rules prevail and are observed with regard to the respective rights of secured and unsecured creditors and to debts provable, and to the valuation of annuities and future and contingent liabilities as are in force for the time being in England or Ireland, as the case 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 virtue of this section (*z*). Section 37 of the Bankruptcy Act, 1883, therefore applies to companies registered in England to the extent mentioned in sect. 207 of the Companies Act, 1908, so that, save demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, all debts and liabilities, present or future, certain or contingent, to which the company is subject at the date of the commencement of the winding-up are provable. An estimate must be made by the official receiver or liquidator of the value of any debt or liability provable as aforesaid which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. Any person aggrieved by the estimate may appeal to the Court; and if, in the opinion of the Court, the value is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability is deemed to be a debt not provable. If, in the opinion of the Court, the value is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury, and the amount of the assessment is provable. Liability includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the dissolution of the company; and generally it includes any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is as respects amount fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies, and as to mode of valuation capable of being ascertained by fixed rules or as matter of opinion (*a*). The official

(*z*) C. A. 1908, s. 207. An analogous provision as to companies registered in Scotland is made by s. 208.

(*a*) Sect. 37 of the Bankruptcy Act, 1893, and C. A. 1908, s. 207.

receiver or liquidator is entitled, if he desires it, to have the value assessed by a jury (*b*).

Section 10 of the Judicature Act, 1875, so far as relates to the winding-up of companies, is repealed by the Companies (Consolidation) Act, 1908, sect. 286, and is re-enacted by sect. 207 of that Act. It has been said that the whole object of sect. 10 of the Act of 1875 was to do away with the rule in *Mason* v. *Bogg* (*c*) enabling a secured creditor who had not realized his security to prove for and receive dividends on the whole of his debt, and afterwards realize his security, provided that he did not receive more than 20*s.* in the pound on the whole, whereas in bankruptcy a secured creditor could only prove for the balance of his debt after realizing or deducting the value of his security (*d*), and that the section was not intended to enlarge the assets to be administered, but only to vary the rights of the persons entitled to the assets (*e*). The effect, however, of sect. 10 was rather wider than stated in *Withernsea Brickworks* (*d*). Lord Selborne was of opinion that sect. 10 must be treated as applicable to any company in liquidation until it is shown that its assets are sufficient for payment of its debts in full (*f*), including the expenses of the winding-up (*g*). It has been decided that the section made the following rules in bankruptcy applicable in the winding-up of an insolvent company: (1) The rules as to proofs by secured creditors (*h*); (2) the rules as to mutual credits and set-off in the Bankruptcy Act, 1883, sect. 38 (*i*), except that no set-off is allowed against calls (*k*) unless the contributory is bankrupt (*l*); (3) the rules as to debts and liabilities provable (*m*), and the rule as to interest on debts (*n*).

The following rules in bankruptcy were not, by virtue of sect.

(*b*) Cf. *Ex parte Neal* (1880), 14 C. D. s. 79.

(*c*) 2 My. & Cr. 443.

(*d*) *Withernsea Brickworks* (1880), 16 C. D. 337, 342, 343. In *Re Hopkins* (1881), 18 C. D. at p. 377, Jessel, M.R., said that the principal object of the section was to do away with the rule in *Mason* v. *Bogg*.

(*e*) *Re Count d'Epineuil* (1882), 20 C. D. 217.

(*f*) *Milan Tramways Co.* (1884), 25 C. D. at p. 591.

(*g*) See s. 10; and cf. *Re Long*, [1895] 1 Ch. 652.

(*h*) *Quartermaine's Case*, [1892] 1 Ch. 639. Judgment creditors have no priority over unsecured creditors: *Leinster Contract Corporation*, [1903] 1 Ir. 517. See also *post*, p. 494.

(*i*) *Mersey Steel Co.* v. *Naylor, Benzon & Co.* (1884), 9 A. C. 434. See also *post*, p. 492.

(*k*) *Gill's Case* (1879), 12 C. D. 755. See *post*, p. 488.

(*l*) *Re Duckworth* (1867), 2 Ch. 578. See *post*, p. 489.

(*m*) *Northern Counties, &c., Co.* (1881), 17 C. D. 340; *British Gold Fields of West Africa*, [1899], 2 Ch. 7.

(*n*) *Salt & Co.* (1908), 98 L. T. 558.

10 of the Judicature Act, 1875, made applicable in the winding-up of an insolvent company:—

(1) The rule restricting the rights of an execution creditor (*o*).
(2) The rules as to reputed ownership (*p*).
(3) The rules giving a landlord the right to distrain for rent accrued due before the winding-up (*q*).
(4) The rules giving a right to disclaim leases and onerous contracts (*r*).
(5) The rules taking away the priority of the Crown against the property of the debtor (*s*).
(6) The rule avoiding a bill of sale not registered under the Bills of Sale Act, 1878, as against the trustee in bankruptcy (*t*).
(7) The rule in bankruptcy that a secured creditor cannot be a petitioning creditor unless in his petition he offers to surrender his security or estimates its value at an amount less than his debt (*u*).

The Companies (Winding-up) Rules, 1909, as to proofs provide, *inter alia*, as follows (*x*):—Every creditor must prove his debt unless otherwise directed by the judge. A debt may be proved by delivering, or sending through the post, to the official receiver, or, if a liquidator has been appointed, to the liquidator, an affidavit verifying the debt. The affidavit may be made by the creditor himself or by some person authorized by him or on his behalf, and in the latter case such person's authority and means of knowledge must be stated. The affidavit must contain or refer to a statement of account showing the particulars of the debt and specify the vouchers (if any) for such debt, and they must be produced to the official receiver or liquidator at his request. It must also state whether the creditor is or is not a secured creditor. A creditor bears

(*o*) *Ex parte Taylor* (1878), 8 C. D. 183; *Richards & Co.* (1879), 11 C. D. 676; *Withernsea Brickworks* (1880), 16 C. D. 337, overruling *Printing, &c., Co.* (1878), 8 C. D. 535; *National United Investment Corp.*, [1901] 1 Ch. 950.

(*p*) *Crumlin Viaduct Co.* (1879), 11 C. D. 755; *Gorringe* v. *Irwell India Rubber Works* (1887), 34 C. D. 128.

(*q*) *Coal Consumers' Association* (1876), 4 C. D. 625; *Bridgewater Engineering Co.* (1879), 12 C. D. 181; *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250.

(*r*) *Westbourne Grove Drapery Co.* (1877), 5 C. D. 248.

(*s*) *Oriental Bank* (1885), 28 C. D. 643.

(*t*) *Re Count D'Epineuil* (1882), 20 C. D. 217.

(*u*) *Moor* v. *Anglo-Italian Bank* (1879), 10 C. D. 681.

(*x*) Rr. 88-101; and as to form of affidavit, see Form 63. This affidavit may be sworn before an official receiver or assistant official receiver or any officer of the Board of Trade or any clerk of an official receiver duly authorized by the Court or the Board of Trade, r. 93.

the cost of proving his debt unless the Court otherwise orders. All trade discounts are to be deducted from the amount of the proof, except any discount not exceeding 5 per cent. agreed to be allowed for payment in cash. Every creditor must separately prove his debt except where there are numerous claims for wages by workmen and others employed by the company.

As to admission and rejection of proofs and appeals to the Court the rules (*y*) provide, *inter alia*, as follows:—

Subject to the Act and unless otherwise ordered by the Court the liquidator in any winding-up may from time to time fix a certain day 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 any distribution made before proof. Notice is to be given by advertisement and in a compulsory winding-up to every person mentioned in the statement of affairs as a creditor, and who has not proved 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, and whose claims have not been admitted. The liquidator is to examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it (*z*). If he rejects a proof he is to state in writing to the creditor the grounds of the rejection. If a creditor 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 rejecting a proof is to be entertained unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of the rejection (*a*). If the liquidator thinks that a proof has been improperly admitted, the Court may, on his application, after notice to the creditor who made the proof, expunge the proof or reduce its amount. The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter. In a compulsory winding-up for the purpose of any of his duties in relation to proofs, the liquidator may administer oaths and take affidavits. And the official receiver, before the appointment of a

(*y*) C. (W.-U.) Rules, 1909, rr. 102–114.

(*z*) *National Wholemeal Bread Co.*, [1892] 2 Ch. 457.

(*a*) On a successful appeal the applicant is allowed his costs of the appeal out of the company's assets. *Ibid.*

liquidator, is to 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 is to be subject to the like appeal. The official receiver or the liquidator in a winding-up by the Court within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, is to file such proof with a memorandum thereon of his disallowance thereof. Subject to the power of the Court to extend the time, the official receiver as liquidator, not later than fourteen days from the latest day specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, must in writing either admit or reject wholly or in part every proof lodged with him or require further evidence in support of it. Subject to the power of the Court to extend the time, the liquidator in a winding-up by the Court other than the official receiver, within twenty-eight days after receiving a proof which has not previously been dealt with, must in writing either admit or reject it wholly 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, he must, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject or require further evidence in support of every proof which has not been already dealt with, and give notice of his decision rejecting a proof wholly or in part to the creditors affected thereby. The official receiver is in no case to be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Rules 1 to 8 of the second schedule to the Bankruptcy Act, 1883, are substantially the same as Rules 88 to 95 of the Companies (Winding-up) Rules, 1909. Rules 19 to 27 of the same schedule are substantially the same as Rules 96 to 98 and 102 to 108 of the Companies (Winding-up) Rules, 1909. Rules 9 to 17 of the same schedule deal with proofs by secured creditors (*b*).

The following are the principal cases decided with respect to proof of debts and liabilities :—

Annuities.

It has been held under sect. 31 of the Bankruptcy Act, 1869, that the value of the following annuities is provable :—An annuity to a person for life (*c*), an annuity to a widow defeasible on her

(*b*) See *post*, p. 494.

(*c*) *Ex parte Naden* (1874), 9 Ch. 670.

marrying again (*d*), and other annuities determinable upon a contingency (*e*). Where the company has a right to repurchase the annuity on six months' notice the proof must be confined to the amount of the purchase-money (*f*).

Contingent Debts and Liabilities.

Section 37 of the Bankruptcy Act, 1883, puts upon the trustee in bankruptcy the duty of estimating the value of any debt or liability provable thereunder (*g*) which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value, and gives to any person aggrieved by the estimate the right of appeal to the Court. If the Court is of opinion that such value is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability ceases to be provable in bankruptcy, and in that case the debtor is not relieved from liability by his discharge. As, by sect. 207 of the Companies Act, 1908, sect. 37 of the Bankruptcy Act, 1883, applies to the valuation of contingent liabilities, it is the duty of the liquidator to estimate the value of such liabilities. The writer is not aware of any case in bankruptcy in which an order has been made that the value of a contingent liability is incapable of being estimated; while, on the other hand, there are many cases in which the Court has held that contingent liabilities are capable of being fairly estimated, *e.g.* the value of a covenant by an assignee of a lease to indemnify the lessees against any claim in respect of a breach of any covenant in the lease (*h*). As in the winding-up of a company a contingent liability, if such an order were made, would be extinguished, it is difficult to conceive of any case in which such an order would be made. Having regard to the decision in *Hardy* v. *Fothergill*, there appears to be no reason why the contingent liability of an insolvent company in respect of future liabilities under the covenants contained in a lease, including a covenant to pay rent, should not be estimated and proved for; and it has been held that this can be done in a case where the lessor is willing to accept a surrender of the lease (*i*). The lessor may,

(*d*) *Ex parte Blakemore* (1877), 5 C. D. 372.

(*e*) *Ex parte Neal* (1880), 14 C. D. 579; *Ex parte Jackson* (1873), 27 L. T. 696.

(*f*) *Ex parte Young* (1879), 27 W. R. 443.

(*g*) See *ante*, p. 481.

(*h*) *Hardy* v. *Fothergill* (1888), 13 A. C. 351. See also *Craig's Claim*, [1895] 1 Ch. 267, and *ante*, p. 185, as to valuation of annuities defeasible upon a contingency.

(*i*) *Panther Lead Co.*, [1896] 1 Ch. 978.

however, be unwilling to accept a surrender, or the liquidator may refuse to surrender, with a view to selling the lease, or, the company being the original lessee, he may have assigned the lease. As original lessee, the company after assignment remains primarily liable for future rent and future breaches of covenant; and, if the company is the assignee of a lease, it remains liable to its assignor under its covenant to indemnify even if the company has assigned the lease. Assuming, therefore, that an assignment has been made, the value of the contingent liability of the company, whether as original lessee or under its covenant to indemnify, may be estimated, as was held in *Craig's Claim*. In bankruptcy the trustee can disclaim a lease, in which case the lessor can prove for the damages caused by such disclaimer. There is no such right of disclaimer in the case of a company in the course of being wound up. Where a lease is neither assigned nor surrendered, the question as to the right of proof is one of some difficulty. It has been decided that where the liquidator retains possession for the benefit of the company, the lessor is entitled to payment in full of the rent and not merely to a dividend (*k*). In *New Oriental Bank Corporation* (No. 2), Vaughan Williams, J., pointed out that *Hardy* v. *Fothergill* had no application to a case in which the lease was still in the possession of the trustee in bankruptcy, and that the rule only applied where there had been a disclaimer, and did not apply in the case of a company while the lease remained vested in the company. In that case, as the lessors refused to accept a surrender, the judge allowed proof to be made for the breaches of the lease which had taken place, and a claim to be entered for the whole of the future rent. In *Horsey's Claim* (*l*), where the company was solvent, the Court held, under the Companies Act, 1862, s. 158 (*ll*), that the lessor had no right to prove for the rent to accrue due during the residue of the lease, and dismissed the application for leave to prove, without prejudice to any application at any time in respect of any rent then due and unpaid, or in the event of any return of assets being asked for by, or being about to be made to, the shareholders. In the case of a solvent company the Court has restrained the voluntary liquidator from distributing its assets without providing for future liabilities under a lease (*m*); but it will not do so as

(*k*) See *ante*, p. 425; *New Oriental Bank Corporation* (No. 2), [1895] 1 Ch. 753.

(*l*) (1868), 5 Eq. 561.

(*ll*) Re-enacted by s. 206 of the C. A. 1908.

(*m*) *Gooch* v. *London Banking Association* (1886), 32 C. D. 41; *Elphinstone* v. *Monkland Iron Co.* (1886), 11 A. C. 332; *Oppenheimer* v. *British, &c., Bank* (1877), 6 C. D. 744.

against other creditors (*n*). Claims which are contingent at the commencement of a winding-up may during the winding-up be ascertained, and in that case proof will be admitted for the ascertained amount, but so that previous dividends in the winding-up will not be disturbed (*o*).

Contributory Creditors.

No sum due to any member of a company in his character of a member, by way of dividends profits or otherwise, is to be deemed to be a debt of the company payable to such member in case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories among themselves (*p*).

The Court, in making an order directing a contributory in an unlimited company to pay moneys other than calls made in the winding-up (*q*), may allow to such contributory, by way of set-off, any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not money due to him as a member of the company in respect of any dividend or profit: provided that, when all the creditors of any company, whether limited or unlimited, are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call (*r*). This right of set-off does not apply as against calls made in the winding-up (*q*).

A shareholder cannot in a winding-up set off a debt owing to him by the company against a call (*s*), whether made before or after the winding-up (*t*), although in the former case there may have been an agreement to do so (*u*); but his trustee in bankruptcy may do

(*n*) *Westbourne Grove Drapery Co.* (1876), 5 C. D. 248.

(*o*) *McFarlane's Claim* (1880), 17 C. D. 337. Cf. *Hill* v. *Bridges* (1881), 17 C. D. 342.

(*p*) C. A. 1908, s. 123, sub-s. 1 (7). Directors' fees do not come within the sub-section. *Dale and Plant, Ltd.* (1890), 43 C. D. 255.

(*q*) *Ex parte Branwhite* (1879), 48 L. J. Ch. 463, not following *Ex parte Gibbs & West* (1870), 10 Eq. 312.

(*r*) C. A. 1908, s. 165.

(*s*) *Grissell's Case* (1866), 1 Ch. 528; *Gill's Case* (1879), 12 C. D. 755. The rule is the same in a voluntary winding-up. *Black & Co.'s Case* (1872), 8 Ch. 254, and *Whitehouse & Co.* (1878), 9 C. D. 595, disapproving *Brighton Arcade Co.* v. *Dowling* (1868), 3 C. P. 175. See also *Hoby & Co.* v. *Birch* (1890), 59 L. J. Q. B. 247; and *Thram Maxim Lamp Co.*, [1903] 1 Ch. 70.

(*t*) *Barnett's Case* (1875), 19 Eq. 449.

(*u*) *Ex parte Bentinck* (No. 1) (1888), 1 Meg. 12.

so (*x*) even although the debt was assigned before the bankruptcy but after the commencement of the winding-up (*y*). The rule is the same whether the claim is made in bankruptcy or in the winding-up (*y*).

When the contributory creditor is a company in liquidation, it cannot set-off against calls made by the liquidator of another company a debt owing by such company to the contributory company (*z*), or take any dividend on the debt until it has paid up all calls in full (*a*). A member who holds his shares in trust for the company cannot set-off, against a call in a winding-up, a claim to indemnity (*b*).

If a shareholder has paid all calls which have become due, he is entitled to receive a dividend on the amount of his debt *pari passu* with the other creditors (*c*); and if he has bought up a debt of the company for less than its amount, he may prove for the full amount of the debt (*d*). Where a shareholder, after the commencement of the winding-up, assigns a debt due to him from the company, his assignee will not be entitled to receive any dividend upon the debt unless and until the shareholder has paid all calls which have become due (*e*); but a shareholder who claims under an assignment of a debt due to another person by the company will be allowed to prove for his debt in competition with creditors (*f*). A shareholder whose shares have been improperly forfeited and sold may prove for damages for the wrongful act in competition with creditors (*g*).

Damages for Breach of Contract.

In the following cases of breach of contract, damages have been proved for: viz. for breach of contract to repair a ship (*h*), to buy goods (*i*), and to purchase a business (*k*).

A winding-up order (*l*) or the appointment of a receiver in

(*x*) *Re Duckworth* (1867), 2 Ch. 578; *Carralli and Haggard's Claim* (1869), 4 Ch. 174.

(*y*) *Ex parte Strang* (1870), 5 Ch. 492.

(*z*) *Auriferous Properties*, [1898] 1 Ch. 691.

(*a*) *Auriferous Properties*, [1898] 2 Ch. 428.

(*b*) *Munster Bank* (1886), 17 L. R. Ir. 341.

(*c*) *Ex parte Brown* (1879), 12 C. D. 823; *Grissell's Case* (1866), 1 Ch. 528.

(*d*) *Humber Iron Works Co.* (1869), 8 Eq. 122.

(*e*) *Ex parte Mackenzie* (1869), 7 Eq. 240.

(*f*) *Ex parte Welton*, [1899] 1 Ch. 108.

(*g*) *New Chile Gold Mining Co.* (1890), 45 C. D. 598.

(*h*) *Trent and Humber Co.* (1868), 4 Ch. 112.

(*i*) *Ebbw Vale Co.* (1869), 8 Eq. 14.

(*k*) *Lafitte & Co.* v. *Lafitte* (1873), 42 L. J. Ch. 716.

(*l*) *Chapman's Case* (1866), 1 Eq. 346; *Ex parte McDowall* (1866), 32 C. D. 366, distinguishing *Ex parte Harding* (1867), 3 Eq. 341.

a debenture-holder's action (*m*) operates as notice of dismissal to the servants of the company; and in the following cases damages have been allowed for breaches of contracts of service. Where by the contract of service it has been agreed that a liquidated sum shall be paid to the manager or servant of the company in the event of the contract being determined before the expiration of the term of service, proof will be allowed for the agreed sum (*n*). Where no such agreement has been made, proof will be allowed for the present value of the salary for the remainder of the term, less a deduction in respect of the servant being at liberty to obtain other employment (*o*). Where an agent is to be paid partly by salary and partly by a commission on the amount of the business done, he is not entitled to prove for loss of commission (*p*).

Damages for Wrongful Act.

A shareholder has been allowed to prove for damages in competition with creditors in respect of an irregular forfeiture of shares (*q*).

Double Proof.

The bankruptcy rule, that there cannot be a double proof so as to entitle a creditor to receive two dividends from one estate in respect of the same debt, applies in the winding-up of a company. In the case of *The Oriental Commercial Bank* (*r*), the E. Company accepted bills upon the undertaking of the O. Company to provide funds to meet them. The bills were subsequently indorsed by the O. Company and discounted, and, both companies going into liquidation, the holders of the bills proved both against the E. and O. Companies and received half the amount of the bills from each company, and the O. Company paid a dividend of 15*s.* in the £ to the E. Company upon the amount paid by it to the holders and a similar dividend to the holders upon the balance of the amount of the bills, being the same dividend as the O. Company paid to its other creditors. The proof of the E. Company for the amount paid by it to the O. Company in consequence of its breach of the undertaking was rejected.

(*m*) *Reid* v. *Explosives Co.* (1887), 19 Q. B. D. 264.

(*n*) *Ex parte Logan* (1870), 9 Eq. 149; *Shireff's Case* (1872), 14 Eq. 417.

(*o*) *Yelland's Case* (1867), 4 Eq. 350; *Ex parte Clark* (1869), 7 Eq. 550.

(*p*) *Ex parte McClure* (1870), 5 Ch. 737.

(*q*) *New Chile Gold Mining Co.* (1890), 45 C. D. 598.

(*r*) (1871), 7 Ch. 99.

Debts Payable at a Future Time.

A creditor may prove for a debt not payable at the date of the commencement of the winding-up as if it were payable presently, and may receive dividends equally with the other creditors less a rebate of interest at the rate of 5 per cent. per annum computed from the declaration of a dividend to the agreed date for payment of the debt (*s*). In such a case, where interest is payable on the debt in the meantime, a creditor may prove for the interest accruing after the commencement of the winding-up (*t*).

Interest.

On any debt or sum certain payable at a certain time or otherwise whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding-up, the creditor may prove for interest at a rate not exceeding 4 per cent. per annum to that date from the time when the debt or sum was payable if payable by virtue of a written instrument at a certain time and if payable otherwise then from the time a demand in writing has been made claiming interest from date of demand until payment (*u*). In the case of an insolvent company creditors whose debts carry interest are entitled to dividends only on what was due for principal and interest at the commencement of the winding-up; but in the case of a solvent company each dividend will be treated as an ordinary payment on account and applicable first in payment of interest due at the date of such dividend and then in reduction of principal (*x*). Interest after the commencement of the winding-up cannot be paid out of the proceeds of calls in respect of debts which do not carry interest, and the 26th rule of the General Order of November, 1862, was *ultra vires* and void (*y*).

Interest can be demanded in virtue of a contract, express or implied, to pay the same (*z*), or by virtue of the principal sum of money having been wrongfully withheld after the time of payment (*a*). Where bills of exchange, promissory notes, and cheques

(*s*) C. (W.-U.) Rules, 1909, r. 98.

(*t*) *Ex parte Ador*, [1891] 2 Q. B. 574.

(*u*) C. (W.-U.) Rules, 1909, r. 97; B. A. 1883, Sch. 2, r. 20; *Imperial Land Co. of Marseilles* (1870), 11 Eq. 478.

(*x*) *Humber Ironworks Co.* (1869), 4 Ch. 643; *Contract Corporation* (1869), 5 Ch. 112.

(*y*) *Herefordshire Banking Co.* (1867), 4 Eq. 250; *East of England Banking Co.* (1868), 4 Ch. 14.

(*z*) *W. W. Duncan & Co.*, [1905] 1 Ch. 307.

(*a*) *Caledonian Rail. Co.* v. *Carmichael* (1870), L. R. 2 H. L. Sc. 56, 66.

have been dishonoured, interest is payable by way of damages from the time of presentation for payment in the case of cheques and bills and notes payable on demand, and from the maturity of bills or notes in any other case. Interest may be withheld in whole or in part, and may be given at the same rate as interest proper (*b*). Interest is also payable in cases within 3 & 4 Will. 4, c. 42, sect. 28, upon all debts or sums certain, payable by virtue of a written instrument at a time certain, from such time; or if payable otherwise, then from the time when demand shall have been made in writing so as to give notice that interest will be claimed from the date of such demand until the time of payment. Interest cannot be given by way of damages for detention of a debt (*c*). A demand for interest may be made against a company after a winding-up order (*d*). Judgment debts carry interest at 4 per cent. per ann. (*e*), even although the principal sum for which judgment was given carried a higher rate of interest (*f*), unless the judgment was given by way of collateral security for the debt (*g*). A creditor who has a right of proof against two companies in liquidation is entitled to receive dividends from both companies until he has received payment in full of the amount of his proof and of the interest accruing due after the commencement of the winding-up (*h*). A secured creditor of a company is entitled, out of the proceeds of sale of his security, to pay himself in full his debt and interest up to date of realization, although the company is in liquidation (*i*).

Mutual Credits and Set-Off.

By sect. 38 of the Bankruptcy Act, 1883, it is enacted *inter alia* that where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under that Act and any other person proving, or claiming to prove, a debt under such receiving order, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the

(*b*) Bills of Exchange Act, 1882, ss. 57, 73, 89; *East of England Banking Co.* (1868), 4 Ch. 14.

(*c*) *L. C. & D. Rail.* v. *S. E. Rail. Co.*, [1893] A. C. 429.

(*d*) *East of England Banking Co.* (1868), 4 Ch. 14.

(*e*) 1 & 2 Vict. c. 110, s. 17; R. S. C. Ord. XLII. r. 16; Ord. LVIII. r. 19.

(*f*) *European Central Rail. Co.* (1876), 4 C. D. 33.

(*g*) *Ex parte Hughes* (1872), 4 C. D. 34, n.

(*h*) *Joint Stock Discount Co.* (1869), 5 Ch. 86.

(*i*) *Humber Iron Works Co.* (No. 2) (1869), 5 Ch. 88.

balance of the account, and no more, shall be claimed or paid on either side respectively. This rule does not apply as between a contributory of the company and the company so as to enable him to set off a debt due to him from the company as against calls made in a winding-up unless he is a bankrupt (*k*); but it does apply to every creditor of an insolvent company other than a contributory (*l*). Until it is shown that the assets of any company in liquidation are sufficient for payment of its debts in full it must, for the purpose of the above rule, be deemed to be insolvent (*m*). The commencement of the winding-up fixes the rights of the parties for the purposes of a set-off (*n*). Mutual credits cannot be allowed when the result would be to make a fraudulent preference (*o*), and sect. 38 is only applicable where the claims on each side are such as result in pecuniary liabilities, and, therefore, it does not allow a claim for money to be set off against a claim for return of goods (*p*). A surety for the debt of a company, who pays the debt after the commencement of the winding-up, may set off the amount so paid against a debt due from him to the company at the time of such commencement (*q*). Debts may be set off in respect of claims arising before the commencement of the winding-up, although not ascertained until after the commencement of the winding-up (*r*). Unliquidated damages for breach of contract can be set off against a liquidated sum (*s*), but moneys owing by a company to directors cannot be set off against moneys ordered to be paid by them to the company under sect. 215 of the Companies Act, 1908 (*t*). The liquidator may disallow a proof, in whole or in part, if the company as a matter of account has a set-off (*u*).

Negotiable Instruments.

A creditor who seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on

(*k*) See Contributory Creditors, *ante*, p. 488, *et seq.*

(*l*) *Campbell's Case* (1876), 4 C. D. 470, 475; *Mersey Steel Co.* v. *Naylor* (1884), 9 A. C. 434.

(*m*) *Milan Tramways Co.* (1884), 25 C. D. 587, 591.

(*n*) *Milan Tramways Co., supra*; *Sankey Brook Coal Co.* v. *Marsh* (1871), L. R. 6 Ex. 185; *United Ports and General Insurance Co.* (1877), 46 L. J. Ch. 403.

(*o*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

(*p*) *Eberle's Hotel Co.* v. *Jonas* (1887), 18 Q. B. D. 459.

(*q*) *Barrett's Case* (1865), 4 De G. J. & S. 756.

(*r*) *Ex parte Bates* (1870), 39 L. J. Ch. 496.

(*s*) *Mersey Steel Co.* v. *Naylor* (1884), 9 A. C. 434.

(*t*) *Ex parte Pelly* (1882), 21 C. D. 492; *Flitcroft's Case*, *ibid.* 519.

(*u*) *National Wholemeal Bread Co.*, [1892] 2 Ch. 457.

which the company is liable, must, subject to any special order of the Court to the contrary, produce it to the official receiver, chairman of the meeting, or liquidator, as the case may be, to be marked by him before the proof can be admitted either for voting or for any purpose (*x*). The holder of a dishonoured bill of the company, who has received from the drawer a part of the amount of the bill, can only prove for the difference, although the part payment was made after the commencement of the winding-up (*y*).

Periodical Payments.

Rent or other payments accruing due at stated periods are, for the purposes of proof, apportionable up to the commencement of the winding-up (*z*). This rule does not prevent a claim being made to be admitted to prove in respect of payments accruing due after the commencement of the winding-up (*a*) other than rent (*b*), nor where the liquidator remains in occupation of premises demised to the company does this rule prejudice or affect the right of the landlord to claim payment of rent during the period of the occupation of the company or liquidator (*c*).

Secured Creditors of Insolvent Companies.

A secured creditor, as defined by the Bankruptcy Act, 1883, s. 168, is a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor (*d*). The word "debt" under that section includes any debt or liability provable in bankruptcy, and "property" includes money, goods and other chattels personal, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere, also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined. The rules dealing with proofs by secured creditors of insolvent companies are the rules in bankruptcy

(*x*) C. (W.-U.) Rules, 1909, r. 100.

(*y*) *Maxoudoff's Case* (1868), 6 Eq. 582.

(*z*) C. (W.-U.) Rules, 1909, r. 96; B. A. 1883, 2nd Sched. r. 19; *Shackell & Co.* v. *Chorlton & Sons*, [1895] 1 Ch. 378.

(*a*) See "Annuities," *ante*, p. 485.

(*b*) As to rent, see *ante*, p. 486.

(*c*) C. (W.-U.) Rules, 1909, r. 96.

(*d*) This definition applies in the winding-up of an insolvent company, see *Lough Neagh Ship Co.*, [1896] 1 Ir. R. 29. An order appointing a receiver by way of equitable execution does not make the creditor a secured creditor. *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154.

applicable to proofs by a secured creditor, and as applied to such companies they are substantially as follows (*e*) :—

If a secured creditor realizes his security he may prove for the balance due to him after deducting the net amount realized (*f*) ; or if he surrenders his security to the liquidator for the general benefit of the creditors, he may prove for his whole debt (*g*). If he does not either realize or surrender his security, he must, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and he is entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Where a security is so valued the liquidator may at any time redeem it on payment to the creditor of the assessed value. If the liquidator is dissatisfied with the value at which a security is assessed, he may require the property comprised in any security so valued to be offered for sale at such times and on such terms and conditions as may be agreed on between him and the creditor, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor, or the liquidator on behalf of the company, may bid or purchase. Provided that the creditor may at any time by notice in writing require the liquidator to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the liquidator does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it ; and the equity of redemption or any other interest in the property comprised in the security which is vested in the company shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued. Where a creditor has so

(*e*) See *ante*, p. 480, and B. A. 1883, Sched. 2, rr. 9-17.

(*f*) *Semble*, the creditor may in the winding-up apply for a sale of his security, and then prove for the balance and receive a dividend on the amount of his proof, but so as not to disturb any dividend already declared. Bankruptcy Rules, 1866, rr. 73-77. The balance is arrived at by deducting, from the amount due at the commencement of the winding-up for principal and interest, the net amount realized, but the creditor is at liberty to set off profits arising from the security after such commencement against interest accrued during the same period. *Quartermain's Case*, [1892] 1 Ch. 639. Proof will be allowed for the balance even after dividends have been paid, but so that they are not disturbed : *Ex parte Williams* (1881), 16 C. D. 590.

(*g*) If a secured creditor proves for his whole debt, or votes in respect thereof, he thereby elects to surrender his security (B. A. 1883, 1st Schedule, r. 10; *Henry Lister & Co.*, [1892] 2 Ch. 417), subject to the power of the Court to permit an amendment of the proof. *Ibid. Safety Explosives Co.*, [1904] 1 Ch. 226. See *Re Rowe*, [1904] 2 K. B. 489, where liberty to amend was refused.

valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the liquidator or the Court that the valuation and proof were made *bonâ fide* on a mistaken estimate (*h*), or that the security has diminished or increased in value since its previous valuation; but every such amendment is to be made at the cost of the creditor and upon such terms as the Court shall order, unless the liquidator allows the amendment without application to the Court. Where a valuation has been so amended, the creditor must forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before the date of the amendment. If a creditor after having valued his security subsequently realizes it, or if it is realized at the request of the liquidator, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor. If a secured creditor does not comply with the foregoing rules he is to be excluded from all share in any dividend (*i*). But he may come in and prove at any time if there are assets undistributed and no injustice will be caused (*k*). A creditor who proves is in no case to receive more that 20*s*. in the £ on the amount of his proof, except that if the security is vested in the creditor under the rules by reason of the liquidator not complying with his request to elect, the creditor may, by a subsequent sale of the security, realize, with his dividends, more than 20*s*. in the £.

Secured Creditors of Solvent Companies.

A secured creditor of a solvent company may prove in the winding-up of the company for the whole amount of his debt without

(*h*) *Henry Lister & Co.*, [1892] 2 Ch. 417; *Ex parte Cama* (1874), 9 Ch. 686.

(*i*) A secured creditor is not bound to prove, but is entitled to rely on his security, and may, without leave in a voluntary winding-up, and with the leave of the Court in a compulsory winding-up, or in a winding-up under supervision, bring an action to realize his security. *Longdendale Cotton Spinning Co.* (1878), 8 C. D. 150. See *ante*, p. 426.

(*k*) *Re McMurdo*, [1902] 2 Ch. 684.

giving credit for the value of his security (*l*), provided he has not realized his security and his debt is ascertained (*m*). Where a creditor holds debentures as collateral security for a debt due to him upon acceptances by the company, he cannot, although the nominal amount of the debentures exceeds the amount of his debt, prove for an amount greater than his debt (*n*).

Sureties.

A surety may prove under sect. 37 of the Bankruptcy Act, 1883, and, therefore, in the winding-up of an insolvent company, although he has not paid the debt for which he is liable (*o*).

Statutes of Limitations.

The Statute of Limitations ceases to run against creditors upon a winding-up order being made, and a creditor will be allowed to prove his debt at any time before the dissolution of the company, but so as not to interfere with dividends already paid (*p*). Proof cannot be allowed in respect of statute-barred claims (*q*).

VII.—*Distribution of Assets.*

The assets of a company in a winding-up are applicable in or towards payment of (1) the costs, charges, and expenses incurred in the winding-up of the company, and (2) the creditors of the company, and any surplus is divisible amongst the contributories

Costs of Winding-up.

The assets of a company in a winding-up by the Court remaining after payment of fees and actual expenses incurred in realizing or getting in the assets must be applied, subject to any order of the Court, in making the following payments, which are to be made in the following order of priority, viz. (*r*) :—

(*l*) *Kellock's Case, Re Barned's Banking Co.* (1869), 3 Ch. 769.

(*m*) *Coupland's Claim* (1869), 8 Eq. 472.

(*n*) *Blakely Ordnance Co.* (1869), 8 Eq. 244.

(*o*) *Ex parte Delmar* (1890), 38 W. R. 752.

(*p*) *General Rolling Stock Co.* (1872), 7 Ch. 646.

(*q*) *Mitchell's Claim* (1871), 6 Ch. 822.

(*r*) C. (W.-U.) Rules, 1909, r. 187. As to taxation of costs, see rr. 177-185.

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next.—The remuneration of the special manager (if any) (*s*).

Next.—The costs and expenses of any person who makes, or concurs in making, the company's statement of affairs (*t*).

Next.—The taxed charges of any shorthand writer appointed to take an examination. Provided that where the shorthand writer is appointed at the instance of the official receiver, the costs of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realizing the assets of the company.

Next.—The liquidator's necessary disbursements other than actual expenses of realization before provided for.

Next.—The costs of any person properly employed by the liquidator.

Next.—The remuneration of the liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Rule 187 does not affect the priority which, under the old practice, attached to costs ordered to be paid to a successful litigant by the liquidator out of the assets of the company, or by the liquidator personally, and to be retained out of the assets. Such an order gives the successful litigant, or the liquidator, as the case may be, the *primâ facie* right to immediate payment in full; but if there are other persons who have existing claims prior in right or equal to his own, then he can only get payment subject to their priority or on an equality with them (*u*). Such an order does not create any charge upon the assets of the company (*x*). Where a liquidator continues an action instituted by the company prior to the commencement of the winding-up, and then the company is ordered to pay the costs of the action, the whole of such costs must be paid, not merely those incurred after the commencement of the winding-up (*y*). The remuneration of the liquidator is fixed, unless the Court otherwise orders, by the committee of inspection, by a commission or percentage payable on the amount realized, after

(*s*) See *ante*, p. 419.

(*t*) See *ante*, p. 455.

(*u*) *London Metallurgical Co.*, [1895] 1 Ch. 758. See also *Ex parte Smith* (1867), 3 Ch. 125; *Home Investment Society* (1880), 14 C. D. 167; *Dominion of Canada Plumbago Co.* (1884), 27 C. D. 33. See C. (W.-U.) Rules, 1909, r. 187 (3).

(*x*) *Cape Breton Co.* v. *Fenn* (1881), 17 C. D. 198, 205.

(*y*) *London Drapery Stores*, [1898] 2 Ch. 684; *Wemborn & Co.*, [1905] 1 Ch. 413.

deducting any sums paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and on the amount distributed in dividend. This remuneration may on the application of the Board of Trade be reduced by the Court. If there is no committee of inspection the remuneration, unless the Court otherwise orders, is to be fixed by the scale of fees and percentages for the time being payable on realizations and distributions by the official receiver as liquidator (*z*).

Creditors.

The assets remaining after providing for the above payments must be applied, first, in payment *pari passu* of preferential debts, and, secondly, in payment of creditors *pari passu* in proportion to the amounts of their proofs (*a*). If the assets of the company are sufficient, interest will be allowed to the creditors on interest-bearing debts at the rate they carry from the commencement of the winding-up order until payment (*b*).

Crown debts have priority over all other unsecured debts (*c*).

The debts made preferential by sect. 209 of the Companies Act, 1908, are: (1) parochial or other local rates due from the company at the commencement of the winding-up, or in the case of a compulsory order where the company was not in voluntary liquidation, at the date of the order, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the 5th April next before that date, and not exceeding one year's assessment; (2) wages or salaries of any clerk (*d*) or servant (*d*) in respect of services rendered to the company during four months before the said date not exceeding 50*l.*; (3) wages (*e*) of any workman or labourer, not exceeding 25*l.*, in respect of services rendered to the company during two calendar months before the said date, provided that where any labourer in husbandry has contracted for the payment of a portion of his wages in a lump sum at the end of the year of

(*z*) C. (W.-U.) Rules, 1909, r. 154. See as to remuneration of voluntary liquidators, *Amalgamated Syndicates*, [1901] 2 Ch. 181.

(*a*) *Ex parte Ashbury* (1868), 5 Eq. 223.

(*b*) See *ante*, p. 491.

(*c*) *Oriental Bank Corporation* (1885), 28 C. D. 643.

(*d*) A managing director is not a clerk or servant. *Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349. A secretary may be: *Cairney* v. *Back*, [1906] 2 K. B. 746.

(*e*) "Wages" may include commission: *Earles Shipbuilding Co.*, [1901] W. N. 78.

hiring he is to 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; (4) unless the company is being wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company all amounts (not exceeding in any individual case 100*l.*) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before such date subject to sect. 5 thereof (*f*). The foregoing debts rank equally among themselves, and are to be paid in full unless the assets are insufficient to meet them, in which case they are to abate in equal proportions, and in the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by the company and are to be paid accordingly out of any property comprised in or subject to that charge (see *ante*, p. 277). These debts are made a first charge on goods or effects distrained upon within three months next before the date of the winding-up order (*g*), or on the proceeds of sale thereof. Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, these debts are to be discharged forthwith so far as the assets are sufficient to meet them.

The liquidator may from time to time during the winding-up declare and pay dividends to the creditors on the amount for which they have been allowed to prove, provided the assets of the company are sufficient for that purpose. In a compulsory winding-up he must, in doing so, comply with the following rules (*h*):—Not more than two months before declaring a dividend, the liquidator must 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 their debts. Such notice is to specify the latest date up to which proofs must be lodged, which is not to be less than fourteen days from the date of such notice. Where any creditor after such date appeals against the decision of the liquidator rejecting a proof, notice of appeal, subject to the power of the Court to extend the

(*f*) Under s. 5, if the company has insured against its liability under the Act of 1906 its rights as against the insurers are transferred to the workman.

(*g*) In respect of any money paid under any such charge the distrainor has the same rights of priority as the person to whom the payment is made. See C. A. 1908, s. 209, sub-s. 4.

(*h*) C. (W.-U.) Rules, 1909, r. 150.

time in special cases, must be given within seven days 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 being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator must exclude all proofs which have been rejected from participation in the dividend. Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator, he is to proceed to declare a dividend, and to give notice to the Board of Trade (in order that the same may be gazetted), and is also to send a notice of dividend to each creditor whose proof has been admitted. 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 months, the liquidator must 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 is not necessary for the liquidator to give a fresh notice to the creditors who have not proved their debts. In all other respects the same procedure is to follow the fresh as would have followed the original notice. Dividends may, at the request and risk of the persons to whom they are payable, be transmitted to him by post, or may at his request be paid to some other persons.

In the administration of the assets of a company in a compulsory winding-up in England and in the distribution thereof amongst its creditors, subject to the provisions of the Companies Act, 1908, the liquidator is to have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; and if any such resolution conflicts with any directions of the committee the resolution is to prevail, and, subject as aforesaid, the liquidator is to use his own discretion in the management of the estate and its distribution amongst its creditors (*i*). The power of the liquidator to summon general meetings of the creditors and contributories has already been considered (*j*). If any person is aggrieved by any act or decision of the liquidator of a company in a compulsory liquidation, he may apply to the Court and the Court may confirm, reverse, or modify the act or decision complained of and make such orders as it thinks just (*k*).

(*i*) C. Act, 1908, s. 158.

(*j*) See *ante*, p. 444.

(*k*) C. Act, 1908, s. 158 (5).

Contributories.

The surplus assets of the company remaining after making all the payments before mentioned must be divided amongst the contributories of the company in accordance with their rights and interests in the company (*l*), unless all the shareholders individually agree upon some other mode of distribution (*m*); and calls may be made for the purpose of adjusting the rights of contributories *inter se* (*n*). Such surplus assets may be sufficient to return to the contributories—

(1) The whole of the paid-up capital; or
(2) A part only of the paid-up capital; or
(3) More than the paid-up capital.

(1) No question arises as to this class of cases.

(2) In this class of cases the following rules are applicable to the distribution of assets unless by the regulations of the company or the terms of issue of the shares it is otherwise provided.

Where the shares rank *pari passu* in repayment of capital, and the whole of the capital is paid up or the same proportion is paid up on all the shares, the assets are distributed between the shareholders in proportion to the amounts paid up on their shares (*n*). Where some of the shares have preference in repayment of capital and all the shares are fully paid, the surplus assets must first be applied in or towards payment in full of the preferential shareholders, and the balance, if any, distributed between the holders of the other shares in proportion to the amounts paid up on the shares (*p*). Where the shares having preference are either paid-up in full or the same proportion has been paid up on such shares, and the other shares are only partly paid up, a call must be made on the other shares so far as may be necessary to repay to the preference shareholders all their paid-up capital. If some of the holders of any class of shares ranking *pari passu* in repayment of capital have paid more upon their shares than others, then the shareholders who have paid more on their shares will be entitled to repayment of the excess before

(*l*) C. A. 1908, ss. 170, 186; *Griffiths* v. *Paget* (1877), 5 C. D. 894; 6 C. D. 511; *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469; *North West Argentine Rail. Co.*, [1900] 2 Ch. 882.

(*m*) *Beeston Pneumatic Tyre Co.* (1898), 14 T. L. R. 338, when such an agreement was inferred by the Court.

(*n*) C. A. 1908, ss. 166, 186; *Anglesea Colliery Co.* (1866), 1 Ch. 555.

(*p*) *Bangor Slate Co.* (1875), 20 Eq. 59.

any payment is made to the other shareholders (*q*), even although proof has been made in the bankruptcy of some of such other shareholders for the estimated value of their liability to future calls provided that less than 20*s.* in the £ has been paid as dividend in respect of the proof (*r*). If necessary a call must be made on the other shareholders for the purpose of equalizing the amount paid up on all the shares (*s*), even although the amount remaining unpaid represents the discount at which the shares were issued (*t*). The holders of partly-paid shares may, however, under the regulations of the company or the terms of issue, be entitled to rank *pari passu* with the fully-paid shareholders in proportion to the amounts paid up on the shares (*u*), or to prevent a call being made to equalize the amounts paid up (*x*). Where the inequality in the amounts paid up on shares arises from the fact that a shareholder has made payments to the company in respect of his shares in advance of the amounts actually called up and due thereon, each shareholder for the purpose of equalizing is not only entitled to be repaid the amount advanced by him, but interest thereon also at the rate agreed on up to the date of repayment before any payment is made in respect of the other shares ranking *pari passu* with his shares in repayment of capital (*y*). Sometimes the surplus remaining after payment of debts, so far as it represents undivided profits, is divisible amongst one class of shareholders (*z*), but it depends upon the true construction of the company's articles (*a*).

(3) In cases where, after repayment to the shareholders of all the capital paid up on their shares, there is a surplus still remaining for distribution, then, unless by the regulations of the company

(*q*) *Anglesea Colliery Co., supra; Scinde, &c., Bank Corporation* (1867), 6 Ch. 53, n.; *Ex parte Maude* (1870), 6 Ch. 51; *Welsh Whisky Distillery Co.* (1900), 16 T. L. R. 246.

(*r*) *Rowe's Trustees Claim*, [1906] 1 Ch. 1.

(*s*) *Provision Merchants' Co.* (1872), 26 L. T. 862; *Ex parte Lowenfeld* (1893), 70 L. T. 3; *Anglo-Continental Corporation*, [1898] 1 Ch. 327; *Welsh Whisky Distillery Co., supra.*

(*t*) *Welton* v. *Saffery*, [1897] A. C. 299; *Weymouth Steam Packet Co.*, [1891] 1 Ch. 66. Where there is an agreement between a company and B and C that in consideration of C accepting an allotment at par of 5000 shares in the company, B should transfer 15,000 of his shares in that company to C, the transaction is not an issue of shares at a discount: *Chapman* v. *Great Central Mines* (1905), 22 T. L. R. 90.

(*u*) *Eclipse Mining Co.* (1874), 17 Eq. 490.

(*x*) *Holyford Mining Co.* (1869), Ir. R. 3 Eq. 208.

(*y*) *Exchange Drapery Co.* (1888), 38 C. D. 171; *Wakefield Rolling Stock Co.*, [1892] 3 Ch. 165.

(*z*) *Bishop* v. *Smyrna, &c., Rail. Co.* (No. 1) [1895] 2 Ch. 265; *W. J. Hall & Co.*, [1909] 1 Ch. 521, where arrears of dividends were paid to preference shareholders.

(*a*) *Odessa Waterworks Co.*, W. N. (1897), 166; and [1901] 2 Ch. 190. n.

or by the terms of issue it is otherwise provided, such surplus, is divisible in proportion to the nominal amount of the shares held by them respectively, whether such shares are partly or fully paid up, or preference, or ordinary shares (*b*). Sometimes the surplus so far as it represents undivided profits is divisible in whole or in part amongst one class of the shareholders (*c*).

Frequently, however, articles of association provide that surplus assets remaining after repayment of paid-up capital shall be divisible in proportion to the amounts paid up, or which ought to be paid up upon the shares at the commencement of the winding-up (*d*), and in the case of preference shares that they shall be entitled to preference in dividend and in repayment of capital in a winding-up, but not to participate further in the profits or assets of the company. Under the regulations of the company, or by the terms of issue, shares may be entitled to participate *pari passu* in the surplus assets in proportion to the amounts paid up on their shares, although some of the shares are only partly paid up (*e*). Proof in bankruptcy is not payment (*f*).

The earnings of a company after the commencement of the winding-up must be treated as capital (*g*). Unless so provided by the regulations of the company, the holders of shares issued at a premium are not in a winding-up entitled to have the premium repaid (*h*). It does not follow because shares are entitled to a preferential dividend that they are entitled to preference in repayment of capital (*i*). The regulations of most companies authorize the distribution of surplus assets in specie. As to the contents of the order of the court directing the liquidation in a compulsory winding-up, see C. (W.-U.) Rules, r. 151, Form 74.

(*b*) *Birch* v. *Cropper* (1889), 14 A. C. 525; *Espuela Land and Cattle Co.*, [1909] 2 Ch. 187.

(*c*) *Bridgewater Navigation Co.*, [1891] 2 Ch. 317. Cf. *Crichton's Oil Co.*, [1902] 2 Ch. 86.

(*d*) *New Transvaal Co.*, [1896] 2 Ch. 750; *Peabody Gold Mining Corporation*, W. N. (1897), 170; *Mutoscope and Biograph Syndicate*, [1899] 1 Ch. 896.

(*e*) *Sheppard* v. *Scinde, &c., Rail.* (1887), 56 L. J. Ch. 866; *Somes* v. *Currie* (1855), 1 K. & J. 605.

(*f*) *Rowe's Trustees Claim*, [1906] 1 Ch. 1.

(*g*) *Bishop* v. *Smyrna, &c., Rail.* (No. 2), [1895] 2 Ch. 596.

(*h*) *Driffield Gas Light Co.*, [1898] 1 Ch. 451.

(*i*) *London India Rubber Co.* (1875), 5 Eq. 519; *North West Argentine Rail. Co.*, [1900] 2 Ch. 882.

CHAPTER XXXIV.

VOLUNTARY WINDING-UP.

I.—*Voluntary Winding-Up.*

The companies which can be wound up voluntarily under the Companies Acts are the same as those which can be wound up compulsorily with the exception of unregistered companies (*a*). A voluntary winding-up differs in many respects from a compulsory winding-up. The Companies (Winding-Up) Rules, 1909, relate principally to compulsory winding-up, but they also apply to the proceedings in a voluntary winding-up or winding-up subject to the supervision except rules which from their nature and subject matter or which by the head lines above the group in which they are contained or by their terms apply only to proceedings in a compulsory winding-up (*b*).

The principal differences between a compulsory winding-up and a voluntary winding-up are—(1) a voluntary winding-up can only take place at the instance of shareholders; and the liquidators are, in the first instance (*c*), appointed by them and are under their control, except so far as the shareholders may, under the Companies Act, 1908, sect. 190, by an extraordinary resolution of the company, delegate to its creditors or to any committee of creditors the power of appointing liquidators and filling up vacancies among them, or enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and (2) the liquidation may be entirely completed without the intervention of the Court.

A company may be wound up voluntarily (*d*)—

(1) When the period, if any, fixed for the duration of the company by the articles of association expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is

(*a*) *Ante*, p. 416, *et seq.*; and *Torquay Bath Co.* (1863), 32 B. 581.

(*b*) Rule 1.

(*c*) The C. A. 1908, s. 188, secures for creditors the power with the sanction of the Court of removing the liquidator appointed by the shareholders, and of appointing a liquidator in his place or jointly with him with or without a committee of inspection.

(*d*) C. A. 1908, s. 182.

to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(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 effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

A winding-up under the first head is of very rare occurrence. A special resolution for voluntary winding-up a solvent company is necessary. An extraordinary resolution can only be passed when the company is admittedly insolvent. If for any reason whatever an extraordinary or special resolution is invalid, there is no voluntary winding-up. What is necessary in order that there shall be a valid special resolution or extraordinary resolution has already been dealt with in Chapter XXV. (*e*). A company cannot contract itself out of its right to wind up voluntarily (*f*).

A voluntary winding-up commences at the time of the passing of the resolution authorizing the winding-up (*g*). When a voluntary winding-up is resorted to for the purpose of reconstructing a company or amalgamating it with some other company, the resolution generally states that for the purpose of effecting the amalgamation or reconstruction, the company be and is hereby wound up voluntarily. In such a case, although the intended amalgamation or reconstruction is *ultra vires*, the winding-up resolution is not thereby rendered invalid (*h*). A resolution to wind up voluntarily does not operate as a notice of dismissal to the servants of the company (*i*).

From the date of the commencement of the voluntary winding-up the company can only carry on its business so far as may be required for the beneficial winding-up thereof, but the corporate state and powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved (*k*). Every transfer of shares, unless made to or with the sanction of the liquidator, and every alteration in the status of members of the company made after the commencement of the winding-up, is void

(*e*) See *ante*, p. 338 *et seq.*; and *Union Hill Silver Co.* (1870), 22 L. T. 400, which decided that the resolution was good, although shareholders in America received less than seven days' notice.

(*f*) *Ellis* v. *Dadson & Co.* (1891), 60 L. J. Ch. 353.

(*g*) C. A. 1908, s. 183; *Dawes' Case* (1868), 6 Eq. 232; *Weston's Case* (1868), 4 Ch. 20.

(*h*) *Cleve* v. *Financial Corporation* (1873), 16 Eq. 363; *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282; *Thomson* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 765.

(*i*) *Midland Counties District Bank* v. *Attwood*, [1905] 1 Ch. 357; but see *Ex parte Schumann* (1887), 19 L. R. Ir. 240.

(*k*) C. A. 1908, s. 184.

unless the Court otherwise orders (*kk*). A valid forfeiture of shares before the commencement of the winding-up cannot be cancelled by the liquidator (*l*), but he may, without the sanction of the Court, sanction transfers during the liquidation and rectify the register of members accordingly (*m*).

Notice of a special or extraordinary resolution passed for winding-up a company voluntarily must be given by advertisement as respects companies registered in (1) England, in the *London Gazette*, (2) Scotland, in the *Edinburgh Gazette*, and (3) Ireland, in the *Dublin Gazette* (*n*). A copy of every special and extraordinary resolution must be printed and forwarded to the Registrar of Companies, and he is bound to record it (*o*).

The following consequences ensue upon a voluntary winding-up of a company (*p*) :—

(1) The property (*q*) of the company must be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, must, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company (*qq*).

(2) The company in general meeting must appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company (*r*), and may fix the remuneration to be paid to them or him (*s*).

(3) On the appointment of a liquidator all the powers of the directors cease, except in so far as the company in general meeting or the liquidators sanctions the continuance thereof (*t*).

(4) The liquidator may, without the sanction of the Court, exercise all powers given by the Act to the liquidator in a winding-up by the Court (*u*).

(5) The liquidator may exercise the powers of the Court under the Act of settling a list of contributories (*x*), and of making

(*kk*) *Ibid.* s. 205 (1).

(*l*) *Dawes' Case* (1868), 6 Eq. 232.

(*m*) See *ante*, p. 474.

(*n*) C. A. 1908, ss. 185, 285.

(*o*) *Ibid.* s. 70. As to penalty, see *ante*, p. 403.

(*p*) *Ibid.* s. 186.

(*q*) "Property" in this section has the same meaning as "assets" in s. 123, and includes uncalled capital. *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711, 724.

(*qq*) See *ante*, p. 502.

(*r*) As to the appointment, resignation and removal of liquidators, see *ante*, pp. 418–422.

(*s*) If the remuneration is not fixed by the company in general meeting, the liquidator or a contributory may apply by summons and have it fixed by the Companies Winding-up Registrar. As to the practice, see *Amalgamated Syndicate*, [1901] 2 Ch. 181.

(*t*) This sanction may be given in the course of the winding-up, and new directors appointed for the purpose of exercising powers with such sanction. *Fairbairn Engineering Co.*, [1893] 3 Ch. 450, where a power of forfeiture was exercised. Cf. *Hirsch* v. *Burns* (1897), 77 L. T. 377.

(*u*) C. A. 1908, s. 151. See *ante*, pp. 464–468.

(*x*) *Ibid.* s. 163. See *ante*, p. 468.

calls (*y*), and shall pay the debts of the company and adjust the rights of the contributories among themselves (*z*).

(6) The list of contributories is to be *primâ facie* evidence of the liability of the persons named therein to be contributories (*a*).

(7) When several liquidators are appointed every power given to them may be exercised 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.

(8) If from any cause whatever there is no liquidator acting the Court may on the application of a contributory appoint a liquidator (*b*).

(9) The Court may on cause shown remove a liquidator and appoint another liquidator (*c*).

The duties of a liquidator in a voluntary winding-up are similar to those imposed upon a liquidator in a compulsory winding-up. It is his duty to collect and realize the assets of the company, make any calls that may be necessary upon the contributories, either for the purpose of the payment of creditors or the adjustment of the rights of the contributories amongst themselves, and to ascertain what are the debts and liabilities of the company, and for that purpose to investigate the books of the company, and to advertise for creditors, and examine and allow or reject in whole or in part the claims made by persons alleging themselves to be creditors of the company. It is the duty of the liquidator to write to creditors of whose existence he is aware, and who do not send in claims, and ask them if they have any claims (*d*). It is submitted that a voluntary liquidator may, without the sanction of the Court, compromise a claim by a creditor. Compromises can also be made in a voluntary winding-up so as to be binding upon a dissentient minority (*e*).

When a list of contributories is settled in a compulsory winding-up, it is binding upon the contributories whose names are included in the list; but a list settled by a voluntary liquidator is not binding on the contributories. A voluntary liquidator in settling the list usually follows the practice in a compulsory winding-up. If he makes a call on the contributories, he applies by summons for a balance order against them directing them to pay to him the amount of the call. Although a contributory may not up to that time have

(*y*) *Ibid.* s, 166.

(*z*) See *ante*, p. 497.

(*a*) See *post*, p. 470.

(*b*) See *ante*, p. 421.

(*c*) See *ante*, p. 468.

(*d*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.

(*e*) Under C. A. 1908, ss. 191 and 192, *post*, pp. 527, 512.

raised any objection to being placed on the list, it is competent for him, on the hearing of the application for a balance order, to resist the call upon the ground that his name has been improperly included in the list.

In a voluntary winding-up the liquidator or a contributory or creditor may apply to the winding-up Court by an originating summons or motion to determine any question arising in the matter of the winding-up, or to exercise all or any of the powers which the Court might exercise if the company were being wound up compulsorily, and the Court may thereupon make such order as it thinks just (*f*).

Sects. 142 and 211 of the Companies Act, 1908, do not expressly apply to a voluntary winding-up; but if an application is made under sect. 193, the Court has jurisdiction to stay any action (*g*), proceeding, attachment, distress, or execution (*h*) against the company, or its estate or effects, upon such terms as the Court may impose (*i*); but until the stay is granted, a creditor may commence or continue any action or proceeding, or put in force any attachment, distress, execution, or analogous proceeding; and therefore a liquidator may obtain a supervision order for the purpose of making sects. 142 and 211 applicable in the winding-up, and so saving the expense of applying for injunctions to restrain actions (*k*). The application for a stay may be made by the liquidator or a contributory or creditor (*l*).

A liquidator may from time to time during the continuance of the voluntary winding-up summon general meetings of the company for any purpose he thinks fit, and if the winding-up continues for more than a year the liquidator must summon a general meeting at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and lay before such meeting an account showing his acts and dealings and the manner in which the winding-up has been conducted during the preceding year (*m*).

The assets of the company are applicable in payment in the first place of the costs of the winding-up, including the liquidator's

(*f*) C. A. 1908, s. 193.

(*g*) *Keynsham Co.* (1863), 33 B. 123; *Harrison* v. *Mortgage Insurance Corporation* (1893), 10 T. L. R. 141, and cases therein cited.

(*h*) *Thurso New Gas Co.* (1889), 42 C. D. 486; *Sabloniere Hotel Co.* (1866), 3 Eq. 74; *Westbury* v. *Twigg & Co.*, [1892] 1 Q. B. 77. See *ante*, p. 422.

(*i*) As to terms, see *ante*, p. 426.

(*k*) *Zoedone Co.* (1883), 53 L. J. Ch. 465. But see observation of Wright, J., [1901] W. N. 14.

(*l*) C. A. 1908, s. 193.

(*m*) *Ibid.* s. 194.

remuneration (*n*), and, subject thereto, must be distributed in the same manner as in a compulsory winding-up (*o*).

II.—*Voluntary Winding-Up under the Supervision of the Court.*

The Court may make an order directing that a voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and subject to such conditions as the Court thinks just (*p*). The Courts having jurisdiction to make supervision orders are the same as those having jurisdiction to make compulsory orders (*q*), and the persons entitled to present petitions for such orders are the same (*r*), and the practice with regard to presenting petitions and making orders is the same. Although the Court has absolute discretion under sect. 199, an order will not as a rule be made on the petition of a contributory (*s*) unless the resolution to wind up has been passed by fraud, or undue influence, or a creditor appears in support of the petition (*t*). The order is obtained upon petition, and for the purpose of giving jurisdiction to the Court over suits and actions it is deemed to be a petition for a compulsory order (*u*). The Court may, in deciding between a compulsory winding-up order and a supervision order in the appointment of liquidators and in all other matters relating to a winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved by sufficient evidence (*x*). By the supervision order, or any subsequent order, the Court may appoint any additional liquidator; and any liquidator so appointed has the same powers, is subject to the same obligations, and in all respects stands in the same position as if he had been appointed by the company; and the Court may remove any liquidator so appointed and fill any vacancy occasioned by the removal or by death or resignation (*y*). A petition for a supervision order ought not to ask for the removal of the voluntary liquidator, such an application should be made separately by summons (*z*). After a supervision order is made, the liquidators,

(*n*) *Ibid.* s. 196.
(*o*) See *ante*, p. 497.
(*p*) C. A. 1908, s. 199.
(*q*) See *ante*, p. 415.
(*r*) *Pen-y-van Colliery Co.* (1877), 6 C. D. 477.
(*s*) *Bank of Gibraltar* (1865), 1 Ch. 69; *Gold Co.* (1879), 11 C. D. 701.
(*t*) *London and Mercantile Discount Co.* (1865), 1 Eq. 277; *Beaujolais Wine Co.* (1867), 3 Ch. 15.
(*u*) C. A. 1908, s. 200. See *ante*, pp. 422–427.
(*x*) *Ibid.* s. 201. See *ante*, p. 444.
(*y*) *Ibid.* s. 202. See *ante*, p. 418, *et seq.*
(*z*) *Hannon's Lode*, Jan. 1899, Wright, J., *ex. rel. ed.*

subject to any restrictions imposed by the Court, may exercise all their powers without its sanction or intervention in the same manner as if the company were being wound up altogether voluntarily (*a*). A winding-up under supervision is not a winding-up by the Court for the purpose of sects. 147 to 149 (except sub-sect. 10 of sect. 149), 152 to 162, 173 and 175 of the Companies Act, 1908 (*b*), but subject as aforesaid, a supervision order is for all purposes, including the staying of actions, and other proceedings, the making and enforcing of calls, and the exercise of all other powers, to be deemed to be an order for compulsory winding-up (*c*). The form of supervision order usually orders the liquidator to file every quarter (*d*) with the register in companies winding-up a report as to the position of and the progress made with the winding-up and the realization of the company's assets, and provides that no bills of costs, charges or expenses, or special remuneration of any solicitor employed by the liquidator, or the remuneration, charges, or expenses, of any person is to be paid out of the assets of the company unless taxed or allowed by the registrar, and directs taxation accordingly. It also orders taxation and payment of the costs of the petition, of the company and the petitioner, and of the creditors and contributories supporting the petition, but so that only one set of costs is to be allowed to such creditors, and one set of costs to such contributories. The costs but not the remuneration of the liquidator prior to the date of the supervision order are payable in priority to the costs of obtaining the order, but the latter costs are payable in priority to the costs of the liquidator subsequently incurred (*e*). The costs of the liquidator's solicitor are payable in priority to the liquidator's remuneration (*f*). The making of a supervision order or the appointment of a provisional liquidator pending the hearing of the petition on which the order was made does not alter the date of the commencement of the winding-up, viz. the date of the passing of the resolution for voluntary winding-up (*g*). The Court has jurisdiction by placing restrictions on the voluntary liquidator, or by dispensing with

(*a*) C. A. 1908, s. 203 (1).

(*b*) *Ibid.* s. 203. These sections relate to the making out of the company's statement of affairs the preliminary report of the official receiver, the appointment, removal, remuneration duties and powers of liquidators, and to committees of inspection, special managers and appointment of official receiver as receiver for debenture holders.

(*c*) *Ibid.* s. 203 (2).

(*d*) *Horner & Co.*, W. N. (1898), 159.

(*e*) *New York Exchange Co.*, [1893] 1 Ch. 371.

(*f*) *Sanitary Burial Association*, [1900] 2 Ch. 289.

(*g*) See *ante*, p. 415.

restrictions on an official liquidator, to make a winding-up under supervision almost equivalent to a winding-up by the Court, and *vice versâ* (*h*). Thus a voluntary winding-up under supervision may be made subject to the control of a committee of inspection of creditors (*h*)

Mr. Justice Vaughan Williams, in *Land Securities Co.* (*i*), said that a voluntary winding-up under the supervision of the Court, if it could be made really effective for purposes of investigation as well as of administration—and he saw no reason why it should not—was the best mode of liquidation, and its adoption would prove a great benefit to the commercial world. In that case the usual supervision order was made, and the liquidator undertook with all due diligence to investigate and report to the Court whether in his opinion an examination of the officers of the company or any of them before the Court, should be ordered, with liberty to any creditor or contributory to attend and examine, and the order provided that if the report should be against examination, any creditor or contributory should be at liberty to apply for such an order. Where a supervision order is made and the voluntary liquidator has not given security, an additional liquidator appointed by the Court will be required to give security (*k*).

III.—*Amalgamations, Reconstructions, and Arrangements.*

A voluntary winding-up is frequently resorted to for the purpose of enabling companies to avail themselves of the powers of effecting amalgamations and reconstructions, conferred by sect. 192 of the Companies Act, 1908. Arrangements between a company and its creditors $\frac{\text{or}}{\text{and}}$ members can be made under sect. 120 of the Act, whether the company is or is not in voluntary liquidation. Before resorting to a voluntary winding-up it should be ascertained that the company does not hold any lease or concession which is liable to forfeiture if the company goes into liquidation. Where a lease contains a proviso that if the lessee being a company shall go into liquidation the lessor may re-enter, the cause of forfeiture arises although the company is solvent and goes into voluntary liquidation for the purpose only of reconstruction with additional capital (*l*).

Although the word amalgamation has no strictly defined meaning

(*h*) *Watson & Sons*, [1891] 2 Ch. 55.
(*i*) (1894), 1 Mans. 369.
(*k*) *Hampshire Land Co.*, [1894] 2 Ch. 632.
(*l*) *Horsey Estate* v. *Steiger, &c., Ltd.*, [1899] 2 Q. B. 79; *Fryer* v. *Ewart*, [1902] A. C. 187.

as applied to companies, it is sufficiently accurate to describe an amalgamation as the union in one company of the undertakings of two or more existing companies (*m*). A reconstruction is the transfer of the undertaking of one company to another company in exchange for fully or partly-paid shares in the latter company (*m*). This may be effected either by two or more companies transferring their undertaking to another company in consideration of receiving fully or partly-paid shares in such company (*n*), or by one company transferring its undertaking to another company for a similar consideration (*o*). Where one company transfers its undertaking to another company for cash, debentures, or some consideration other than shares in the latter company, the transaction is a sale.

A company incorporated by special Act for a public purpose cannot transfer its undertaking to, or amalgamate with, another company, unless the amalgamation is sanctioned by such Act or by another special Act (*p*).

It is submitted that no other company incorporated by special Act, nor any chartered company, can transfer its undertaking to, or amalgamate with, another company without the authority of a special Act, or of an amended or new charter, or registering under Part VII. of the Companies Act, 1908. Amalgamations and reconstructions of companies governed by the Companies Acts are generally effected under sect. 192 of the Companies Act, 1908, but it was formerly considered that reconstructions might be effected without recourse to the corresponding section of the Companies Act, 1862 (sect. 161), upon the ground that it did not by implication prevent a company, if so authorized by its memorandum of association, from selling its assets for fully-paid or partly-paid shares in another company, and then going into voluntary liquidation and dividing such shares in specie among its members, the purchaser undertaking the payment of its debts and liabilities (*q*), even although the sale included uncalled capital of the selling company (*r*), but it has been now decided that where it was usually the case the sale is merely a device to deprive shareholders of the

(*m*) *South African Supply, &c., Co.*, [1904] 2 Ch. 268.

(*n*) *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.

(*o*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469.

(*p*) *G. N. Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 9 Ha. 306; *Charlton* v. *Newcastle Rail. Co.* (1859), 5 Jur. N. S. 1096.

(*q*) *Cotton* v. *Imperial, &c., Corporation*, [1892] 3 Ch. 454; *Doughty* v. *Lomagunda Reefs*, [1903] 1 Ch. 673; *Mason* v. *Motor Traction Co.*, [1906] 1 Ch. 419; *Fuller* v. *White Feather Reward, Ibid.* 823.

(*r*) *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.

protection of the section it is invalid (*s*). Reconstructions are also effected under sect. 120 of the Companies Act, 1908. It must be remembered, in considering the application of sect. 192, that the Act of 1908 also applies to companies formed and registered under the Joint Stock Companies Acts or under the Companies Act, 1862, and that every company, with the exception and subject to the restrictions mentioned in sect. 249 of the Act of 1908, may, by registering under that Act, become subject to the provisions thereof (*t*).

Sect. 192 of the Companies Act, 1908, is in the following terms:—

(1) Where a company is proposed to be or is in course of being wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator, or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into 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 transferee 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 carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in the manner 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 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

(*s*) *Manners* v. *St. David's Mines*, [1904] 2 Ch. 593; *Bisgood* v. *Nile Valley Co.*, [1906] 1 Ch. 747; *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743.

(*t*) *Southall* v. *British Mutual Life Assurance Society* (1870), 6 Ch. 614. See C. A. 1908, s. 285, as to what companies are within that Act.

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. (6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or in the case of a winding up 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 shall 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 secretary or any two of the directors may 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.

Under this section the transferor company can sell the whole or a portion of its property in consideration of shares, policies, or like interests in the transferee company. The essentials required by this section are as follows:—

(1) A voluntary winding up of the transferor company.
(2) A special resolution of the transferor company authorizing its liquidator to sell for shares, &c., in the transferee company.
(3) The purchaser must be a company within the meaning of that word as defined in the Act (*u*).
(4) The sanction of the Court, if within a year after the passing of the resolution an order is made for winding up the company by or subject to the supervision of the Court.

In the case of assurance companies the sanction of the Court is always required (*x*).

A sale made under sect. 192 is binding upon both creditors and shareholders (*y*). The power given by it is in addition to any powers conferred upon the company by its regulations; thus a sale thereunder, although *ultra vires* of the company, is good (*z*). The making of a supervision order does not take away this power (*a*), and, *semble*, it may be subsequently exercised without the sanction of the Court (*b*). It has been said that this section does not authorize a sale of the proceeds of future calls (*c*), but it is doubtful

(*u*) See *ante*, p. 514, s. 285.
(*x*) Assurance Companies Act, 1909, s. 13, and *ante*, p. 296.
(*y*) *City and County Investment Co.* (1879), 13 C. D. 475.
(*z*) *Nicholl* v. *Eberhardt Co.* (1890), 61 L. T. 489.
(*a*) *Imperial Mercantile Credit Association* (1871), 12 Eq. 504.
(*b*) *Wright's Case* (1870), 5 Ch. 437.
(*c*) *Clinch* v. *Financial Corporation* (1868), 5 Eq. 450, 476; 4 Ch. 117.

if this construction is correct, and it has been decided that a company empowered by its memorandum of association to sell its undertaking for shares or securities in another company may properly make it a term of the sale that its uncalled capital shall be transferred to the purchaser (*d*), and a similar decision was given in the case of a sale by the liquidator under sect. 95 of the Companies Act, 1862 (*e*). The Court has no power under sect. 192 to authorize a sale to a new company in consideration of that company agreeing to pay the creditors of the old company by instalments (*f*), or of an agreement or resolution compelling the members of the selling company to pay a premium upon the shares of the purchasing company allotted to them (*g*). The resolution or agreement may provide that shares in the purchasing company shall be allotted as partly paid up, but a liability to pay cash cannot be imposed on the members of the selling company by allotting to them shares credited as partly paid up except with their consent (*h*). The shareholder accepting such shares becomes liable for the amount not credited as paid on the shares, and sometimes the shareholder is required to make a payment of part of this amount on application and on allotment (*i*). In such cases, which are of frequent occurrence, the agreement usually provides for the allotment to be made direct to such members, and not to the liquidator, so as to prevent the possibility of his name being put on the B list in the event of the winding-up of the purchasing company. A member of the selling company, even although he has not duly served a notice of dissent, cannot be compelled to accept shares in the purchasing company, although in such a case he would not be entitled to receive any compensation for his interest in the selling company (*k*). The consideration for the sale must be distributed among the members of the selling company in accordance with their rights and interests, under its regulations, in the assets of the company remaining after payment of its liabilities, otherwise the majority by

(*d*) *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.

(*e*) *Bank of South Australia* (No. 2), [1895] 1 Ch. 578. See now C. A. 1908, s. 151.

(*f*) *General Exchange Bank* (1867), 15 W. R. 477.

(*g*) *Imperial Bank of China, &c.* v. *Bank of Hindustan, &c.* (1868), 6 Eq. 91.

(*h*) See *City and County Investment Co.* (1879), 13 C. D. 475, 482; *Imperial Mercantile Credit Association* (1871), 12 Eq. 504; *Simpson* v. *Palace Theatre* (1893), 69 L. T. 70.

(*i*) *Weston* v. *New Guston Co.* (1889), 1 Megone, 225, 352; affd. H. L. (1891), 64 L. T. 815; *Postlethwaite* v. *Port Phillip Gold Co.* (1889), 43 C. D. 452.

(*k*) *Los' Case* (1865), 34 L. J. Ch. 699; *Higgs' Case* (1865), 2 H. & M. 657; *Martin's Case* (1865), *ibid.* 669; *Ex parte Bagshaw* (1867), 4 Eq. 341; *Drew's Case* (1867), 36 L. J. Ch. 785.

a special resolution could deprive the minority of their property (*l*), but the persons prejudicially affected by any other mode of distribution may assent thereto (*m*). If an agreement for sale provides for a distribution otherwise than in accordance with the members' rights the agreement is good, although the liquidator may be restrained from making such a distribution (*n*). It is submitted that any article of association is void which purports to empower the liquidator to make a distribution otherwise than in accordance with the legal rights of the contributories (*o*). An agreement that the members of one company shall, in exchange for their shares therein, take shares in another company is chargeable with *ad valorem* stamp duty (*p*).

A special resolution under this section is invalid unless the notice convening the meetings distinctly states that it is intended to proceed under such section (*q*), and it is invalid so far as it authorizes the liquidator to procure and pay for the underwriting of the shares of the new company out of the assets of the old company (*r*), unless the provisions of sect. 89 are complied with (*rr*).

The selling company can only sell under this section to another company (*s*), although, provided it is a corporate body, it is immaterial in what way it has been incorporated, and before the Companies Act, 1908, came into operation whether or not it was a foreign company (*t*). The effect of the Interpretation section (285) of the Act is to limit the purchasing companies to those formed and registered or registered under the Act or under some or one of the Acts mentioned on page 7, *ante*, so that a sale to a foreign company is now invalid (*u*). As the power to sell to a foreign company is most useful (*u*), and the alteration in the law was made by inadvertence, it is probable that an amending Act may be passed to correct the mistake. A sale to a person who intends to re-sell at a profit to a company is invalid (*s*); but a

(*l*) *Griffith* v. *Paget* (1877), 5 C. D 894; 6 C. D. 511; *Postlethwaite* v. *Port Phillip Gold Co.* (1889), 43 C. D. 469; *Simpson* v. *Palace Theatre* (1893), 69 L. T. 70; *North West Argentine Rail. Co.*, [1900] 2 Ch. 882.

(*m*) *Beeston Pneumatic Tyre Co.* (1898), 14 T. L. R. 338.

(*n*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469.

(*o*) Cf. *Payne* v. *Cork Co.*, [1900] 1 Ch. 308.

(*p*) *Chesterfield Brewery Co.* v. *Inland Revenue Commissioners*, [1899] 2 Q. B. 7.

(*q*) *Imperial Bank of China, &c.* v. *Bank of Hindustan* (1868), 6 Eq. 91; *Ex parte Fox* (1871), 6 Ch. 176, 193.

(*r*) *Canning Jarrah Timber Co.*, [1900] 1 Ch. 708.

(*rr*) *Barrow* v. *Paringa Mines*, [1909] 2. Ch. 658.

(*s*) *Bird* v. *Bird's Sewage Co.* (1874), 9 Ch. 358.

(*t*) *Ex parte Fox* (1871), 6 Ch. 176, 192.

(*u*) *Thomas* v. *United Butteries of France*, [1909] 2 Ch. 484.

sale to an agent or trustee for a company to be formed is within the section (*x*). It has been said that the question of the validity of a sale under this section cannot be decided in winding-up proceedings, but only in an action (*y*), which can be instituted by a non-assenting shareholder suing on behalf of himself and all other shareholders (*z*); but this question has been decided in favour of the validity of the sale by the Court of Appeal upon a summons taken out in the winding-up of the selling company (*a*); and in another case the Court of Appeal appeared to consider this course regular (*b*). An agreement for sale under this section is not invalid because it contains a clause providing that part of the purchase-money shall be paid to the directors and secretary of the company as compensation for loss of office (*c*).

With respect to a sale under this section, a member of the selling company may be an assenting member, a dissentient member, or a non-assenting member. By a dissentient member is meant a shareholder who, not having voted for the special resolution, has, under the section, duly notified his dissent. A valid notice must (a) be in writing, (b) be addressed to the liquidators, (c) be left at the registered office of the company within seven days after the meeting at which the confirmatory resolution was passed, and (d) express the dissent of the dissentient member from the special resolution, and require the liquidators either to abstain from carrying it into effect, or to purchase his interest in the selling company (*d*). A notice of dissent served before the confirmatory meeting, and not objected to or returned within a month thereafter, is valid (*e*). A dissentient member is not entitled to have his name omitted from the list of contributories, although he transfers his shares to the liquidator (*f*); but such a transfer relieves him from any liability as to the costs of the liquidation (*g*). If the liquidator and the dissentient member cannot agree upon the sum to be paid for his interest in the selling company, it must be determined by arbitration under sect. 192; but if the articles of association of a

(*x*) *Hester & Co.* (1875), 44 L. J. Ch. 757, 759.

(*y*) *Imperial Bank of China, India and Japan* (1866), 1 Ch. 339, 347, 348; *International Life Assurance Society* (1869), 20 L. T. 433.

(*z*) *Clinch* v. *Financial Corporation* (1868), 5 Eq. 450; *Bird* v. *Bird's Sewage Co.* (1874), 9 Ch. 358.

(*a*) *City and County Investment Co.* (1879), 13 C. D. 475.

(*b*) *Hester & Co., supra.*

(*c*) *Southall* v. *British Mutual Assurance Society* (1871), 6 Ch. 614. Cf. *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358.

(*d*) *Union Bank of Kingston-on-Hull* (1880), 13 C. D. 808.

(*e*) *London and Westminster Bread Co.* (1890), 59 L. J. Ch. 155.

(*f*) *Vining's Case* (1870), 6 Ch. 96.

(*g*) *Ex parte Poole* (1873), 42 L. J. Ch. 620.

company provide for arbitration between the company and its members, either mode of arbitration may be resorted to (*h*). An agreement within the meaning of this section is not constituted by an article of association providing that the sum payable shall be such sum as the liquidator can obtain by selling the shares to which the dissenting member but for his dissent would have been entitled (*i*). It is submitted that the time at which the value of the interest is to be ascertained is the date at which the binding agreement for sale is entered into, and that the sum awarded should include interest on such sum from such date until the date of the award. No interest is payable on the amount of the award until payment is demanded in writing, in which case interest is payable at the rate of 4 per cent. per annum from the date of demand until payment (*k*). It is difficult to say how the value of the member's interest is to be ascertained except by evidence of experts as to such value. The price to be paid in shares by the new company is disregarded in practice, and the value of a dissentient member's interest depends on the nature of the reconstruction (*l*). A commission to examine witnesses abroad has been granted to ascertain the value of the company's assets (*l*); but the Court will not give to a dissentient member liberty to examine the officers of the company under sect. 174 of the Companies Act, 1908 (*m*). Unless provision is made to satisfy any sums payable to a dissentient member, he can obtain an injunction to restrain the liquidator of the selling company from parting with all its assets (*n*). Generally by the agreement of sale the purchasing company undertakes to pay any sum to which the dissentients are entitled, with power to rescind the agreement if that sum should exceed a stated amount, and the liquidator has a lien upon the assets of the selling company to secure the payment of such sum. By a non-assenting member is meant a member who, not being a dissentient member as before defined, has not expressly or impliedly assented to the sale. If he declines to accept his proportion of the shares payable by the purchasing company, he will get nothing (*o*) unless they are allotted

(*h*) *De Rosaz* v. *Anglo-Italian Bank* (1869), L. R. 4 Q. B. 462.

(*i*) *Baring-Gould* v. *Sharpington Syndicate*, [1899] 2 Ch. 80.

(*k*) *United States Direct Cable Co.* (1879), 48 L. J. Ch. 665.

(*l*) *Mysore West Gold Mining Co.* (1889), 42 C. D. 535.

(*m*) *British Building Stone Co.*, [1908] 2 Ch. 450.

(*n*) *Hester & Co.* (1875), 44 L. J. Ch. 757; W. N. (1875), 179; *Baring-Gould* v. *Sharpington Syndicate*, *supra*; and *Payne* v. *Cork Co.*, [1900] 1 Ch. 308.

(*o*) *Weston* v. *New Guston Co.* (1889), 1 Megone, 225, 352; affirmed, H. L. (1891), 64 L. T. 815; *Zuccani* v. *Nacupai Gold Mining Co.* (1889), 61 L. T. 176.

and sold by the liquidator, in which case he is entitled to the net proceeds of the sale (*p*). A special resolution directing shares in the purchasing company to be offered to members of the old company, and fixing a reasonable limit of time for acceptance, is *intra vires* (*q*), and in the absence of such a stipulation a reasonable time must be allowed (*r*). An article of association is void which purports to authorize what may be done under sect. 192, with the omission of the proviso in favour of dissentient shareholders contained in that section (*s*). Notwithstanding a sale under this section, a member of the old company still remains liable as a contributory for the amount unpaid on his shares (*t*). Before the Joint Stock Companies Arrangement Act, 1870, was altered by the Companies Act, 1900, s. 24, the Court of Appeal refused to sanction a scheme of arrangement under the first-mentioned Act, which provided *inter alia* for the allotment of shares in a new company to the members of the old company but did not give them the rights of dissentient members under sect. 161 of the Companies Act, 1862 (*u*); and as the power to sanction is discretionary, the Court may still act upon this principle. Subject, however, to giving a dissenting shareholder this protection, the Court will have regard to the wishes of the majority of the creditors and contributories (*x*).

Section 192 provides, that if within a year after the passing of the resolution an order be made to continue the voluntary winding-up under the supervision of the Court, or to wind up the company compulsorily, the special resolution shall be void, unless sanctioned by the Court. Where the scheme is unfair to a minority of the shareholders of the selling company, and no agreement for sale to the purchasing company has been executed, the Court has jurisdiction to make a winding-up order and so stop the scheme (*y*). This sanction cannot be given before such an order is made (*z*).

(*p*) *Lake View Gold Mines*, [1900] W. N. 44.

(*q*) *Postlethwaite* v. *Port Phillip Gold Co.* (1889), 43 C. D. 452; *Burdett-Coutts* v. *True Blue Gold Mine*, [1899] 2 Ch. 616.

(*r*) *South Australian Petroleum Fields*, W. N. (1894), 189.

(*s*) *Payne* v. *Cork Co.*, [1900] 1 Ch. 308; *Fox's Case* (1871), 6 Ch. 176.

(*t*) *Ex parte Jeaffreson* (1870), 11 Eq. 109; *Vining's Case* (1870), 6 Ch. 96; *Part's Case* (1870), 10 Eq. 622.

(*u*) *Canning Jarrah Timber Co.*, [1900] 1 Ch. 708. Sect. 161 is the same as s. 192 of the C. A. 1908.

(*x*) *Imperial Mercantile Credit Association* (1871), 12 Eq. 504.

(*y*) *Consolidated South Rand Mines*, [1909] 1 Ch. 491. If the company appeals, indemnifying security for the costs of the appeal will be ordered: S. C. [1909] W. N. 66.

(*z*) *Callao Bis Co.* (1889), 42 C. D. 167.

Sometimes after the special resolution is passed, a supervision order is obtained for the purpose of obtaining such sanction (*a*).

Formerly it was necessary that the contract between the old company and the new company should be filed at the office of the Registrar of Joint Stock Companies before any shares were issued under it to the liquidator or the members of the old company (*b*). But it is now only necessary for the new company, within one month after allotting the shares, to file a return of the allotments and the contract under which such shares are issued, and any subsidiary contract providing for the issue of the shares to the shareholders who have agreed to take them (*c*).

Amalgamations.

In some cases the amalgamation of two companies is desirable in the interests of both companies, *e.g.* where the companies are carrying on the same kind of business, and their patent rights give them virtually a monopoly of the business; or where their capitals are small, and by amalgamation a better market for their shares can be acquired; or where an economy can be effected, or a ruinous competition put an end to. Amalgamation of companies may be effected either (1) by a special Act; (2) or under sect. 192 by the transfer by one or more companies, and the acquisition by an existing company of the undertaking and assets of the former company or companies, in consideration of fully or partly-paid shares in the transferee company; or by the transfer by two or more companies of their undertakings and assets to a new company incorporated for the purpose of acquiring the same in consideration of fully or partly-paid shares in the transferee company. Where the amalgamation of two existing companies is effected under the 192nd section the directors of each transferring company should

1. Enter into a proper agreement with the transferee company conditional upon the adoption thereof by the liquidators of the transferring company with the sanction of a special resolution.
2. Procure the passing of a special resolution to wind up the company voluntarily, appointing a liquidator, and authorizing him to enter into and carry into effect the proposed agreement.

(*a*) *New Flagstaff Mining Co.*, W. N. (1889) 123.

(*b*) See *ante*, p. 166.

(*c*) C. A. 1908, s. 88. See *ante*, p. 149, and as to penalty on default, see *ante*, p. 406.

The directors of the transferring company should, if its uncalled capital is not likely to be sufficient to satisfy dissentient shareholders, either retain sufficient assets for that purpose, or, by the agreement, provide that the transferee company shall provide any moneys to be paid to the dissentients, and that such moneys shall be a charge upon the assets transferred (*d*). In the latter case, the transferee company should cause to be inserted in the agreement a power to rescind, in case there are dissentients holding more than a specified number of shares. It is also necessary for both companies to see that the transferee company has the necessary power to carry into effect the agreement. It is sufficient if the company is empowered "to make and carry into effect . . . arrangements with respect to the union of interests or amalgamation, either in whole or in part, with any other companies or persons carrying on any trade or business of a similar nature to that of the company" (*e*).

By means of a winding-up, the transferring company can always acquire power to transfer its undertaking to the transferee company, and an unregistered company having no power to amalgamate, can, by registering itself under the Companies Act, 1908, avail itself of sect. 192, and thus transfer its business to another company (*f*). This being so, it is not necessary to refer to the cases of unincorporated companies in which decisions have been given as to whether or not their deeds of settlement permitted them to transfer their undertakings (*g*). Where the amalgamation is effected by the winding-up of the old companies, and the transfer of their undertakings to a company incorporated for that purpose, the new company's memorandum of association should expressly empower it to enter into and carry into effect the agreements with the old companies.

Reconstruction.

1. A reconstruction is the transfer of the undertaking and assets of one company to a new company formed for the purpose of acquiring the same.

(*d*) *Hester & Co.* (1875), 44 L. J. Ch. 757.

(*e*) *Pulbrook* v. *New Civil Service Society* (1877), 26 W. R. 11.

(*f*) *Southall* v. *British Mutual Assurance Society* (1871), 6 Ch. 614.

(*g*) *Era Insurance Co.* (1860), 30 L. J. Ch. 137; *Kearns* v. *Leaf* (1864), 1 H. & M. 681; *Ernest* v. *Nichols* (1857), 6 H. L. Cas. 401; *Doman's Case* (1876), 3 C. D. 21; *Argus Life Assurance Co.* (1888), 39 C. D. 571.

A reconstruction is resorted to by a company for one of the following purposes:—

(1) To "water" the capital of the company.

(2) To obtain fresh capital for carrying on the business of the company.

(3) To acquire powers which are *ultra vires* of the company.

I. To "water" capital is not a legal term, but it is a convenient expression, commonly used to denote the increase of the amount of the capital paid, or credited as paid, of a company, without any addition to its assets or diminution of its liabilities taking place (*h*). The "watering" of capital may be done from proper or improper motives. As the shares of a company paying a high average dividend are not, other things being equal, so valuable in proportion to the dividend as the shares of a company paying a much lower dividend, it is sometimes desirable to reconstruct the company in order to increase the marketable value of the holdings of its members. Thus, suppose a company pays regularly a dividend of 30 per cent. on its paid-up capital of 50,000*l.*, then, by forming a new company with a capital of 300,000*l.* with which to purchase the undertaking of the old company, its shareholders will hold, in the capital of the new company, 6*l.* for every 1*l.* they held in the capital of the old company. If the amount of dividend remains the same, they will receive 5 per cent. instead of 30 per cent., but these shares will sell for a larger sum proportionately (*h*).

II. Reconstruction is resorted to for the purpose of obtaining fresh share capital in cases where the issued capital is fully paid, and the selling price of the shares is below par. In a case of this kind a part of the consideration consists of shares in the new company, credited as partly paid up, to be allotted to the shareholders of the old company. The difference between the amount credited as paid up and the nominal value of the shares, constitutes the unpaid capital, which may be called up when required. A scheme of this kind is set out fully in *Postlethwaite* v. *Port Phillip, &c., Co.* (*i*).

The reconstruction of any company may be effected by a special Act of Parliament; of a chartered company by a new charter; of a company registered under the Companies Acts by proceeding under sect. 192 of the Companies Act, 1908, or, with the consent of all its members, by an exchange of the shares of the old company for those of the new company in the winding-up of the former company.

Where reconstructions are effected under sect. 192 of the Companies Act, 1908, the *modus operandi* is similar to that adopted

(*h*) This may also be done by a special Act. Thus in the session of 1909 the Anglo-Argentine Electric Tramways Co. obtained a special Act by which each of its ten per cent. second preference shares of 5*l.* each was divided into *two* five per cent. first preference shares of 5*l.* each.

(*i*) (1889), 43 C. D. 452.

for amalgamation of existing companies by means of a new company incorporated for the purpose of taking over their undertakings. Where a reconstruction has been carried out by the formation of a new company bearing the same name, which takes over all the liabilities of the old company, payments made by the new company to a creditor of the old company, who deals with the new company under the belief that he is continuing to deal with the old company, must be applied in discharge of debts due to him by the old company, and not of those due to him by the new company (*k*). In the case of trustees holding shares in the old company who have no power to hold shares or debentures in the new company, the Court has jurisdiction to authorize the trustees to retain shares and debentures in the new company to which they are entitled under the scheme of reconstruction (*l*).

III. A reconstruction is also resorted to by a company in the following cases, amongst others :—

(a) To carry on a business, or to apply its funds to purposes unauthorized by its memorandum of association.
(b) To acquire further borrowing powers.
(c) To acquire further powers of investment.
(d) To diminish the liabilities of members in respect of its uncalled capital; and
(e) To issue preference shares where it has no power to do so.

The first three objects can now in some cases be accomplished under sect. 9 of the Companies Act, 1908 (*m*). Where shares have been issued at a discount, the Court will not sanction the reduction of the subscribed capital of the company by writing off the amount of the discount (*n*), and therefore a reconstruction is necessary for that purpose.

Arrangements.

2. The word "arrangement," as applied to a company, means a scheme whereby the rights of all the creditors or shareholders of a company, or of all the members of any class of its creditors or shareholders, are varied.

Where a company becomes commercially insolvent it is often to the advantage of its creditors that they should forego some of their rights, in order to help it out of its difficulties and make their claims against it of greater value. It is therefore desirable that a company should have

(*k*) *Anning and Cobb's Claim* (1878), 38 L. T. 53.

(*l*) *Re New*, [1901] 2 Ch. 534, overruling *Re Crawshay* (1888), 60 L. T. 357, and *Re Morrison*, [1901] 1 Ch. 701.

(*m*) See *ante*, p. 18.

(*n*) *New Chile Co.* (1888), 38 C. D. 475.

power to make arrangements with its creditors, even although a small minority of them may oppose. Any company may make such an arrangement by procuring a special Act of Parliament for that purpose (*o*). But a railway company incorporated by a special Act, and any company registered under the Companies Acts, may, without obtaining a special Act, make arrangements with its creditors binding upon a dissentient minority. In the former case, however, it is only certain classes of creditors who can be affected.

Railway Companies.

An insolvent railway company incorporated by special Act may make arrangements with certain classes of its creditors under the Railway Companies Act, 1867, ss. 6—22. The scheme of arrangement may also contain provisions defining the rights of the shareholder of the company *inter se*, and for raising additional share and loan capital, or either of them. In England the scheme has to be filed in the High Court of Justice, Chancery Division, together with a written declaration under the seal of the company as to its insolvency, and an affidavit of the chairman and the majority of the directors of the company verifying the declaration. Notice of the filing of the scheme must be published in the *London Gazette*, and it must receive the assent in writing of three-fourths in value of the respective classes of holders of mortgages, bonds, debenture stock, and of rent-charge or other payment payable by the company in consideration of the purchase of the undertaking of another company, and of the guaranteed and preference shareholders affected by it, and also the assent of the ordinary shareholders at a general meeting specially called for that purpose (*p*). Where the consent of three-fourths of the classes prejudicially affected cannot be obtained the scheme cannot be confirmed (*q*). Where some of the ordinary shares have each been divided into two half shares, one of which has a preferential right to dividend as against the other, the half shares to which such right is attached do not constitute a class of preference shareholders under the Act (*r*). If the company is the lessee of a railway the like assent of the same classes of creditors and shareholders of the lessor company is similarly required. The

(*o*) See *London Financial Association* v. *Wrexham, &c., Rail. Co.* (1874), 18 Eq. 566.

(*p*) Railway Companies Act, 1867, ss. 8-13.

(*q*) *Neath and Brecon Rail. Co.*, [1892] 1 Ch. 349.

(*r*) *Brighton and Dyke Rail. Co.* (1890), 44 C. D. 28. *Quære*, whether the decision would not have been different had all the ordinary shares been so divided.

scheme must be confirmed by the Court, upon petition presented by the directors within three months after the filing of the scheme, unless the time is extended by the Court, and the petition must be advertised in the Gazette. After hearing the directors and any creditors, shareholders, or any other persons entitled to be heard, and upon proof that the scheme has been duly assented to, the Court may confirm the scheme. The scheme is then enrolled, and becomes as binding upon the persons affected by it as if it had been an Act of Parliament. Notice of the confirmation and enrolment of the scheme must be advertised in the Gazette (*s*). Printed copies of the scheme when confirmed and enrolled must be kept by the company at its principal office at all times, and sold to any person applying for the same at a price not exceeding sixpence (*t*). After the filing of the scheme, the Court may restrain proceedings against the company (*u*), and from and after notice of filing has been published in the Gazette, and until enrolment of the scheme (*x*), no execution, attachment or other process against the property of the company is available without leave of the Court (*y*). The property of the company includes the amount of capital remaining to be paid, in respect whereof a *scire facias* has been obtained under the Companies Clauses Act, 1845, s. 36 (*z*).

The following schemes, amongst others, have been sanctioned by the Court under this Act:—

The conversion of stock into irredeemable stock (*a*); the allotment of debenture stock to assenting outside creditors in satisfaction of their debts (*b*); the creation and issue to creditors, in satisfaction of their debts, of debenture stock in excess of the company's powers (*c*); the capitalizing of interest in arrear, and extending time for payment of principal moneys owing on debentures, and providing a fund out of surplus lands and free assets of the company for payment of interest and principal (*d*).

No creditor of the company, without his consent, can be bound by a scheme except he belongs to one of the above-mentioned

(*s*) Sects. 14-19.

(*t*) Sect. 20.

(*u*) Sect. 7.

(*x*) *Potteries, &c., Rail. Co.* (1869), 5 Ch. 67; *Potteries, &c., Rail. Co.* v. *Minor* (1871), 6 Ch. 621.

(*y*) Sect. 9.

(*z*) *Devon and Somerset Rail. Co.* (1868), 6 Eq. 610.

(*a*) *Irish North Western Rail. Co.* (1868), Ir. R. 3 Eq. 190.

(*b*) *West Cork Rail. Co.* (1873), Ir. R. 7 Eq. 96.

(*c*) *Teign Valley Rail. Co.* (1867), 17 L. T. 201.

(*d*) *East and West India Dock Co.* (1890), 44 C. D. 38. This company was also a railway company: see *S. C.* 38 C. D. 576.

classes specified in the Act (*e*); but creditors who are bound by the scheme do not thereby lose any priority over outside creditors which they possessed before (*f*). An outside creditor who has recovered judgment against a railway company, and in respect thereof has obtained and registered writs of elegit under the Act 23 & 24 Vict. c. 36, is not bound by a scheme unless he assents to it (*g*); but the scheme may provide for issue of debenture stock to such unsecured creditors as may agree to accept it in satisfaction of their debts (*h*), and a debenture holder is bound by a scheme, although filed after he has obtained judgment against the company (*i*). Although outside creditors are not bound by a scheme, they may be seriously affected by it, and are entitled to be heard against it, and the Court may, if the scheme unfairly interferes with their rights, refuse to sanction it (*k*).

Companies governed by the Companies Acts.

Arrangements between a company governed by the Companies Acts and the holders of its debentures or debenture stock are sometimes made under powers in that behalf contained in the trust deed securing the debentures or stock, or in the debenture or stock conditions (*l*). The Deeds of Arrangement Act, 1887, does not apply to arrangements made by limited companies, and therefore such an arrangement does not require to be registered although made while the company is a going concern (*m*).

The prescribed majority of the creditors or of any class of creditors of a company or of the members or of any class of members of a company can bind a minority to accept an arrangement under sect. 120 of the Companies Act, 1908, and a similar majority of creditors and of contributories can bind a minority to accept an arrangement with creditors under sect. 191 of the Act. Neither the Court nor the liquidator has power under sect. 214 of the Act to sanction an

(*e*) *Cambrian Rail. Co.* (1868), 3 Ch. 278; *Bristol and North Somerset Rail. Co.* (1868), 6 Eq. 448; *East and West Junction Rail. Co.* (1869), 8 Eq. 93; *Stevens* v. *Mid-Hants Rail. Co.* (1873), 8 Ch. 1064; *Stevens* v. *Cork and Kinsale Rail. Co.* (1872), Ir. R. 6 Eq. 604.

(*f*) *Stevens* v. *Mid-Hants Rail. Co., supra*; *Navan and Kingscourt Rail. Co.* (1885), 17 L. R. Ir. 398.

(*g*) *Stevens* v. *Mid-Hants Rail. Co., supra.*

(*h*) *East and West India Docks Co.* (1890), 44 C. D. 38; *Somerset and Dorset Rail. Co.* (1869), 18 W. R. 332.

(*i*) *Potteries, &c., Rail. Co.* v. *Minor* (1871), 6 Ch. 621.

(*k*) *Bristol and North Somerset Rail. Co.* (1868), 6 Eq. 448; *Somerset and Dorset Rail. Co.* (1869), 18 W. R. 332; and see *East and West India Docks Co.* (1890), 44 C. D. 38.

(*l*) See *ante*, p. 274.

(*m*) *Rileys, Ltd.*, [1903] 2 Ch. 590.

arrangement by which a dissentient minority of creditors or members are bound (*n*), nor can the Court order the liquidator to consent to a compromise under sect. 214 (*o*).

Sect. 120 of the Act is as follows:—

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may on the application in a summary 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, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be summoned in such manner 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 in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors or on 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 liquidator and contributories of the company;

(3) In this section the expression "company" means any company liable to be wound up under this Act.

Sect. 191 of the Act is as follows:—

(1) Any arrangement entered into between 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-fourths in number and value of the creditors;

(2) Any creditor or contributory may within three weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon as it thinks just, amend, vary, or confirm the arrangement.

Arrangements are usually made under sect. 120, as under it both creditors and members and any class of creditors or members

(*n*) *Albert Life Assurance Co.* (1871), 6 Ch. 381.

(*o*) *Pearson's Case* (1872), 7 Ch. 309. See *ante*, p. 467.

can be bound and a winding-up is unnecessary, and the consent of the requisite majority of creditors is more easily obtained.

It is noticeable, that while under the Railway Clauses Act, 1867, arrangements can only be made with the classes of creditors therein specified, no such limitation is contained in sect. 120 of the Companies Act, 1908, and any creditor, whether secured or unsecured, may be bound under it. Hence considerable difficulty would arise in applying the section but for the discretion vested in the Court, which enables the Court to refuse to sanction a scheme which would be unfair to any creditor or class of creditors. "The word 'creditor' in the section is general. No distinction is made between different kinds of creditors; there is nothing to except any particular class of creditors from the jurisdiction of the Court. But, of course, it is one thing to say that there is power to do it, and it is quite a different thing to say that the Court, in the exercise of its discretion, thinks the scheme a proper one to be sanctioned" (*p*). Sect. 120 applies to every person having a pecuniary claim against the company, whether actual or contingent, and the assignor of a lease to the company, whom the company had indemnified against liability under the lease, was held to be barred, by a scheme under which the new company took over the assets and liabilities of the old company, from asserting any claim to have assets of the old company impounded to meet any claim arising under the indemnity (*q*).

Where an arrangement is to be made under sect. 120 of the Act of 1908, the course of procedure is as follows:—

1. The scheme of arrangement is prepared.

It is not necessary in a scheme to expressly reserve the rights of creditors of the company against its sureties for debts of the company, as such rights are unaffected by a scheme (*r*). The word "discount" as used in a scheme means rebate of interest, not true discount (*s*). It is usual for the scheme to provide that it may be modified with the sanction of the Court, but as the Court will not sanction important modifications unless they are approved by meetings convened for that purpose, it is desirable to see what arrangements have been sanctioned by the Court. By the section any compromise or arrangement may be sanctioned, and the Court,

(*p*) Per North, J., *Empire Mining Co.* (1890), 44 C. D. 409.

(*q*) *Craig's Claim*, [1895] 1 Ch. 267. Appeal to the H. L. compromised on terms of the judgment being affirmed, each party paying its own costs: (1896), 74 L. T. 744.

(*r*) *London Chartered Bank of Australia*, [1893] 3 Ch. 540.

(*s*) *Ex parte Farquhar*, [1896] 2 Ch. 320.

in the exercise of its discretion, has liberally construed this authority. Thus, a scheme may be sanctioned which provides that first mortgage debenture-holders shall be postponed to other debentures or charges about to be issued or created (*t*); that the time for payment of arrears of interest and the principal moneys owing on debentures shall be extended, and the rate of interest reduced (*u*); that debentures of a new company shall be accepted in satisfaction of the debentures of the old company, and that other creditors shall accept the liability of the new company for the liability of the old company (*x*); that debenture-holders and other creditors of the company shall accept shares in the new company in satisfaction of their debts (*y*); that debentures the interest on which is to be only payable out of the profits of the company, shall be taken in satisfaction of debentures the interest on which is payable whether profits are made or not (*z*). Where the company is in course of being wound up and is not reconstructed but is to continue to carry on its business, the scheme provides that the liquidation shall be stayed, the liquidator discharged, and the assets handed over by him to the company (*z*). In this case it is necessary to obtain an order on the application of a creditor or contributory to stay the winding-up (*a*).

The Court refuses to sanction a scheme when the required majority is made up by persons who are not acting *bonâ fide* in the interest of the creditors or class of creditors to which they belong, *e.g.* where their votes are given to rid themselves of their liability for amounts unpaid on their shares (*b*); but in the absence of any improper motive there is nothing to prevent a creditor, who is also a shareholder of the company, from voting (*c*).

2. An order is obtained directing the holding of separate meetings of the creditors, or class or classes of creditors, and the members or class or classes of members, whose rights are to be affected, for the purpose of considering the scheme.

The order is obtained on summons, and can be obtained by

(*t*) *Western of Canada Oil Co., Ltd.*, W. N. (1874), 148.

(*u*) *Landore Siemens' Steel Co.* (1879), Palmer's Precedents, 4th ed. 613.

(*x*) *Northampton Coal Co.* (1876), *ibid.* 617.

(*y*) *Slater* v. *Darlaston Coal, &c., Co.*, W. N. (1877), 165; *Empire Mining Co.* (1890), 44 C. D. 403; *North Western, &c., Co.* (1882), Palmer's Precedents, 3rd ed. 603.

(*z*) *Alabama, &c., Rail. Co.*, [1891] 1 Ch. 213.

(*a*) See *ante*, p. 427.

(*b*) *Wedgwood Coal Co.* (1877), 6 C. D. 627.

(*c*) *Madras Irrigation, &c., Co.*, W. N. (1881), 172.

the company or by a creditor or member, or, in the case of a company being wound up, by the liquidator. The order usually directs who is to convene and act as chairman of the meetings, and how notice of the meetings is to be given. The form of any advertisements, notices and proxy papers that may be required is settled in the chambers attached to the winding-up Court, if the company is in course of being wound up. The Court has no jurisdiction to stay execution upon a judgment until after the meetings are held (*d*).

Where the scheme does not affect the rights of a class of creditors, *e.g.* unsecured creditors, it is not the practice for notice of the intended meeting to be sent to them. Although in one case Brett, L.J., was of opinion that only one meeting should be held of all the classes of creditors intended to be bound by the scheme (*e*), it is necessary for different classes of creditors to have separate meetings (*f*). Thus, where there were matured and unmatured policy holders of an insurance company, it was held that a dissentient holder of a matured policy was not bound by a resolution passed at a meeting to which all the policy holders were summoned (*g*). Probably the same rule will hold good with regard to classes of members. A scheme may be sanctioned notwithstanding the dissent of a class of members if their interest in the company is valueless (*h*).

3. The resolutions approving the scheme are passed by the required majority at each of the meetings convened as before mentioned.

The majority required is a majority in number representing three-fourths in value of the creditors, or class of creditors (*i*), or of the members, or class of members (*h*), *present* in person or by proxy at the meeting.

Foreign creditors may be authorized to give proxies to a person named by the official receiver, and to deposit them at a place named by him in the foreign country; and proxies so given are valid and can be used at the meeting, particulars thereof being telegraphed to

(*d*) *Booth* v. *Walkden Spinning, &c., Co.*, [1909] W. N. 12.

(*e*) *Dynevor Collieries Co.* (1879), 11 C. D. at p. 610.

(*f*) *Wedgwood Coal Co.* (1877), 6 C. D. 627; *Alabama, &c., Rail. Co.*, [1891] 1 Ch. 213.

(*g*) *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 2 Q. B. 573.

(*h*) *Tea Corporation*, [1904] 1 Ch. 12.

(*i*) *Bessemer Steel Co.* (1875), 1 C. D. 251.

the official receiver as the chairman of the meeting (*k*). These proxies require a 10*s.* stamp, and being executed abroad can be stamped within thirty days after they arrive in England (*k*). Proxy papers used when the company is in liquidation must be in the form approved in chambers (*l*). Section 120 of the Act of 1908 does not provide how the majority is to be ascertained at meetings of members or classes of members, but it is submitted that the majority required is a majority of the members or class of members present in person or by proxy at the meeting and entitled to vote representing not less than three-fourths in number of the votes to which such members are by the regulations of the company entitled. Where debentures are payable to bearer they must be produced at the meeting, to entitle the bearers to vote and to estimate the value represented by the votes (*m*). Where the debentures are registered, only the registered holder or his proxy can vote.

The Court will not sanction a scheme where it is impossible to estimate the value of the debts owing to the creditors (*n*).

4. The sanction of the scheme by the Court is obtained.

In considering whether a scheme should be sanctioned, the general principle on which the Court acts is laid down in the *Alabama, &c., Rail. Co.* (*o*)—viz. that the Court must look at the scheme and see whether the section has been complied with, whether the majority are acting *bonâ fide* or whether they are coercing the minority in order to promote interests adverse to those of the class whom they purport to represent, and then see whether the scheme is reasonable or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it. When there is nothing unreasonable or unfair in the scheme as between different classes of creditors or of members, the Court defers to the wishes of the required majority (*p*). Where a scheme of arrangement involves a reduction of capital, the reduction should be carried out in accordance with sects. 46 to 56 of the Companies Act, 1908 (*q*).

A scheme of arrangement may be sanctioned under sect. 120,

(*k*) *English, &c., Chartered Bank*, [1893] 3 Ch. 385.

(*l*) *Inter-Oceanic Railway of Mexico* (1896), 3 Manson, 162.

(*m*) *Wedgwood Coal Co.* (1877), 6 C. D. 627.

(*n*) *Albert Life Assurance Co.* (1871), 6 Ch. 381.

(*o*) [1891] 1 Ch. 239, 247.

(*p*) *Alabama, &c., Rail. Co., supra*; *Tunis Rail. Co.* (1874), 10 C. D. 270, n.; *English, &c., Chartered Bank*, [1893] 3 Ch. 385.

(*q*) *Cooper, Cooper & Johnson*, [1902] W. N. 199.

although one or more previous schemes have been sanctioned (*r*). A scheme so sanctioned cannot be pleaded as a defence to an action in a colonial Court by a non-assenting creditor suing for the whole of his debt (*s*). The Court will not sanction a scheme which provides for payment of costs or remuneration unless it also provides for their taxation or allowance (*r*). The application for the sanction of the Court is made by petition, intituled in the matter of the Companies (Consolidation) Act, 1908, and of the company. It is not necessary to serve the petition on any creditors whose rights are not affected by the scheme, even although they have not been summoned to attend the meeting convened to consider the scheme.

(*r*) *Mortgage Insurance Corporation*, W. N. (1896), 4.

(*s*) *New Zealand Loan, &c., Co.* v. *Morrison*, [1898] A. C. 349.

WINDING-UP.

CANADIAN NOTES.

Revised statutes of Canada, 1906, Ch. 144. The Act is *intra vires*, the Dominion Parliament being in the nature of an insolvency law, and applies to all corporate bodies of the nature mentioned in it, whether incorporated under provincial or Dominion charter. *Re Clarke and Union Fire Ins. Co.* (2), 14 O. R. 618; 16 A. R. 161; *sub nom. Shoolbred* v. *Clarke*, 17 S. C. R. 265. And see *Allan* v. *Hanson*, 18 S. C. R. 667.

But the only clauses that can apply to an Ontario corporation are those dealing with insolvency. *Re Cramp Steel Co.*, 11 O. W. R. 133. *In re Nelson Ford Lumber Co.*, 1 Sask. L. R. 503.

While a contributory is regarded as a debtor, it is not every debtor that is to be called a contributory. Sect. 19 implies that contributories are limited to persons who are shareholders or members. *Re Central Bank and Yorke*, 15 O. R. 625.

Semble, or who are alleged to be such.

The scope of the term "contributory" appears to be no greater in this Act than in its English original. *Canadian Pacific Railway Co.* v. *Robinson*, 14 S. C. R. 105.

The description of a contributory does not seem to contemplate that any one but a shareholder or member of the company shall be placed upon the list, although this would probably be held to include a person who had entered into a binding contract with the company to take shares. *Per* Burton, J.A., *In re The London Speaker Printing Company, Pearce's Case*, 16 A. R. 508, at p. 513.

If a petition is based on the insolvency of the company, the petitioner must strictly prove the existence of one or more of the circumstances set out in this section, or his petition will be dismissed. *Re Rapid City*, 9 Man. L. R. 574. *In re Harris Maxwell &c. Co.*, 1 O. W. N. 984, a winding-up order was asked for on the ground that it was "just and equitable that the company should be wound up." It was alleged that the company was being

mismanaged, etc., but it was held that the grounds shown were insufficient. A winding-up order cannot be granted merely because there is dissension within the company. Held, that the substratum of the company cannot be said to be gone so long as the property acquired by the charter exists.

A petition for a winding-up order in respect of a company incorporated by Dominion letters patent must be presented in the province where the head office is situated. *Watzel* v. *Oriental Silk*, 9 Q. P. R. 289.

Sub-sect. (*a*).—It has been decided in Ontario by Magee, J., *In re Ewart Carriage Works Limited*, 8 O. L. R. 527, that sect. 4 of the Act defines the only manner in which a company can be shown to be "unable to pay its debts as they become due" under this sub-section, and that if the petitioner relies on this sub-section, and fails to prove the demand in writing, and the neglect by the company for sixty days to pay the sum due, his petition must be dismissed. The same decision was given, prior to this case, in Manitoba, *In re Qu'Appelle Valley Farming Co.*, 5 Man. L. R. 160, and *Re Rapid City Farmers' Elevator Co.*, *supra*.

Prior to any of these decisions, it was held in Quebec, in *McKay* v. *L'Association Coloniale*, 13 R. L. 383, that the petitioner is not confined to the manner prescribed by sect. 4 in showing that the company is "unable to pay its debts as they become due." But this decision is now of no effect in Ontario. And it is submitted that the decision *In re Ewart* is perfectly sound, the legislation having, it would seem, purposely avoided the adoption of the English section, allowing the petitioner to prove to the satisfaction of the Court that the company is unable to pay its debts as they become due, altogether apart from any demand and consequent neglect on the part of the company to pay the debt. In view of this, the English cases on this point must be closely scrutinized before being applied here.

Sub-sect. (*b*).—See *Lake Winnipeg, etc.*, 7 Man. 252, 255.

Sub-sect. (*d*).—If it is intended to rely on this sub-section, it is submitted that the petitioner must show the acknowledgment as an act of the company to the same extent as an act upon which the company can be held liable in an action on a contract. A statement made by a shareholder that the company is insolvent is obviously insufficient, so also with a statement of a director. In fact, it is doubtful whether the president or general manager of a company could make a statement acknowledging the company's insolvency, so as to enable a creditor to obtain an order winding up

the company on the strength of that acknowledgment. The business of the president or general manager is to carry on the business of the company, and not to bring it to an end. *Re Briton Medical*, 11 O. R. 478. It is submitted that the acknowledgment must in effect amount to a statement by the company through its board of directors or other proper channels that it is insolvent. See, however, *Hovey* v. *Whiting*, 14 S. C. R. 515. The tendency of the Court is to restrict this sub-section within very narrow limits.

No appearance of a company to oppose a motion is not sufficient acknowledgment of insolvency within this sub-section. *Re Lake Winnipeg T. L. & P. Co.*, 1891, 7 M. R. 255. An affidavit of the president of the company, who is also a creditor, stating that the company is insolvent, but not giving a statement of assets and liabilities, was held insufficient evidence. *Ibid.*

This acknowledgment must be alleged in the petition if the petitioner relies on this sub-section. *Re Briton Medical*, 11 O. R. 478. See also *Re Peterborough Shovel and Tool Co.*, 14 O. W. R. 821.

Sub-section (*g*).—Notwithstanding the fact that an assignment for the benefit of creditors is made a ground upon which a winding-up order may be granted, the Court has a discretion to refuse the order and allow the assignment proceedings to be continued if the creditors or the majority of them so desire. But as against the company the order is made *ex debito justitiæ* when an assignment for the benefit of creditors is alleged and proven. *Re Strathy Wire Fence Co.*, 8 O. L. R. 186.

If the petition does not allege an assignment for the benefit of creditors, and the company executes an assignment between the time of service of the petition and the hearing, the petitioner cannot avail himself of the assignment, and unless other grounds are shown upon which the order can be made the petition will be dismissed with costs. *Re Churchill Manufacturing Company* (unreported), Meredith, C.J., December, 1907.

This is because the Act requires four days' notice to be given to the company, and effect cannot be given to a ground of which the company had not that notice. *Re Abbott-Mitchell*, 2 O. L. R. 143.

For an instance where a winding-up order was made under this sub-section, see *Re Qu'Appelle Valley Co.* (1888), 5 M. R. 160.

Sub-section (*h*).—It is held in Manitoba that the return of a writ of execution by a County Court bailiff *nulla bona* is not a good ground for an order under this sub-section. *Re Rapid City*, 9 M. R. 574.

Where the sale was fixed for January 3rd and the writ was in

the sheriff's hands on December 30th, it was held in Manitoba that this proved insolvency under this section. *Re Lake Winnipeg, etc., Co.*, 7 M. R. 255.

A company is deemed to be unable to pay its debts as they become due whenever a creditor to whom the company is indebted in a sum exceeding $200 then due has served on the company, in the manner in which process may legally be served on it in the place where service is made, a demand in writing, requiring the company to pay the sum so due, and the company has, for ninety days in the case of a bank, and for sixty days in all other cases, next succeeding the service of the demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditors. Ch. 144, Sect. 4.

The demand in writing must be served on the company in the manner in which process may legally be served on it. It is not sufficient that verbal demands have been made, or demands by letter. *Re Rapid City Farmers' Elevator Co.*, 9 M. R. 574.

For the rules governing service see Consolidated Rule 159. Service of a specially endorsed writ of summons in an action against the company to recover the amount of a creditor's claim is not sufficient demand in writing, within the meaning of the above section. What is required is a demand for immediate payment which is reasonably certain in terms and not calculated to mislead. *Re Abbott-Mitchell, etc., Co.*, 2 O. L. R. 143.

It is not a good demand under this section if the debt was not due when demand made. *Re Briton Medical*, 11 O. R. 478.

The whole period of sixty days must have expired before the petition is launched. *Re Catholic Publishing Co.*, 2 D. J. S. 116.

If an assignee of a debt petitions and relies on this section he must prove that the assignment was prior in date to the demand. *Re Rapid City*, 10 M. R. 681.

A landlord's claim to be paid preferentially for overdue rent after the service is not good. *Fuches* v. *Hamilton Tribune*, 10 P. R. 409.

Section (6).—This Act applies to all corporations: (*a*) which are insolvent; (*b*) which are in liquidation or in process of being wound up, and, on petition by any of their shareholders or creditors, assignees or liquidators, ask to be brought under the provisions of this Act.

Section (6) (*b*) applies only to companies which are insolvent or which were incorporated by the Dominion Parliament or are subject to its control. *Re Cramp Steel Co.*, 11 O. W. R. 133.

Where a foreign company has been ordered to be wound up by

a foreign Court and the company is doing business in Canada and has assets here, a Canadian Court can order the company to be wound up so far as its Canadian assets are concerned. The winding-up proceedings here will be ancillary to the winding-up proceedings in the foreign country. *Allen* v. *Hanson*, 18 S. C. R. 667.

Our Courts cannot exercise with regard to an English company the full extent of the powers conferred by our winding-up Act. For example, they cannot by the effect of a winding-up order affect the operations of the company in England, causing it to cease to carry on its business there, as under section 20 the company must do in this country. But the same difficulty existed when the English Courts were asked to make orders to wind up colonial companies, and was held not to affect the jurisdiction.

All the winding-up Act seeks to do in the case of foreign corporations is to protect and regulate the property of the corporations in Canada, and protect the rights of the creditors of such corporations upon the property in Canada. It by no means follows that because all the provisions of the Act may not be applicable to foreign cases that those portions which are should not be acted upon. *Per* Ritchie, C.J., in *Allen* v. *Hanson*, *supra*.

The Ontario Winding-up Act does not apply to a company incorporated in Ontario where application for winding up is made by a creditor on the ground that the company is insolvent; the local legislature having no jurisdiction in matters of insolvency, which are wholly within and "subject" to the legislative authority of the Parliament of Canada. The Ontario Act applies solely to voluntary liquidation. *Re Iron Clay Brick Manufacturing Company, Turner's Case*, 19 O. R. 113.

A company incorporated under an Act of the Province of Ontario and carrying on business in Ontario is "doing business in Canada" within the meaning of this section. *Re Ontario Forge and Bolt Company*, 25 O. R. 407.

Upon the application of certain policy-holders to a Court of Equity to have a receiver appointed for the purpose of winding up the company and collecting in the assets, it was held that the Court could not make such an order, as the object of the Legislature in creating an insolvency Court was to administer the estates of insolvents, and under the Insolvent Act of 1875 (D) complete provision was made for the carrying out of all that the plaintiffs demanded. A Court of Equity has, in such cases, no jurisdiction to make such an order. *McNeil* v. *Reliance Mutual Fire Insurance Co.*, 26 Gr. 567.

It is submitted that the Court will act upon the principle of this decision in respect to this Act.

It has been held that the Act does not apply to a club or literary society or the like, they not falling within the term "trading companies." *Re Montreal City Club*, 8 R. J. Q. (S. C.) 527.

This Act applies to foreign companies doing business in Canada. It would seem that such companies must have assets within Canada before a winding-up order can be made. *Allen* v. *Hanson*, 18 S. C. R. 667.

See sect. 12.

(*d*) When the capital stock of the company is impaired to the extent of twenty-five *per centum* thereof, and when it is shown to the satisfaction of the Court that the lost capital will not likely be restored within one year; or

Only a shareholder holding shares of the company's stock to the amount of at least $500 may petition under this sub-section.

It was held by Mabee, J., *In re Cramp Steel Co.*, 11 O. W. R. 133, that this sub-section applies only to companies subject to federal control or incorporated under the Dominion Companies Act. It would appear from this decision that the order can be made in respect to an Ontario corporation under sub-section (*c*) only.

Who may Petition.

The fact that a creditor is entitled to a lien for the full amount of his claim does not disqualify him from being a petitioner. *Re Strathy Wire Fence Co.*, 8 O. L. R. 186.

The assignee of a debt can petition, but the assignor should join in the petition. *Re People's Loan & Deposit Co.*, 7 O. W. R. 253.

The assigning of claims for the purpose of bringing a petition is not to be encouraged. It is not permissible for various creditors of a company to assign to any creditor or any other person their claims against the company in order that the petitioner may have a claim against the company in excess of two hundred dollars for the purpose of enabling him to petition to wind up the company. *Re People's Loan & Deposit Co.*, 7 O. W. R. 253.

Two or more creditors, each for a sum less than two hundred dollars, but the total of whose claims is in excess of two hundred dollars, cannot present valid petition for the winding-up of a company based on these claims. *Re People's Loan & Deposit Co.*, *supra.*

Evidence in Support of Petition.

It was held by Anglin, J., in 1907, *In re Kearns Ink and Wax Company* (unreported), that service of the petition on the vice-president of the company when it was not shown that the president could not be served, was not good service on the company.

Where a company has made an assignment for benefit of creditors, service of a petition for a winding-up order upon the assignee for benefit of creditors is not good service upon the company under this section. *Re Rodney Casket Company*, 12 O. L. R. 409.

The petitioner is not required to give four clear days' notice. Notice of presentation of the petition served on the 4th of November and returnable on the 8th, was held to be good service. *Re Arnold*, 2 O. L. R. 671.

In order that a winding-up order may be made, it is essential (1) that sufficient allegations be contained in the petition to bring the case within the sections of the Act; (2) that the petition should be verified by a sufficient affidavit. *Re Kootenay Brewing Co.* (1898), 6 B. C. R. 131. Leave to file a supplementary affidavit is, as a rule, refused.

The affidavit in support of petition for winding-up must be filed before service of the petition, in accordance with Con. Rule 524. *Re Balding Lumber Co., Ltd.*, 23 O. L. R. 255.

Discretion of Court.

The question, whether or not the Court has a discretion to grant or refuse a winding-up order when the insolvency of a company is shown as required by the Act, has been considered in several cases of late years. The question first arose in the *Wakefield Rattan Co.* v. *The Hamilton Whip Company, Limited*, 24 O. R. 107. See also *Re William Lamb Manufacturing Co.*, 32 O. E. 243. And *Re Maple Leaf Dairy Co.*, 2 O. L. R. 590.

The question finally came before the Court of Appeal, *In re Strathy Wire Fence Co.*, 8 O. L. R. 186.

And it can be taken as settled that on an application for a winding-up order the Court has a wide discretion to grant or withhold the order, and that the Court will examine into the case, and if possible the wishes of the creditors will be observed.

On an application to wind up a company, if it is clearly shown

on the material that the company has no assets, and that therefore the creditor can obtain nothing by a winding-up, the Court will refuse to make the winding-up order. *In re Georgian Bay Ship Canal and Power Aqueduct Co.*, 29 O. R. 358.

To enable a company to be wound up under this Act it is not sufficient for the company to appear by counsel and admit insolvency and consent to be wound up, but the facts as required by the Act showing insolvency must be disclosed in the material on which the petition is based. *Re Grundy Stove Co.*, 7 O. L. R. 252.

Costs of Petition.

The usual practice when the petition is successful is to give the petitioner his costs out of the estate and also to give costs to the company for opposing the petition. Any creditors and contributories who appear on the petition are also as a rule given costs, but only one set of costs among creditors and one set of costs among contributories, and this only where there is good ground for their appearance.

The company is entitled to its costs of appearing on the petition even although it does not oppose the application but in fact facilitates it. Its costs may be paid out of the estate. *Re Wiarton Beet Sugar Co.*, 3 O. W. R. 393.

Second Petition.

Where there are two petitioners for a winding-up order against the one company, the applications being heard together the order was made under both petitions, but the conduct of the proceedings was given to the latter petitioner, a creditor for money paid, in preference to the earlier one, who was shown to be an employee of and in close touch with the company. In ordinary circumstances the first petition has the preference, and the second petitioner would lose his costs if he had notice of the previous one, unless there were other reasons for filing a second petition, such, for instance, as in this case, a fear of collusion. *Re Estates Limited*, 8 O. L. R. 564.

A winding-up order having been obtained by a creditor from the Master in Chambers under 45 Vict. c. 23, sect. 28 D., on material which was not regular, and the solicitor who represented the petition being the solicitor for the company, it was ordered by the Court

that the carriage of the proceedings should be given to creditors who presented a petition on the following day. It is preferable to have the winding-up conducted by solicitors who are totally disconnected with the company. *Re Joseph Hall Manufacturing Co.*, 10 P. R. 485.

Where a petition was served and filed without notice when a previous petition was pending, and the second petitioner made out a good case for the winding-up order, the petitioners were allowed their costs, although a winding-up order was made on the first petition. *Re Algoma Commercial Co.*, 3 O. W. R. 140.

Where a petition is filed for the winding-up of a company and a second petition is subsequently filed and brought on for hearing before the first petition, the Court should be informed of the prior proceedings. An attempt made to forestall a *bonâ fide* application by a friendly one is not a practice that should be encouraged. *Re Enterprise Hosiery Co.*, 4 O. W. R. 56.

A creditor obtained a winding-up order, and other creditors applied to have the order set aside on the grounds of fraud and prejudice and asked for the appointment of a receiver. Middleton, J., refused the application, holding that the order was in effect a judgment of the Court directing the company's assets to be realized and applied *pro rata* in discharge of its obligations, and that no other creditor could have any greater or higher right, that the order could not defraud any creditor nor in any way prejudice him, and that the Court had no power on this application to appoint a receiver. *Re Standard Cobalt Co.*, 16 O. W. R. 501.

Miscellaneous Cases.

The petition cannot be amended on the hearing so as to include a ground upon which the order can be made which was not set out in the petition. The Act requires four days' notice of the application to be given to the company, and effect cannot be given to a ground of which the company had not that notice. *Re Abbott Mitchell*, 2 O. L. R. 143.

But leave will generally be given to serve a new petition.

Leave given to file further material and represent petition. *Re Redpath Vehicle Co.*, 4 O. W. R. 515.

Leave given to amend petition, offer additional evidence and represent petition in fourteen days. *Re Ewart*, 8 O. R. L. 527.

After the order has been pronounced, drawn up and entered, the

Court has no power to alter it except in a new proceeding brought for the purpose. See Holmsted and Langton, p. 838.

Until entry the order may be varied. See Holmsted and Langton, p. 837.

After the order has been entered the only power that the Court has to stay its effect is to be found in sect. 19. Note that the section gives no power to the company to apply for a stay of the order.

Where a winding up is proceeding in a foreign Court and special relief is sued for in a province where certain of the assets are situate, it is not proper for a local Court to interfere in respect to property controlled by the foreign Court in the winding up. If the suit or proceeding is in aid of the foreign proceedings, the shape in which the assistance should be given in the local Court would depend on what has been done in the foreign Court. There must be no conflict between the two Courts, and in order to prevent this the local Court should have evidence to show the position of matters in the foreign Court, and the steps about to be taken there, so as to furnish proper relief to the plaintiff, and at the same time not to interfere with steps being taken in the foreign Court with the same object. *Louth* v. *Western of Canada Oil Co.*, 22 Gr. 557.

Order by Judge in bankruptcy in England enjoining plaintiffs from proceeding in the High Court of Justice for Ontario. See *Maritime Bank* v. *Stewart*, 13 P. R. 86.

In winding-up applications it is advisable to follow the rules for guidance to be found in English cases. *Re Alpha Oil Co.*, 12 P. R. 298. But great care must be taken as many of the English sections and rules are entirely different to ours.

When the petition is granted the judges make two orders, one directing the company to be wound up, and the other appointing the provisional liquidator and referring the matter to the Master in Ordinary or other proper officer to appoint a permanent liquidator and take all necessary steps in connection with the winding up. In applications made at Toronto, the reference must be directed to the Master in Ordinary under the provisions of sect. 121 of the Ontario Judicature Act, unless he certified that he is unable to take the reference.

Proceedings following a Winding-up Order.

After the winding-up is made the officer to whom the winding-up has been referred requires the provisional liquidator to bring in an

affidavit showing the estimated value of the assets of the company, and upon this being done he directs a bond, usually for double the amount of the assets, to be filed by the provisional liquidator. This bond is commonly drawn so as to be sufficient for the permanent liquidator in case the provisional liquidator is subsequently appointed permanent liquidator. The referee then gives an appointment which he directs to be advertised, calling upon all shareholders, contributories and creditors of the company to attend before him when he will appoint a permanent liquidator. It is not usual to appoint a person other than the provisional liquidator to be permanent liquidator unless good cause is shown, but the wishes of the majority of the creditors are usually observed. After the appointment of permanent liquidator he proceeds to sell the assets of the company with the approval of the Master, either by tender or auction sale after proper advertising. The liquidator also advertises at once for all claims against the company to be filed with him duly verified by affidavit. After the expiration of the last day upon which the liquidator has given notice the claims against the company must be filed with him, he presents the claims filed to the Master, and such claims which are proper to be allowed are allowed. In case the liquidator desires to contest the right of any persons to rank upon the estate he serves such person with a notice requiring him to appear before the Master upon a named day and prove his claim. On the return day the disputed claimant must prove the claim to the satisfaction of the Master, or his right to rank against the estate is barred.

The liquidator also proceeds forthwith to prepare a list of the persons who, in his opinion, are liable for unpaid stock. The liquidator brings in his affidavit setting out these defaulting shareholders, and an order is made by the Master requiring them to attend before him on a named day and show cause why they should not be settled on the list of contributories. On the return day of this appointment the case is tried before the Master in the ordinary manner. In case the liquidator desires to take proceedings against the directors of the company for breach of trust under section 123, he brings in an affidavit giving his grounds for such proceedings, and if satisfactory to the Master he issues a summons calling upon the directors to appear before him, and the liquidator must then make out his case. When all the contributories' cases are disposed of the Master makes his report upon the same, and it is filed, and notice of filing given to the contributories, and the report becomes absolute within fourteen days from the date of the service of the

notice of filing. The same applies to a misfeasance summons. When all creditors' claims of which the liquidator has notice, whether formal or otherwise, are either admitted to rank against the company or are barred by the referee, and when the proceedings in connection with the sale of the assets and the realization upon any judgments obtained against contributories or directors, are concluded, the solicitors' costs are taxed, the liquidator brings in his statement of cash received and paid, and the remuneration of the liquidator and the dividend to be paid is fixed. Upon the liquidator producing vouchers to the referee for the payment of all dividends, an order is made discharging him from further liability and directing the bond filed by him to be delivered up for concellation.

An application for an order staying proceedings should usually be made on notice to the plaintiff in the action or suit, but in a proper case an order may be made on an *ex parte* application. The correct practice is to specify what action is restrained, and to restrain proceedings in it, but a departure from this may not invariably be fatal. The order should also contain the usual undertaking as to damages. *In re Tobique Gypsum Co.*, 6 O. L. R. 515.

The jurisdiction under this section extends the restraining proceedings in actions or suits beyond the ordinary territorial jurisdiction of the Court, and more especially when the execution creditor is resident within the jurisdiction. *Re Tobique Gypsum Co.*, 6 O. L. R. 515.

There is jurisdiction in the High Court in this province to make an order staying proceedings under an execution in the hands of the sheriff of a county in the Province of New Brunswick. But the sheriff having, notwithstanding, proceeded with the sale under the execution against the lands of the company, and executed a deed of the same to the purchaser, it was held that there was no jurisdiction in the Court to make an order summarily declaring the sale void. The case is not one coming within the class of cases which under the Act may be dealt with in a summary manner by a Judge in the winding-up proceedings. In general, the summary powers cannot be exercised against persons who do not come within some or one of the classes of persons specified in the sections of the Act covering the summary exercises of powers. The Court is not justified in extending the jurisdiction to other cases not within the terms of the Act. *In re Tobique Gypsum Co.*, 6 O. L. R. 515.

See section 22 relating to proceedings in an action after the winding-up order is made.

Note that this section gives no power to the Court to stay the

proceedings upon the application of the company. A creditor or contributory must apply.

But in *Re Boehmer Erb Company* (unreported), Teetzel, J., in November, 1907, stayed the winding-up proceedings upon the application of the company for the purpose of allowing the company to settle with their creditors upon representations that all debts would be promptly paid.

It is common practice before the Master in Ordinary to have the proceedings stayed pending a settlement of all creditors' claims, and the company is encouraged in any *bonâ fide* efforts so to do.

A contributory petitioning to set aside a winding-up order was required to give security for the costs of the company and the creditor who opposed the petition, where it appeared that the creditor was merely acting in the interests of other persons who lived out of the jurisdiction and who had indemnified him as to costs. *Re Rainy Lake Lumber Co.*, 11 P. R. 314.

It is to be noted that under this section the winding-up may be altogether stayed and the company restored to its former status. (Note that under section 20 the corporate estate and powers of the company continue until the completion of the winding-up.) It is submitted that this order would not be made unless all creditors were paid in full or were unanimous in supporting the application. An order was made in *Re Volcanic Reef Co.* (unreported) by Mabee, J., on October 16, 1906, where all creditors but one were paid, and that creditor applied for the order. The writer is not aware of any other case in Ontario when such an order has been made.

Section 20.—The liquidator has authority under section 34 subject to the Court's approval to carry on the company's business.

Note that the company must cease carrying on business only from the time of the making of the order, although under section 5 the winding-up shall be deemed to commence at the time of the service of the notice of presentation of the petition, *i.e.* when the order is made the winding-up reverts back to the service of the notice of presentation.

As the corporate state and corporate powers of the company are continued under this section until the completion of the winding-up, the powers of the directors do not cease until expressly terminated by the Act. This termination is found in section 32, under which the directors' powers cease upon the appointment of the liquidator. See notes to that section. Until such appointment the directors' powers exist in full force, except as limited by this Act as in this and the following section.

The use of the words "after the commencement of such winding-up" seems unfortunate, as it is almost evident that the provisions of section 5 have been overlooked, by which section the winding-up is deemed to commence at the time of the service of the notice of presentation of the petition. The present section is taken from section 131 of the English Act of 1862, and the wording of this part is not changed.

The question arises whether a transfer of shares made after the service of the notice is void even if the petition is dismissed and the order refused. This section does not refer to the order in any way, but it is submitted that it does not operate unless the order is made, *i.e.* transfers of shares made after service of the notice are void only if the order is subsequently made upon that petition.

Note that the time named in this section is different from that named in the preceding section, and the two sections following.

There can be no alteration in the status of members of the company by the transfer of fully paid shares. *Redfern* v. *Polson*, *supra*.

Section 22.—Note that this section does not prohibit proceedings being commenced after the service of the petition; it is only after the making of the order.

It was held by Mulock, C.J., in *Kurtz* v. *McLean, Ltd.* (unreported), on January 24, 1908, that application for leave is properly made to a Judge in Chambers. It is submitted, however, that the Master to whom the winding-up is referred has at least power to hear the application under this section. See *Duke* v. *Ulrey*, 14 O. W. R. 932.

To obtain leave to proceed with an action the applicant must allow such special or unusual circumstances as make it reasonably clear that the matters in question cannot be satisfactorily dealt with by the tribunal especially provided in the winding-up proceedings. *Titteringdon* v. *Distributors Co.*, 8 O. W. R. 328, *i.e.*, the Master to whom the winding-up is referred. See *In re B. C. Tie and Timber Co.*, 14 B. C. R. 204.

Previous to the winding-up order the company sued the shareholder for unpaid calls, and the shareholder had delivered a defence and counter-claim praying that his application for shares should be cancelled on the ground of misrepresentation and of false and fraudulent statements in the prospectus.

Held, on the application by the shareholder for leave to proceed in the action, notwithstanding the winding-up order, that the shareholder could have in the winding-up proceedings all the relief that

he claims by his defence and counter-claim, and leave to proceed was accordingly refused. *Re Packenham Pork Packing Co.*, 6 O. L. R. 582.

In re Toronto Cream and Butter Co., 14 O. W. R. 81, the Court of Appeal refused to interfere with the discretion of a judge who gave leave to bring an action.

The High Court of Justice of Ontario having made an order for the winding up of a company, there is jurisdiction in that Court to restrain an action commenced in a Quebec court against the company. The court in such case acts as a Federal Court, and a Provincial Court cannot interfere with its proceedings. *Baxter* v. *Central Bank of Canada*, 20 O. R. 214.

But the Court will not grant such an order until evidence is produced shewing that the foreign court has been advised of the winding-up proceedings, and has itself refused to stay the proceedings pending before it. *Re Canada Cork Co.*, an unreported decision of Meredith, C.J., made in 1905.

Where goods were sold to a company before the winding-up under a lien agreement (no property passing until payment is full), and the liquidator refused to give up the goods to the vendors, leave was refused, the vendors to bring an action against the liquidator for the recovery of the goods. They were directed to proceed under section 133. *Kurtz* v. *McLean*, *supra*.

Although where a company before liquidation has accepted an option under a contract, thereby entitling it to further right and subjecting it to further obligations, a liquidator must accept the contract in its entirety or decline to do so. *Wm. Hamilton Manufacturing Co.* v. *Hamilton Steel and Iron Coy.*, 23 O. L. R. 270.

A judgment obtained against a company subsequent to the making of a winding-up order has no force or effect, and in fact is absolutely null and void. Quære whether an order vacating such a judgment is necessary. *Keating* v. *Graham*, 26 O. R. 361, at p. 370. See notes to section 23.

After an order has been obtained in Ontario winding up a foreign company doing business in Ontario, P., a resident of Ontario, brought an action against the company in the State of Michigan, with a view of attaching a steamer wintering there which was the property of the company. It was shewn that representations that the company was perfectly solvent had been made by both the secretary and managing director to P., and P. swore that but for these representations he would have taken proceedings before he did, which might have enabled him to obtain judgment before the

winding-up order was made. In an action for an injunction to restrain P. from proceeding with his action in Michigan, in which it was shewn that other creditors of the company, who were residents of the United States and so not within the jurisdiction of the court, were also proceeding against the steamer, it was held that this case could not be distinguished in principle from *Ex Parte Railway Steel and Plant Company, In re Taylor*, 8 Chy. Div. 183, and the court declined to continue the injunction. It was stated that when the postponement of proceedings in an action is made in pursuance of a request made on behalf of the company for time, the creditor was entitled to the benefit of his judgment in priority to other creditors, and that the section 20 of 45 Vict. c. 23 (D) (section 22 of the present Act) does not make the action absolutely void, but leaves discretion in the Court, and under circumstances such as in this case the creditor was entitled to be preferred. *Re Lake Superior Native Copper Co.*, 9 O. R. 277.

It is very doubtful if this case is now good law, although it does not appear to have been expressly over-ruled. See *Keating* v. *Graham*, 26 O. R. 361, at p. 370. It is submitted that now in no case would such a creditor be given any preference whatever, having in view sections 22, 23, 84, and in fact the whole policy of the Act, which is to provide a rateable distribution of the company's assets among all creditors.

Leave was given in Manitoba to a servant of the company to sue the company for wages, so that he would be able to sue the directors under section 276 of the Manitoba Companies Act after a return of *nulla bona* was made.

Re Lake Winnipeg, 7 M. L. R. 602. See also *Crew* v. *Dallas*, 9 W. L. R. 598. It is submitted that the same leave will be given here so as to enable a servant of the company to comply with section 94 of the Ontario Companies Act.

After the winding-up order is made the Court will not allow its administration of the assets to be embarrassed by other proceedings affecting the estate administered, and when a creditor is restrained from enforcing his rights at law it is upon the principle of allowing him to bring his legal rights with him into the Master's office, which the Court substitutes for proceedings at law. *Clarke* v. *Union Fire Insurance Co., Gaston's Case*, 10 P. R. 339.

Unless moneys levied under any attachment or other process or proceeding are actually paid over to the plaintiff before the winding up commences, *i.e.*, the service of the notice of presentation of the petition, no lien or privilege whatever is created except for such

claim as the law of the Province allows for costs. This is by virtue of section 84.

The wording of that section makes it evident that "attachment, sequestration and execution," mentioned in this section are included therein. Consequently such an attachment, etc., is void, "if put in force" after the making of the order, and if put in force before the making of the order it is of no effect unless the moneys levied or received have been paid over to the plaintiff before the commencement of the winding-up proceedings.

It is submitted that "distress" is not included in section 84, which seems to apply only to judicial proceedings. A distress is not a judicial proceeding. See Bell on Landlord and Tenant, p. 250.

The liquidator sought to restrain mortgagees from selling without the sanction of the Court on the ground that such sale would be a "proceeding against the company" under section 22 of the Winding-Up Act. Held that the mortgagees were proceeding rightfully. *In Re British Columbia Tie and Timber Co.*, 14 B. C. R. 81.

Rent.

A landlord's claim to be paid preferentially for overdue rent which had accrued prior to the service of the winding-up petition, and for which no distress has been made, is invalid by virtue of sections 5 and 34 of the Act.

An undertaking by a provisional liquidator to pay such a claim is by sections 22 and 23 void, unless the permission of the Court is first obtained. *Fuches* v. *Hamilton Tribune*, 10 P. R. 497.

If the landlord has distrained before the making of the winding-up order, or if the bailiff has been in possession of the goods before the making of the winding-up order, the distress has been "put in force" under the section.

And it is submitted that section 84 applies to judicial proceedings.

Taxes.

The right to prove a claim for taxes against a company in liquidation depends upon the right to maintain an action therefor, which right only exists when the taxes cannot be recovered in any special manner provided by the Assessment Act, as, *e.g.*, a distress or sale of land. Where, therefore, a claim was made for arrears of taxes against a company in liquidation and it was shown that

before the date of the winding-up order the taxes might have been, but were not, recovered by distress, the claim was disallowed. *Re Ottawa Porcelain Co.*, 31 O. R. 679.

There is nothing in this Act or the Assessment Act making taxes a preferred claim in a winding-up. The municipal corporation must rank for its claim, for taxes due at the winding-up, as an ordinary creditor in accordance with the provisions of section 69. See *In re Ideal House Furniture, Limited*, 18 Man. L. R. 650.

But see Edw. VII. (Ont.), sect. 103, sub-sect. 3, which is confined to order made under the Ontario Winding-up Act. *Re Ottawa Porcelain Co.*, 31 O. R. 670, at 690.

If the municipal corporation has distrained for taxes before the making of the winding-up order, and is in possession of the goods at the date of the order, it is submitted that the Court will not order the delivery over of the property to the liquidator without payment in full of the amount due, at least an undertaking to do so, because such a distress is not within the terms of the above section, and section 84 seems to apply only to judicial proceedings.

But after the making of the order the company's property cannot be sold for taxes.

School Commissioners v. *Montreal Abattoir*, 3 M. L. R. (Q. B.) 116.

Such sale should be a proceeding under section 24. Formerly this section read: "The Court, in making a winding-up order, must appoint a liquidator," etc. It was held in *Shoolbred* v. *Union Fire*, 14 S. C. R. 624, that the Court could not delegate this duty, and that, further, the liquidator could not be appointed without notice to the creditors and shareholders. The result was that no winding-up order could be made without first notifying the creditors and shareholders, since the liquidator had to be appointed by the winding-up order, and he could not be appointed without such notice. The section, however, was amended by 47 Vict. c. 39, sect. 4, the word "may" being substituted for "must," and retained in that manner in the revision of 1886 as section 20. In the last revision section 20 has been split up and included in sections 24, 27 and 39, but the wording is substantially the same, and "may appoint" is retained. If, however, the Court desires to appoint the liquidator at the same time as making the winding-up order, the notice must be given as prescribed. Under section 29 the Court has power to appoint a provisional liquidator, and the invariable practice now is for the Court to appoint a provisional liquidator under that section at the same time as the winding-up

order is made, but by a separate order, and refer the appointment of permanent liquidator to a Master, who makes such appointment after proper notice to the creditors and contributories, the provisional liquidator remaining in possession, and doing all necessary acts in the meantime. This practice was commended by Patterson, J., in *Shoolbred* v. *Clark*, 17 S. C. R. at p. 272.

This is because the Court has power, after the winding-up order has been made, to delegate its power (see section 110), and as the proceedings are analogous to administration proceedings they can be carried on much better in the Master's office.

At the same time as an order was made for the winding-up of a company, an order was also made, upon the application of the petitioners and upon the consent of the company's counsel appointing the local manager of a bank, which was the largest creditor of the insolvent company, permanent liquidator upon his giving proper security. The order was subsequently carried on the application of three shareholders declaring him to be a provisional liquidator only, and directing a reference of the local Master to appoint a permanent liquidator. It was held that unless section 27 is complied with it is a substantial objection to the appointment of the liquidator. *Re Guelph Linseed Oil*, 2 O. W. R. 1151.

If more than one liquidator is appointed, and no order made under this section, it is not proper for one of them to delegate duties or powers to another. They should act in conjunction, and give the estate the benefit of their joint judgment and discretion in all matters pertaining to their office. If any exigency arises, or it is found impossible to act in conjunction, the Court may exercise its jurisdiction under this section upon an application for that purpose. *Re Central Bank*, 15 O. R. 309.

Where more than one liquidator is appointed it is well to have included in the order appointing them an order defining their separate powers.

Where several liquidators are to be appointed, and there is a difference of opinion as to who should be appointed, the test laid down by the English judges is sound in principle, and should be followed, *i.e.*, the choice should be given to the nominees of those who will have the benefit and immediate concern in realizing the assets. *Re Central Bank*, 15 O. R. 309.

This rule applies equally well to the appointment of a single liquidator.

Section 27.—As stated in the notes to section 24, the practice is for the Court on making the winding-up order to appoint a

provisional liquidator under section 29, and to delegate its powers under section 110 to a Master or official referee to appoint a permanent liquidator, and to generally supervise the conduct of the winding-up. No notice to creditors or contributories is required before making the appointment of provisional liquidator (see section 29). He is appointed by an order supplementary to, and at the same time as the winding-up order, notice of which application has of course been given to the company under the provision of section 13.

It is usual for the Court to appoint the petitioner's nominee as provisional liquidator, and leaving any contest in respect to the appointment to be fought out before the Master on the appointment of the permanent liquidator. This was stated to be the proper practice by Boyd, C., on a petition to wind up The Stark T. L. and P. Company in November, 1907 (unreported). If there has been an assignment for the benefit of creditors the assignee is generally appointed provisional liquidator.

When the order of reference is brought in to the Master he names a day for the appointment of the permanent liquidator, and directs notice of this appointment to be served upon the persons named in this section usually by advertising in one or two newspapers which are most likely to reach the parties, and by mailing copies to such of these persons as are known to the liquidator, *e.g.*, as shown in the company's books. Personal service is rarely required. The day named is usually ten days, or two weeks from the date of the first advertisement, the time of course varying according to the circumstances of each case. The manner and time of service is left by this section in the discretion of the Court (which means the Master, if an order of reference under section 110 has been made), and the rule is to follow the practice in administration proceedings.

Upon the return of the appointment the provisional liquidator files an affidavit approving the publication and service of the notice in the manner directed by the Master.

Unless the provisions of this section are observed it is substantial objection to the appointment of the permanent liquidator. *Re Guelph Linseed Oil*, 2 O. W. R. 1151; *Shoolbred* v. *Union Fire*, 14 S. C. R. 624.

The following are some of the principles laid down by the Court for the appointment of liquidators.

The test laid down by the English judges is sound in principle and should be followed, *i.e.*, the choice should be given to the nominee of those who will have the benefit and have the immediate

concern in the realization of the assets. *Re Central Bank*, 15 O. R. 309.

It is desirable to follow the rules for guidance to be found in the English cases under the Winding-up Acts. The Court abstains from laying down any such rule as that the nominee of the petitioning creditor should have a preference. The Court will consider the condition of affairs to ascertain what parties are most interested in the due administration of the estate in liquidation, and other things being equal will act upon their recommendation. *Re Alpha Oil Co.*, 12 P. R. 298.

Where the creditors were those whose interests were most to be regarded, and the great bulk of them favoured the appointment of the sheriff and opposed the nominee of the petitioning creditors, and the sheriff who resided in the country where the company's operations were carried on and where all its books and assets were was already *de facto* liquidator under voluntary proceedings taken pursuant to the Ontario Act, and was otherwise well qualified for the position, the Court appointed him liquidator. The rule as to costs suggested in *Re North Assam Tea Co.*, 5 Ch. 664, followed Ib.

In no case will the Court award the costs of a contest respecting the appointment of a liquidator. *Re Commercial Bank*, 13 C. L. T. 381.

Where a proposed liquidator of bank was formerly an official of the bank and was largely indebted to it, although the debt was claimed to be fully secured, it was held that the objections to his appointment were serious and substantial. *Re Commercial Bank*, 9 M. L. R. 342.

An appeal lies from the order of the Master appointing a permanent liquidator to a Judge in Court (as does an appeal from any order made by him in the winding-up proceedings) on the general principle that when the Court has delegated to a subordinate tribunal any of its powers, a right of appeal always exists from such tribunal to the Court itself. *Markle* v. *Ross*, 13 P. R. 135.

Further appeals are governed by sect. 101, *et seq.*

It is competent for the Court to refer it to the Master to decide upon the security to be given by the liquidator. *Shoolbred* v. *Clark*; *Re Union Insurance Co.*, 17 S. C. R. 265.

No rules or special forms have been adopted in Ontario in respect to security to be given by liquidators, but the practice in administration matters is followed, as is the case with practically all proceedings in the Master's office in the course of the winding-up. In order that the Master may be in a position to determine

the proper amount of security, one of the first duties of the provisional liquidator is to bring in an affidavit setting out the assets which have come to his hands and their value. See form *infra*. The Master then fixes the security to be given by the liquidator, which is usually twice the amount of the assets. Usually the security is given by a bond made by the liquidator and a guarantee company, which company has been approved by Order in Council under 62 Vict. 2, Ont. C. 12. In such cases no additional surety and no affidavit of justification is required. See the above statute. If the security is given by any other persons the usual affidavits of justification must be made. Note sect. 30 (2).

The cost of furnishing security by the liquidator is borne by him personally, and cannot be charged against the assets of the company as an expense incurred in the winding up,

After the assignee, for the benefit of creditors of an incorporated company, had sold part of the assets and received the proceeds, he was appointed liquidator under the Winding-up Act, and gave security by a bond, which recited all the proceedings and order, and was conditioned to be void if the liquidator should duly account for what he should receive or become liable to pay as liquidator.

Held, that the funds and property in the hands of the assignee became vested in him, as liquidator, upon his appointment as such, and that the sureties were responsible for his subsequent misappropriation thereof.

The bond provided that the certificate of the Master-in-Ordinary of the amount for which the liquidator was liable should be sufficient evidence of liability as against the sureties, and should form a valid and binding charge against them.

Held, that the sureties had the right to appeal from the certificate, in accordance with the usual practice of the Court. *In re Army and Navy Clothing Company of Toronto, Limited*, 3 O. L. R. 37.

As stated above, the invariable practice now is to appoint a provisional liquidator by an order made at the same time as the winding-up order, and the permanent liquidator is appointed on the reference to the Master. The Act requires no notice of the appointment of a provisional liquidator to be given to creditors or contributories, whereas notice of the appointment of a permanent liquidator must be given. It is probable that it is for this reason that the practice outlined is followed.

It is not usual to embrace in the order of reference any restrictions upon the powers of the provisional liquidator. All that the provisional liquidator does is to bring the liquidation to the attention

of the Master, take possession of the property of the company, and continue in possession of the property of the company, and take stock of the company's properties and examine the company's books, in order that he may submit to the Master and interested persons present a report on the position of the company's affairs at the time of the appointment of the permanent liquidator. It is submitted that a provisional liquidator has not power, for instance, to make a sale of any of the company's properties unless specific authority so to do is given in the order. This was done *In re Guelph Linseed Oil Co.*, 2 O. W. R. 1151.

If the provisional liquidator desires to carry on the business of the company he must obtain an order from the Court, allowing him to do so; and the Court may give him leave to borrow money for that purpose.

The provisional liquidator is also required to file and give security for due performance of his duties, the amount of the bond being fixed through the statement of the assets of the company, which the liquidator submits under oath to the Master for this purpose. See notes to sect. 28.

Meetings of creditors and contributories, etc., are called by the Court and not by the provisional liquidator. See sect. 61.

Note also sect. 20.

Note that nothing is said as to the powers of the company's officers. But as under sect. 20 the company must cease on the making of the order to carry on business, it is submitted that no contract could be made after that date which would be binding on the company unless made by the liquidator under the powers given by him by the Act, or *semble*, with his approval. Note that the directors' powers do not cease until the appointment of the liquidator. There is no decision on the point as to whether this applies to the appointment of provisional liquidator. It is submitted, however, that as the whole scheme of the Act is to place the control of the company in the Court or the liquidator from the date of the winding-up order, no act of the directors would be held valid if done after the appointment of provisional liquidator.

It is, perhaps, of little importance, however, in view of sects. 20 and 21.

If the powers of directors are not continued under this section, a sale of the assets to one or more of them by the liquidator is valid as their fiduciary relations to the company or its shareholders have come to an end. *Chatham National Bank* v. *McKean*, 24 S. C. R. 348.

It is to be noted that there is no provision in the Act vesting the company's assets in the liquidator. This section merely places all the company's assets in his custody, and the following section gives him power to sell them.

It is submitted that the liquidator accordingly cannot in any way be regarded as a purchaser of the assets so as to be able, for instance, under the Chattel Mortgage Act to dispute the validity of a chattel mortgage for want of registration. See *Re Rainy Lake Lumber Co.*, 15 A. R. 749.

The liquidator stands in no higher position than the company. *Re William Hamilton Mfg. Co.*, 1 O. W. N. 61; 1 O. W. N. 421.

The assets of the company, being placed in the liquidator's possession by the Act, it is submitted that any interference in the possession of the liquidator is a contempt of Court, and may be punished by committal. Such interference undoubtedly may be restrained by injunction. See Oswald on Contempt, 3rd ed. pp. 76–77.

The liquidator represents all classes of creditors in the winding-up. *Re Farmers Loan and Savings Co.*, 2 O. W. R. 854.

The E. company became the holders of 525 shares in the capital stock of a coal company and 50 shares in a steel company, depositing the certificates thereof, which were put in the name of the defendants, a trust company, with them for safe keeping, receiving from the trust company a document under seal whereby they acknowledged the receipt of the certificates, and agreed to hold same in their safe deposit vaults to the order of the loan company, with any dividends received in respect thereof, guaranteeing they would be kept safely therein, and delivered up on demand to the E. company, the remuneration of the trust company also being provided for; 375 of the shares had been acquired by the E. company under an agreement with another company, the A. Loan Company, which had an interest in the prospective profits to be derived from the sale of the shares. While the certificates were in the defendants' possession both loan companies were ordered to be wound up under the Dominion Act, the defendants being appointed liquidators of the A. company and the L. & W. Trust Company liquidators of the E. company. After the commencement of the liquidation proceedings the L. & W. Company, as such liquidators, demanded the certificates from the defendants, and, on the latter refusing to deliver them up, this action was brought for damages for the detention.

Held, that the defendants were merely bailees and not trustees,

but, even if regarded as trustees, the failure to hand over the certificates was not a breach of trust, for which they were fairly excusable under 62 Vict. (2) c. 15, s. 1 (0), for owing to their dual character of trustee of the E. company and liquidators of the A. company, they did not act with singleness of purpose: and that a direction made by the Master-in-Ordinary to whom was referred the winding-up of the A. Loan Company, that the whole 525 shares should be retained by the defendants as such liquidators, was made without jurisdiction and so afforded no protection, and that damages for the detention (delivery having been made pending the action) should be based on an estimate of what had been lost by the detention, the measure thereof being the highest price which could have been procured for the shares between the demand and the delivery. *The Elgin Loan & Savings Co., et al* v. *The National Trusts Company, Limited*, 10 O. L. R. 41.

It is common practice for an order to be made under section 124, giving liberty to the liquidator to do the things required to be done by him in the course of the winding-up, and particularly those things set out in this section without previous notice to creditors, contributories. Unless this order is made notice must be given as required by the Act.

Note also that under section 38, authority may be given to the liquidator to exercise all powers given by the Act without the sanction or intervention of the Court. This order is rarely made, as it is much safer for the liquidator to have the protection of a Court order in all things that he does. But see *London & Western Trusts Co.* v. *National Trust, supra.* See also *Kendale* v. *Webster*, 15 B. C. R. 268.

Bringing and Defending Actions.

In practice, it is not necessary for the liquidator to obtain authorization from the Court to recover the company's assets without action. It is necessary, however, if it is desired to bring or defend an action. But see next case.

After a winding-up order has been made, the company (semble the liquidator) has power to sue under the statute, and if it chooses to run the risk of costs, it would seem it may do so without the sanction of the Court. If an action is brought without the sanction of the Court, the proper course is to take the objection that there is no authority to sue on motion in Chambers to dismiss on that

ground. It is too late to take such an objection at the trial. *Sarnia Agricultural Implement Manufacturing* Co. v. *Hutchinson*, 17 O. R. 676. See also *Hamilton* v. *Hamilton Steel & Iron Co.*, 16 O. W. R. 694.

Liquidators are officers of the Court. *Re Central Bank, Henderson's Case*, 17 O. R. 110.

Where an action is brought by the liquidator of a company in liquidation, in the name of the company, and he is not otherwise a party to it, he cannot be ordered personally to pay the costs of it. *Ontario Forge and Bolt Co.* v. *Comet Cycle Co.*, 17 P. R. 156.

Actions begun before the liquidation should be continued in the name of the company. A fresh action should not be begun. *Ross* v. *Perras*, 5 R. J. Q. 470.

After the action was at issue, an order was made by the Quebec Court directing the winding-up of the defendant company and appointing a liquidator. The plaintiff then obtained leave from that Court to proceed with this action. Afterwards the liquidator obtained an order from the Court authorizing him to intervene and defend this action in his own name as liquidator; he then applied to this Court in this action, and obtained an order that the action proceed in the name of the plaintiff against the company and the liquidator. Held, that the liquidator having thus intervened and made himself a party to the action, and having appeared by his counsel at the trial and contested the claim of the plaintiff, the latter having succeeded upon his claim was entitled to a judgment for his costs both against the company and the liquidator personally. This Court had no authority to direct that the liquidator might reimburse himself out of the assets, that was a question for the Court in the Province of Quebec having control of the assets. *Boyd* v. *Dominion Cold Storage Co.*, 17 P. R. 468.

A shareholder resident out of the jurisdiction intervened for the purpose of expediting the actions of the liquidator during the course of the winding-up. It was held that the referee had power to order security for costs to be given and proceedings stayed until such security was provided for. It was also held that the liquidator was not barred of this right to security by not applying until after the original application of the shareholders had been dismissed and appeals taken, but that the security should be limited to the cost of the appeal. *Sarnia Oil Co.*, 14 P. R. 335.

Upon the winding-up of a company under the Dominion Winding-up Act, two of those whose names were on the list of contributories filed by the liquidator applied to stay the trial of

their liability until some shareholder, who wished to have the question tried out, should indemnify the liquidator. The liquidator took up the position that the prosecution of the claims against the applicant was not in the interests of the creditors and should therefore be abandoned. The Court following in *Re Sarnia Oil Co.* (*supra*), held, that the applicants had status, a shareholder or creditor always having the right to intervene to ask the Court for directions with respect to the liquidator. And further, in order to ascertain the wishes of shareholders or creditors, a meeting was not necessary and their consent if expressed by counsel would be sufficient. *Re London Fence, Ltd., Brown's Case, Merchants Bank of Canada's Case*, 17 W. L. R., p. 387.

An order winding up a company having been made in the High Court of Justice of Ontario, an injunction was granted by that Court to restrain proceedings commenced in a Quebec Court against the liquidators for acts done by them as officers of the Court, or under the authority thereof, or in discharge of their duties as such liquidators. *Baxter* v. *Central Bank of Canada*, 20 O. R. p. 214.

It is submitted that when the liquidator brings an action, the adverse party has no right to examine for discovery an officer of the insolvent company.

The liquidator is not the assignee of the chose in action, and the assets are not vested in him by the Act, and even if it were it has been held in *Bank of Toronto* v. *Quebec Fire Ins. Co.*, 18 P. R. 41, that consolidated rule 441, which allows the assignor of a chose in action to be examined for discovery in an action brought by his assignee, does not extend so far as to allow an officer of a corporation, which corporation is the assignor of the chose in action to be examined. The only other rule upon which an examination could be found is consolidated rule 440, which states that, "A person for whose immediate benefit an action is prosecuted or defended, shall be regarded as a party for the purpose of examination."

In a sense, the action is brought for the benefit of the company. In the case of assignments for the benefit of creditors, an examination of the debtor has been allowed in an action by or against his assignee for the benefit of creditors. See *Garland* v. *Clarkson*, 9 O. L. R. 281. But this rule does not, in terms, extend to officers of corporations and by analogy to the decision in *Bank of Toronto* v. *Quebec Fire Insurance Co.*, *supra*, under rule 411, and the decision in *Ferrins* v. *Algoma Table Work Co.*, 8 O. L. R. 634, which holds

that consolidated rule 477, does not extend to the examination of officers or foreign corporations, it is submitted that in no case has the adverse party a right to examine an officer of the insolvent corporation in an action brought by the liquidator in his own name. If the action were brought in the name of the company, it is submitted that the ordinary rights of examination would exist.

Quære, whether the liquidator of a company under the winding-up can object to the want of registration for formal defects in a chattel mortgage as an execution creditor or subsequent mortgagee could do. *Re Rainy Lake Lumber Co.*, 15 A. R. 749.

As to the powers of liquidation, *Re Central Bank, Nasmith's Case*, 16 O. R. 293, at p. 305, and *Re Standard Fire, Caston's Case*, 12 A. R. 486, at p. 495.

The liquidator represents the creditors only because he represents the company, and it is through the company so represented that the rights of the creditors are to be enforced. *Re Bolt and Iron Co.*, 10 P. R. 437.

Sale of the Assets.

The power to sell the assets of a company is vested in the liquidator and not in the Court, although the liquidator must obtain the approval of the Court as a condition of exercising the power of sale. *In re Canadian Woollen Mills, Limited, Long's Appeal*, 9 O. L. R. 367.

The sale of the assets of a company being wound up under this Act is governed by the ordinary Court practice in sale cases, *i.e.*, first, to have an inquiry whether a sale by auction or by tender or by private contract would be the most advantageous to the estate and then to offer the property for sale by the mode adopted. Where there is a sale by private contract an affidavit of the actual value of the property should be produced so that such value may be compared with the price offered. *Re Bolt and Iron Co.*, 10 P. R. 437.

When a sale has been carried out under the supervision of the official referee after notice being given to all creditors, it is not necessary to move to confirm the sale. *Re McCann Know Milling Co.*, 1 O. W. N. 579.

A sale by tender was advertised and all bids were to be in on a certain day at 5 p.m. o'clock. At that hour only one bid had been

received and the referee enlarged the time for the arrival of a train which was late. It was held that the referee had power to enlarge the time in this way. *Re Alger and Sarnia Oil Co.*, 21 O. R. 440; affirmed 19 A. R. 446.

If the powers of the directors are not continued as provided by sect. 31 of the Act, their fiduciary relations to the company or its shareholders are at an end and a sale to them by the liquidator is valid. *Chatham National Bank Co.* v. *McKeen*, 24 S. C. R. 328.

Quære, whether an agreement to purchase the assets of a company at a certain rate on the dollar of the unascertained claims of the creditors of such company would be valid, if it is not expressly provided in the agreement by whom the claims are to be admitted or adjudicated. Although there would be no doubt that the liquidator was intended by the parties to the agreement to determine upon the claims, nevertheless this case would seem to show that the liquidator must be expressly named in the agreement. *Re Bolt and Iron Co.*, 10 P. R. 437.

It is to be noted in connection with the sale of the assets of the company that there is no provision in the Act vesting the assets in the liquidator, consequently it is necessary when assets are sold for the deed or bill of sale to be executed by the liquidator under the seal of the company and his own seal.

When an agreement for sale has been made between the liquidator and an intending purchaser it is usual for an agreement to be drawn up between them in the ordinary form of agreements. The approval of the Master is usually given, not in the form of an order, but by endorsing his approval in the margin of the agreement. When a bill of sale or deed is made pursuant to the agreement, the Master again endorses his approval in the margin. It is usual in the bill of sale or deed to insert recitals showing the winding-up order, order of reference, appointment of liquidator, advertisement for sale, acceptance of offer, and so on.

It is preferable to have the proceedings under a winding-up order conducted by solicitors who are totally unconnected with the company to be wound up. *Re Joseph Hall Manufacturing Co.*, 10 P. R. 485.

In a proceeding for the winding-up of a company a solicitor who is acting for claimants whose claims must be contested by the liquidator cannot obtain the sanction of the Court to his acting also as solicitor for the liquidator, nor will the Court sanction an appointment of a special solicitor to act for the liquidator in the matter of a contested claim.

The policy of the statute contemplates the prosecution of the Winding-up Act by a disinterested solicitor whose services will not be divided by the assertion of antagonistic claims. In this case the solicitors were directed to elect whether or not they would give up their whole services to the prosecution of the winding-up with a view to the realization and administration of all the assets. *Re Charles Stark Co.* (No. 2), 15 P. R. 471.

Under a reference for the winding-up the referee appointed a form of solicitors to represent the general body of creditors, and ordered that they should be notified to attend whenever he should direct, and that the costs as between solicitor and client should be paid out of the assets by the liquidator. The liquidator was represented by another solicitor. Held, that this class of order and liability was not favoured by the Court. It should only be involved and attendances thereupon had when there was a special reason in which the appearance of some one to represent the creditors was desirable. Attendances and services of such solicitor should not be paid for out of the assets except where contemporaneously provided for by the referee, and it is not proper practice to extend this at the close of the proceedings by obtaining a certificate from the referee that, had he been applied to from time to time, he might have provided for other attendances and services. *Re Drury Nickel Co.*, 16 P. R. 525.

But see now sect. 131 (*a*).

The Court has no power under this section to compromise *per se*. The only power is in the liquidator with the approval of the Court. The scheme of compromise must be initiated or recommended by the liquidator. *Re Sun Lithographing*, 24 O. R. 200.

In this case it was also held that there was no power in the Court to enforce a compromise upon a dissentient minority. Since that decision, however, 62 & 63 Vict. c. 43, s. 3, was passed, and the provisions are now to be found in sects. 63 and 64 of the present Act. See these sections, which allow three-fourths in value of the creditors to force, with the sanction of the Court, a compromise upon the dissentient minority.

It is common for a contributory or debtor to endeavour to effect a compromise, and he is generally required to make an affidavit as to his means, and if it is desirable he can be cross-examined thereon. If the liquidator is satisfied to compromise he generally enters into a provisional agreement with the contributory embodying the terms of compromise, and then applies for the approval of the Court.

Any compromise which is made under this section is generally in reference to the amount of the claim for which the creditor is to rank. It would be under only the most exceptional circumstances that the amount of the dividend to be paid a certain creditor would be fixed before the general dividend was decided upon.

An order is very rarely made under this section, the Court preferring to retain a general control of proceedings.

It is not usual in ordinary liquidations to appoint inspectors. However, when the liquidation is complicated or involves the disposal of a large business, inspectors have frequently been appointed, whose knowledge of the technical features of the business or the peculiar situation of the company being wound-up was such as to be of assistance to the liquidator.

An inspector appointed in liquidation proceedings under the Winding-up Act is in a fiduciary position as regards the disposal of the assets and cannot without the consent of all persons interested become the purchaser thereof. *In Re Canadian Woollen Mills, Limited, Long's Appeal*, 9 O. L. R. 367.

In fixing the liquidator's remuneration it is proper to take into consideration amounts adjusted or set-off, but not actually received by the liquidator. The amount allowed should be equally spread over the whole period of the liquidation so as to secure vigilance and expedition at all stages of the liquidation as well as proper distribution among the liquidators if there are more than one. It is not proper to pay a large part of the compensation at an early stage of the liquidation. *In re Central Bank, Lyle's Claim*, 22 O. R. 247.

The general rule is to allow a liquidator a commission upon the corpus which is finally distributed by him, such commission being paid when the distribution of the corpus takes place from time to time, and he is further allowed a reasonable annual allowance for care and management. The Court may, instead of fixing their remuneration by way of percentage, allow one lump sum, to include and cover the percentage upon the receipts and disbursements of the corpus and the allowance for the care and management of the estate. The usual commission allowed for the receipts and disbursements of the corpus of an estate is five per cent. exclusive of the annual allowance for care and management, but each case must depend upon its own circumstances. *Re Farmer's Loan and Savings Co.*, 3 O. W. R. 837.

The liquidator cannot charge in his disbursements the premium

paid by him on the bond filed by him as security for his proper distinction of the estate. This is the ordinary practice, although there is no direct authority.

The section intends that the remuneration is not necessarily to be increased because three liquidators are to be paid instead of one. The recompense for services under the Act is properly one, based chiefly upon consideration of the time occupied, the work done, the responsibility imposed, and being fixed it will go to the liquidator, or if more than one it will be distributed among them. *Re Central Bank*, 15 O. R. 309.

In the order appointing the permanent liquidator it is usual to insert a clause naming the bank in which deposits are to be made.

Deposits are usually made to the credit of A. B., liquidator of the company.

Note that, as in the case of the liquidator, there is nothing in this section vesting the company's property in the Court. The title to the property always remains in the company, but the property is in the custody of the liquidator or the Court until sold.

It seems peculiar that there is no provision other than that in this section of the Act providing for the discharge of the liquidator, and this section is rarely acted upon. The general case is for the liquidator to complete the winding up, distribute the assets and obtain his discharge from the Court, and the cancellation and delivery up of his bond. This is the practice, although, as stated, there is no provision in the Act governing or providing for it. The liquidator passes his accounts in the ordinary manner of an administrator upon notice being given to all parties interested, *i.e.*, creditors, contributories, etc., and upon the accounts being passed and dividend declared the liquidator proceeds to pay the dividends, and upon producing to the Master vouchers for the payment of the dividends the liquidator is discharged.

Notice of passing accounts is given usually by advertising; and the Master may also direct a copy to be served on each creditor and contributory, which is done usually by mailing.

After accounts have been passed, dividends declared, etc., the liquidator sends out cheques for dividends to the creditors whose claims have been admitted or proved. He then presents the said cheques to the Master, who directs his discharge and the cancellation of his bond. In case any cheques have been issued and not cashed within a reasonable time the liquidator may take advantage of sect. 136.

Contributories.

Every contributory has a right to a complete list of all the contributories. *In re Banque de St. Jean*, 10 Q. P. R. 223.

When notice has been served upon each contributory and days named for the trial of the cases as indicated in the notes to section 48, the Master proceeds to try each case. The trials are conducted in the same manner as other proceedings before the Master. Either party may summon witnesses to attend by service of a subpœna and oral evidence is taken under oath. See section 115. The Master's order has the force of a judgment. See section 112. The order is filed as a report, notice of filing served, and it becomes absolute in fourteen days if not appealed against. See Consolidated Rules, Nos. 693, 694, and 769.

The officer to whom the reference is directed has jurisdiction in settling the list of contributories to inquire into and decide as to whether stockholders holding certificates declaring the stock to have been duly paid up have in fact paid anything thereon. *Re Cornwall Furniture Co.*, 18 O. L. R. 101.

There is no provision in the Act for discovery as between the liquidator and a contributory, and it is submitted that the right to discovery does not exist in these cases.

After a winding-up order is made the power of collecting the assets of the company is vested solely in the liquidator; a judgment creditor of the company cannot take proceedings against a shareholder for unpaid calls. *Shaber* v. *Cotton*, 23 A. R. 426; *Re Bolt and Iron Co.*, 10 P. R. 437. *Bank of Hochelaga* v. *Garth*, 2 M. L. R. 201.

When proceedings are taken by the liquidator and are unsuccessful costs may be awarded against him. *Re Bolt and Iron Co.*, 10 P. R. 437.

A contributory is not allowed to set up all defences against the liquidator which he might have been allowed to set up against the company in an action for calls. The liquidator represents the creditors as well as the company and the rights of the creditors must be considered. *Re Central Bank, Henderson's Case*, 17 O. R. 110.

This section has no application to any liability which is one of a shareholder or member as such. *Re Wiarton Beet Sugar Co., Freeman's Case, infra.*

The onus of proof that a person is a shareholder and is liable to contribute to the assets of the company on a winding-up is upon

the liquidator. *Per* Meredith, J.A. *In re Canadian Tin Plate Co.*, 12 O. L. R. 591, at p. 601.

It is submitted that this onus is satisfied by the liquidator as he shows that the alleged contributory has been treated in the company's books as a shareholder, and that the onus is then cast upon the contributory to show that he is not a shareholder. See *Hill's Case*, 10 O. L. R. 501. See also, *Re London Speaker Co.*, 16 A. R. 508, at p. 514.

In re Standard Mutual Fire Insurance Co., Musson's Case, 1 O. W. N. 974, it was argued that as M. was a mere nominee of a certain company and held the shares in question as trustee for them, he should not be placed upon the list of contributories. But it was held that he was liable, the sole question being who is the legal owner of the shares.

The defences most commonly raised by contributories may be classified as follows:—

1. Subscription induced by fraud, misrepresentations, etc.
2. No binding contract to take shares.
3. Shares transferred, and transfer registered, or not registered through default of company.
4. Shares paid for in full.
   (*a*) In cash.
   (*b*) In property.
   (*c*) In services.
5. Shares forfeited before winding-up order made.

These defences will be considered in their order.

The broad statement may be made that this is no defence whatever, unless an action has been begun before the date of the winding-up order to set aside the contract to take shares on the ground of fraud, misrepresentations, etc.

After the winding-up order is made a shareholder cannot evade liability by setting up misrepresentation or fraud in the purchase of his shares. Proceedings to set the contract aside must be taken before the making of the winding-up order to be effectual. *Re The London Speaker Printing Company, Pearce's Case*, 16 A. R. at p. 513. *Stephens* v. *Riddell*, 21 O. L. R. 484.

But if in an action for calls before the winding-up, the shareholder counter-claims for rescission on the ground of fraud, misrepresentation, etc., he can obtain all relief in the winding-up which he could have obtained in the action. *Re Packenham Pork Co.*, 6 O. L. R. 582. See *Foley* v. *Barber*, 14 O. W. R. 669; 16 O. W. R. 667.

No binding contract to take shares.

The defences under this heading may be sub-divided as follows:—

(*a*) No offer.

(*b*) No acceptance.

(*c*) Offer withdrawn before acceptance.

(*d*) Offer subject to a condition which has not been fulfilled.

(*e*) Offer accepted with a condition which was not accepted by shareholder. Dealing first with the defence of no offer to take shares.

Reference may be had generally to the title, subscription and allotment, *ante*, p. 216*a*. It is there stated that persons may become shareholders in various ways.

1. By subscribing to the memorandum of agreement filled on incorporation.

2. By applying to the company for shares and receiving notice of allotment after such allotment has been made or something amounting to notice of the acceptance of the application.

3. By taking a transfer of shares from a shareholder and being registered in respect of such shares in the stock register of the company.

4. By registration in succession to a deceased or insolvent shareholder.

5. By estoppel, as by receiving and retaining a certificate of shares and attending meetings or receiving dividends in respect of same, by allowing one's name to appear on the register of shareholders, or by acting as a director of the company without the necessary qualifying shares.

(*a*) No offer.

Applications for, and allotment of shares, must be treated upon the same principles as ordinary contracts between individuals.

The ordinary law of contracts accordingly applies to all cases of shareholders' liability, including the law of estoppel.

The offer for shares need not be in writing, nor need it be a formal offer. The company may make the offer as by allotting shares to a person, and if, after it is brought to his notice, he does not repudiate them, but rather, has voted as a shareholder, he will be held liable. *Re Standard Fire*, 12 A. R. 486.

An offer to take shares may be made by a person signing a memorandum of agreement referred to in the Ontario Companies Act, sections 3 and 4, etc., and the Dominion Companies Act, section 5, etc., either before or after incorporation, and without anything more being done he will be regarded as a shareholder, and liable to

pay the amount subscribed, granting of course that the company has been actually incorporated.

This arises from the fact that, as stated by Boyd, C., *In re Queen City Refining Co.*, 10 O. R. 264, "the Act really contemplates two modes of acquiring stock, one by subscription and the other by allotment."

The Ontario Companies Act, sect. 3, provides that all those who petition for a charter, and "any others who have or may thereafter become subscribers to the memorandum of agreement hereafter referred to," shall be a body corporate and politic, etc.

It is to be noted that the Dominion Companies Act is slightly different from this. It provides that a charter may be granted to those persons who apply therefore, "constituting such persons and others who have become subscribers to the memorandum of agreement hereinafter referred to, and who thereafter become shareholders in the company, thereby created a body corporate and politic," etc.

The Dominion Act, therefore, expressly recognizes that persons may become shareholders without signing the memorandum of agreement, while the Ontario Companies Act does not. In the old Ontario Companies Act, in sect. 2, the definition of shareholder was contained stating that shareholder shall mean "every subscriber to or holder of stock in the company, and shall extend to and include the personal representatives of the shareholders." The present Dominion Act contains the same definition, but there is no definition whatever in the present Ontario Act. It, therefore, may be open to some question as to whether a person can become a shareholder in a company incorporated under the Ontario Companies Act unless he signs the memorandum of agreement referred to in the Act. But see *Re London Speaker Co.*, *infra*.

It is submitted, however, that it is clear that those persons who subscribe to the memorandum of agreement before incorporation are now liable as shareholders without any further act of the directors. It was held *In re London Speaker Co.*, 16 A. R. 508, that where a person, before incorporation, signs an agreement to take stock, he does not become liable as a shareholder without anything further being done. That decision, however, was under the old Companies Act before its amendment, which provided that only those who petition for the charter, and others who may become shareholders in the company, should be constituted a body corporate and politic, etc., and, furthermore, the agreement signed in that case was not an agreement provided by the Act. A perusal of the

judgments of Burton, J.A., and Osler, J.A., in that case, will show clearly that the Court was of the opinion that those who had signed the memorandum of agreement referred to in the Act would become shareholders without allotment. It is submitted, however, that in view of this case, even under the present Acts, a person who signs an agreement in the form other than that given by the Ontario or Dominion Act, prior to incorporation, will not become a shareholder unless there is allotment of stock and notice to him in the ordinary way. See *In re Nipissing Planing Mills, Ltd.*, 18 O. L. R. 80; and see *Modern Bedstead Co.* v. *Tobin*, 12 O. W. R. 22.

Those persons who are named in the charter of a company as shareholders are liable for the stock stated in the charter to be held by them, and no further act of the directors is necessary. *Re Haggart Bros.*, 19 A. R. 582.

The Statute of Limitations does not begin to run against a company until a call is made and notice given, and accordingly persons named in the charter issued in 1880 as shareholders were, in 1891, held liable, no call having been made in the meantime. *Ibid.*

It would appear that those persons who sign the memorandum of agreement referred to in the Companies Act after incorporation are liable without allotment: See judgment of Burton, J.A., *In re London Speaker Co.*, 16 A. R. 508, at p. 513, explaining the decision of Boyd, C., *In re Queen City*, 10 O. R. 264.

A person signed the memorandum of agreement and stock book upon the incorporation of the company, subscribing for $2200 worth of stock, and he was named in the charter as a provisional director. He was subsequently elected president of the company. No shares were ever allotted to him. It was held that he was liable as a contributory in respect of the $2200. No allotment of stock was necessary to hold the petitioner for incorporation liable. *Re Cement, Stone and Building Co., McBean's Case*, 8 O. W. R. 264.

Where A. signs the memorandum of agreement on incorporation and the petition, but is really acting for B. and signs on his behalf, A. alone and not B. is liable on the winding-up, as petitioners must, by the Companies Act, own the shares subscribed for in their own right. *Re Wakefield Mica Co.*, 7 O. W. R. 104.

The Ontario Companies Act provides that "No person shall hold office of a director unless he is a shareholder absolutely in his own right."

The holding of office, it is submitted, is sufficient conduct on the part of a director to justify the conclusion that he desired to become

a shareholder to the extent of at least one share, and in action, considered himself to be a shareholder.

(*b*) No acceptance of offer.

The most common mode of acquiring shares is by application to the company after incorporation and acceptance of the offer by the company which issues the shares applied for. The only manner in which a company can accept an application for shares is by doing two acts which are separate and distinct. These are:

(*a*) Allotting the shares applied for.

(*b*) Giving notice to the shareholder that the shares have been allotted to him and his offer thereby accepted.

In reference to allotment reference may be had to the title allotment, *supra*. It may be stated here, however, that owing to the change in the Ontario Companies Act, there would now appear to be less necessity for strict and regular proceedings in respect to allotment than there formerly was. By the old Ontario Companies Act, sect. 26, it was provided that "shares shall be allotted when and as the directors by bye-law or otherwise ordain." The cases cited *infra* show that the directors were required to act regularly and in a body in making an allotment of stock which would be binding on the shareholders, unless such things were done that it might be said as in *Hill's Case*, *infra*, that the directors had "otherwise ordained." But under the present Ontario Act the only provision in respect to allotment is contained in sect. 87, which states that the "directors may make bye-laws to regulate the allotment of shares."

It is thus seen that there is no direct provision requiring the directors to make bye-laws actually allotting the shares. It will almost seem that under this provision the directors may pass a bye-law placing the allotment of stock in the hands of an officer, such as a secretary, and regulate the allotment by him. It was held in *Galloway's Case*, 12 O. L. R. 100, that this could not be done. But this decision was given under sect. 26 of the old Act, which is not now in force. The question is open to serious doubt, as all depends on the construction which the Courts will place on "regulate the allotment of shares."

G. agreed with a director to take $2000 stock and to pay for same by a rebate of 10 per cent. from each month's account. This was in writing signed by a director but not by the company. No allotment was ever made. He never attended meetings as a shareholder. Held he was not contributory. *Re Canadian McVicker Engine Co.*, 13 O. W. R. 916.

The appellant who agreed to take one share in a company received and accepted a certificate for five shares expressed to be fully paid up, four of which the managing director told him were intended only as security for certain paper to which he had become a party for the accommodation of the company. No stock was subscribed for by or allotted to him, but a dividend on the one share was paid to him. Held that he was a contributory in respect to the one share only. *In re Charles H. Davies, Limited, McNichol's Case*, 18 O. L. R. 240.

Promoters of a company finding difficulty in getting stock subscribed said that when the company got a bonus of $15,000 from the town, $15,000 of paid-up stock would be allotted and distributed *pro rata* among the subscribers. This was done. Held in winding-up proceedings that holders of this bonus stock must be placed on the list of contributories. *Re Cornwall Furniture Co.*, 14 O. W. R. 352; affirmed 15 O. W. R. 614.

It may be mentioned that since the revision of 1886, the Dominion Act is more stringent in respect to the allotment of stock than in the Ontario Act. In sect. 46 of the present Dominion Act it is provided that "stock shall be allotted as the directors by bye-law shall prescribe." It would seem, therefore, in the case of Dominion companies, that it is essential that there should be a proper bye-law of the company allotting stock in order to make a shareholder liable.

A person who applies for shares which are not allotted to him, and where there is no recognition by the company of his position as a shareholder and no action on his part presuming himself to be a shareholder, is not liable on a winding up. *Re Zoological Society*, 16 A. R. 543.

A shareholder applied for stock and upon receipt of his application his name was placed on the shareholders' list, an account opened for him in the stock ledger and a draft made on him for 10 per cent. of his stock, which was paid. A letter was sent him with the draft advising that the company was drawing upon him for the first payment "on account of his stock." He was held liable on a winding up, although no bye-laws were passed by the directors allotting the stock. It was held that all these acts must be regarded as evidence that the directors "otherwise ordained" the allotment of this stock. *Hill's Case*, 10 O. L. R. 501. See *supra* as to change in Companies Act.

Where a contributory applied for stock and was notified that the directors had allotted him the stock in accordance with his

application, but as a matter of fact the directors had not passed a bye-law providing for or "otherwise ordained" the allotment of stock as required by the old Ontario Companies Act, and had merely passed a resolution that the "secretary be instructed to allot stock as applications are passed in," it was held that he was not liable upon a winding up on the ground that the directors could not delegate to a subordinate officer their duty to allot stock. There was no valid acceptance of his application. *Galloway's Case*, 12 O. L. R. 100.

In the same case where a contributory had applied for preference stock and it was admitted that the provision of the Companies Act had not been complied with in respect to the creation of preference stock, it was held that he could not be liable as the company was never in a position to give him that for which he had applied and he was not estopped from showing this. *Ibid.*

In *Higginbotham's Case*, 12 O. L. R. 100, which arose out of the same liquidation, a contributory applied for stock, acted as director, gave a note in payment of his stock, made payments thereon, attended meetings of shareholders and moved resolutions thereat, but he had not notice until after the liquidation of any irregularities in connection with the allotment. It then appeared that the directors had passed no bye-law or otherwise ordained the allotment of stock, but had merely delegated the power of allotment to the secretary. It was held that making payments in ignorance of these facts was not a conclusive act, and the attendance and conduct at the meetings was not such an act of participation in the affairs and business of the company as to debar any question as to his status as a shareholder.

"In order to impute to a person a contract to take shares, something like a contract must be established or something shown which prevents him from saying there is not a contract. Here there was nothing in the records to show that he was a shareholder except entries in an imperfect stock book or ledger." *Per* Moss, C.J., at page 113.

A contributory applied for shares, and on the same date as the application, an entry was made in the stock ledger debiting him with these shares, and on the same day he gave the company's agent a cheque on account. On the following day he notified the agent that he withdrew his offer to take shares and stopped payment of the cheque. No evidence was adduced in respect to allotment. A formal notice of allotment was not given, but notice of calls were given. Held, no valid allotment and contributory not liable. *Morton's Case*, 12 O. L. R. 594.

After a person has subscribed in the ordinary manner for shares and they have been allotted to him, it is not competent for the company to release him from his liability to pay for the shares in cash, by entering into an agreement to issue to him fully paid shares in consideration of his covenants to do something in the future. Held that the subscriber should be settled upon the list of contributories.

In re Jones and Moore Electric Co., 18 Man. L. R. 549. See also *Re Northern Constructions, Ltd.*, 19 Man. R. 528.

J. signed an application for ten shares on 1st May. On 2nd May he wrote to the canvasser withdrawing his application. On May 4th his application was accepted, and ten shares allotted to him and notice sent. Held that the canvasser had no authority to receive a notice of withdrawal, and as J. had not brought home to the company knowledge of the receipt of the letter of withdrawal before allotment, he was settled on the list of contributories. *Re Globe Fire Insurance Co.*, 11 W. L. R. 293.

In *Re Distributors Company, Thurston's Case*, 13 O. W. R. 735, it was held that where a firm subscribes for stock in a company the several partners are liable to be placed on the list of contributories for the unpaid balance, including Thurston, who was a "special partner" of the firm, and bound to bear an equal share with the other partners in the firm's losses.

A contributory applied for shares on condition that no further calls be made thereon, and the shares were allotted him on that condition. He gave his cheque in payment and his proxy to vote on the shares. Objection having been raised as to his right to vote on the shares as they had been sold at a large discount, the defendant stopped payment of his cheque, and informed the president that he would have nothing further to do with the shares. Held that his name should be removed from the list of contributories.

In re Lake Ontario Navigation Co., 20 O. L. R. 191. As to conditional application, see also *In re Victor Wood Works*, 7 E. L. R. 55.

A trustee invested money in a company of which he was president. On the eve of the company being wound up the president withdrew $1969.61 from the company to protect his *cestuis que trust* and give them a preference. Held that section 99 of the Winding-up Act applied, and that the plaintiff was entitled to recover from the defendant the amount withdrawn. *Trusts and Guarantee Co.* v. *Munro*, 19 O. L. R. 480.

As to the defence, the defendant's shares were forfeited before winding-up, see *In re D. Wade Co.*, 2 Alta. L. R. 117.

A contributory under the Dominion Winding-Up Act is entitled to set off a deposit account against a claim against him under the double liability clause of the Bank Act. *Re Central Bank, Ex parte Harrison & Standing*, 30 C. L. T. 271.

CHAPTER XXXV.

DISSOLUTION OF COMPANIES.

In the case of the compulsory winding-up of a company, the Court, when its affairs are completely wound up, makes an order that the company be dissolved from the date of such order, and thereupon the company is dissolved accordingly (*a*). It is presumed that no order for dissolution will be made in England until the liquidator has obtained his release in pursuance of sect. 157 of the Companies Act, 1908. Under this section, when the liquidator has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories, or has resigned or has been removed from his office, the Board of Trade is, on his application, to cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, is to take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and may either grant or withhold the realease accordingly, subject nevertheless to an appeal to the High Court. Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty. An order of the Board releasing the liquidator discharges 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. Where the

(*a*) C. A. 1908, s. 172.

liquidator has not previously resigned or been removed, his release operates as a removal of him from his office. The liquidator, before making application for his release, must give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and send with the notice a summary of his receipts and payments as liquidator, and notice of the order granting the release is to be gazetted (*b*).

If the winding-up of a company in England is not concluded within one year after the commencement of the winding-up, the liquidator is bound to send to the registrar of companies every half-year until the winding-up is concluded a statement in duplicate, verified by affidavit, in the prescribed form containing the prescribed particulars with respect to the proceedings in and the position of the liquidation (*c*). If during any such half-year he has not paid or received any money on account of the company, he is, to transmit the statement containing the prescribed particulars with respect to the proceedings in and position of the liquidation and also to send an affidavit of no receipts or payments (*d*). The liquidator is to pay into the the Companies Liquidation Account at the Bank of England, to the credit of the company, all money representing (1) unclaimed dividends which for more than six months from the date when the dividend became payable have remained in his hands or under his control; and (2) all other money in his hands or under his control representing unclaimed or undistributed assets which have remained unclaimed or undistributed for a period of six months after the date of their receipt (*e*). In the first case the money is to be paid at the expiration of the six months, and in the second case within fourteen days from the date to which the statement of account is brought down, provided that the amount so to be paid in is to be the minimum balance of such assets during the six months immediately preceding such date, less such sum as the Board of Trade may authorize the liquidator to retain for the immediate purposes of the liquidation (*f*). Any person claiming to be entitled to any moneys so paid in may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due, but so that any person dissatisfied with the decision of the Board of Trade may appeal to the High

(*b*) C. (W.-U.) Rules, 1909, r. 197.
(*c*) C. A. 1908, s. 224 (1); C. (W.-U.) Rules, 1909, r. 189.
(*d*) *Ibid.* r. 190.
(*e*) *Land Mortgage Bank of Florida*, [1898] 1 Ch. 444.
(*f*) C. A. 1908, s. 224 (4); C. (W.-U.) Rules, 1909, r. 191.

Court (*g*). Money so paid in cannot be attached by means of a garnishee order (*h*). As to the penalty to which a liquidator is liable for default in complying with sect. 224, see *ante*, p. 406 (*i*).

Any person stating himself in writing to be a creditor or contributory of the company is entitled, by himself or his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to a copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of Court, and is punishable accordingly on the application of the liquidator or of the official receiver (*k*). The winding-up of a company is, for the purpose of sect. 224, deemed to be concluded—

(1) 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 releasing the liquidator pursuant to sect. 157 of the Act.

(2) 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 (*l*).

The Board of Trade may, with regard to the moneys so paid in to the Companies Liquidation Account (*m*), make any payment thereout on the application of the liquidator when required by him for the purpose of distribution, or for the costs and expenses of the proceedings (*n*), or to a person certified by the liquidator to be entitled to receive the same (*o*); or may invest any part of such moneys, and sell any part of such investments if money is required for the purposes of the company (*p*). If there is a committee of inspection,

(*g*) C. A. 1908, s. 224 (6) (7).

(*h*) *Spence* v. *Coleman*, [1901] 2 K. B. 199.

(*i*) C. A. 1908, s. 224, and C. (W.-U.) Rules, 1909, rr. 189 to 191, apply to a voluntary winding-up, whether under supervision or not, as well as to a compulsory winding-up. *Stock and Share Auction*, [1894] 1 Ch. 736; C. (W.-U.) Rules, 1909, Rule 188.

(*k*) C. A. 1908, s. 224 (2).

(*l*) C. (W.-U.) Rules, 1909, r. 188.

(*m*) See C. A. 1908, s. 229.

(*n*) C. (W.-U.) Rules, 1909, r. 196.

(*o*) C. A. 1908, s. 224 (6).

(*p*) *Ibid.* s. 231.

the Board is to make such investments or sale at the request of the committee of inspection, or, if there is none, at the request of the liquidator (*q*). The dividends on the investments are to be paid to the credit of the company (*r*). If the balance to the credit of any company's account in the hands of the Board of Trade exceeds 2,000*l*., and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company is entitled to interest upon such excess at the rate of 2 per cent. per annum (*s*). It is submitted that any person entitled to any unclaimed dividends paid in to the credit of the Companies Liquidation Account can, notwithstanding the dissolution of the company, obtain payment thereof out of such account. Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which, in the opinion of the Board of Trade, is required for the time being to answer demands in respect of companies' estates, the Board is required to notify the excess to the Treasury and 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 same in Government securities to be placed to the credit of such account. If any money is required from this account by the Board of Trade to answer any demands in respect of companies' estates, the same is to be repaid by the Treasury, and, if necessary, raised by the sale of any part of such Government securities. The dividends are to be paid to such account as the Treasury may direct, and regard is to be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding-up of companies in England (*t*).

As soon as the affairs of a company in voluntary liquidation are fully wound up, the liquidator is bound to make up an account showing the manner in which the winding-up has been conducted and the property of the company disposed of, and to call a general meeting of the company to consider such account and any explanation thereof. The meeting must be called by advertisement specifying the time, place, and object of the meeting, and published one month at least previously to the meeting, as respects companies registered in (1) England, in the *London Gazette*; (2) Scotland, in *Edinburgh Gazette*; (3) Ireland, in the *Dublin Gazette* (*u*). The

(*q*) *Ibid.* s. 231 (1).
(*r*) *Ibid.* s. 231 (3).
(*s*) *Ibid.* s. 231 (4).
(*t*) C. A. 1908, s. 230.
(*u*) *Ibid.* ss. 195 and 285.

liquidator must then make a return to the registrar of companies of the holding of such meeting, and of its date; and on the expiration of three months from the registration of the date of such return the company is deemed to be dissolved (*v*). But the Court can before the three months have expired stay all proceedings in the winding-up and so keep the company on foot after the three months (*x*), and the Court may upon 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 thinks fit. The person who obtains the order must within seven days after it is made file with the registrar an office copy thereof (*y*).

Where any company has been wound up under the Companies Act, 1908, and is about to be dissolved, the books, registers, accounts, deeds and documents of the company and of the liquidators may be disposed of in the following way—that is to say, in the case of a winding-up by or subject to the supervision of the Court in such way as the Court directs, and in the case of a voluntary winding-up, in such way as the company by extraordinary resolution directs; but after the lapse of five years from the dissolution no responsibility rests on the company or the liquidators, or any person to whom the custody of such books, etc., has been committed, by reason that the same or any of them cannot be made forthcoming, to any party or parties claiming to be interested therein (*z*). If, however, after the dissolution of a company any documents remain in the custody of the liquidators, they may be ordered to produce such documents (*a*).

Where a company has been dissolved the Court may, at any time within two years of the date of the dissolution on an application by the liquidator or any other person who appears 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 might be taken as might have been taken if the company had not been dissolved (*b*).

It may be mentioned here that, without any winding-up proceedings, a company may be dissolved under the provisions of sect. 242 of the Companies Act, 1908, which confers upon the registrar of joint stock companies power to strike off the register the name of

(*v*) *Ibid.* s. 195. As to penalty on default, see *ante*, p. 406.

(*x*) *Eastern Investment Co.*, [1905] 1 Ch. 352.

(*y*) C. A. 1908, s. 195. As to penalty on default, see *ante*, p. 406.

(*z*) C. A. 1908, ss. 222, 285.

(*a*) *London and Yorkshire Bank* v. *Cooper* (1885), 15 Q. B. D. 473.

(*b*) C. A. 1908, s. 223.

any company which is not carrying on business or in operation, and upon the publication of the notice thereof in the *London, Edinburgh*, or *Dublin Gazette*, as respect a company whose registered office is in England, Scotland, or Ireland, the company is dissolved, but so that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. Before the company's name can be struck off, the registrar (1) sends a letter to the company inquiring whether it is carrying on business or is in operation; (2) if no answer is received within a month, then within fourteen days thereafter sends a registered letter stating 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; and (3) if an answer is received that the company is not carrying on business or in operation, or no answer is received within one month after the date of the second letter, publishes in the *Gazette* and sends to the company a notice that at the expiration of three months from the date of the notice the name of the company will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. Any member or creditor of the company, or the company, may obtain from the Court (*c*) an order that the name of the company be restored to the register, and the Court may make such order if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise (*d*) that it is just to do so. If the order is made, the company is deemed to have continued in existence as if it had never been dissolved under this section, and the Court may give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the dissolution had not taken place (*e*). Where a company is being wound up, and the registrar has reasonable cause to believe 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 (*f*) have not been made for a period of six 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

(*c*) This is the Court having jurisdiction to wind up the Company, C. A. 1908, s. 285.

(*d*) *Outlay Assurance Society* (1887), 34 C. D. 479.

(*e*) *Carpenter's Patent Davit Co.* (1888), 1 Meg. 26.

(*f*) See *ante*, p. 535.

a like notice as if the registrar had not within one month after sending the second letter above mentioned received any answer thereto.

A letter or notice under sect. 242 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 whose name and address are known to the registrar, or if there is no such director or officer may be sent to each of the subscribers of the memorandum at his address as therein mentioned.

Where a company would but for its having been dissolved become entitled to dividends or other personal property, such dividends or property belong to the Crown as *bona vacantia* (*g*).

Where at the time of the dissolution of the company it is a trustee of property, the Court has jurisdiction under the Trustee Act, 1893, to appoint new trustees and to make a vesting order (*h*). The dissolution of a company does not extinguish the liability of a surety who has guaranteed the payment of interest on its debentures until the principal sums thereby secured are repaid (*i*), but it does extinguish the liability of a surety for payment of rent reserved by a lease vested in the company at the time of its dissolution as the dissolution determines the lease and the land leased reverts to the reversioner (*k*).

(*g*) *Higginson and Dean*, [1899] 1 Q. B. 325.

(*h*) *General Accident Assurance Corporation*, [1904] 1 Ch. 147, not followed by Buckley, J., *Re Taylor's Agreement Trust*, [1904] 2 Ch. 737; but followed in *Richard Mills & Co.*, [1905] W. N. 36, and 9, *Bomore Road*, [1906] 1 Ch. 359.

(*i*) *Re Fitzgeorge, Ex parte Robson*, [1905] 1 K. B. 462.

(*k*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378.

AMALGAMATION.

CANADIAN NOTES.

Amalgamation may be effected:

1. By special Act of Parliament;

2. By proceedings under sect. 8 of the Ontario Companies Act;

3. Under the provisions of sect. 188 of the Ontario Companies Act. This section is almost the same as sect. 191 of the Imperial Companies Act, 1862;

4. Under a power in the Charter to sell the undertaking for shares in another company combined with the power to divide assets in a winding-up in specie;

5. By the formation of a new company and the sale to this new company of the assets of the companies desiring to amalgamate.

Bond holders of a railway company were, by the Statutory Charter, given an option to convert their bonds into stock, such stock to be preferential to the ordinary stock of the company. By subsequent Act the company was authorized to amalgamate with another company, and it was declared in the Act that the two companies and those who should become shareholders in the amalgamated company should constitute the new company. It was held that this amalgamation did not extinguish the right of the bond holders to elect to take stock which should be preferred stock in the amalgamated company. *Cayley* v. *Cobourg Ry. Co.*, 14 Gr. 571.

In 1889 the City of Toronto entered into similar agreements with the defendant companies, by which they authorized these companies to lay down and operate underground wires and appliances for the distribution and supply of electricity, and gave them other privileges in connection with their business. By these agreements the defendants were forbidden to lease, to amalgamate with or sell out to any other company, without the consent of the plaintiffs, and if they did so all rights granted thereby were to cease and determine. In 1896 the Incandescent Co. sold out all their assets

and the shareholders transferred their shares to the Electric Light Co.

Held, that the Toronto Electric Light Co. had not, in purchasing, fallen within the prohibition clause, for to hold to the contrary would be to add "buy" to that clause.

What had been done was not an amalgamation of the companies, inasmuch as the purchase was for cash, and for cash only, and the Incandescent Light Co. acquired no interest whatever in the assets and affairs or otherwise of the other company.

Inasmuch as the actions were not commenced till April, 1902, the plaintiffs had, by their long delay in bringing suit, and also by their conduct after the alleged breach and before the action, lost their right to complain. The plaintiffs had, by their conduct, waived the alleged forfeiture, the evidence clearly showing that they had knowledge throughout of the facts upon which the right to claim a forfeiture rested, and it was not necessary to prove actual notice.

Notice to the city engineer was, in the circumstances of this case, sufficient, although the evidence showed much more than that, and warranted the conclusion that knowledge of the absorption of the one company by the other was common and general throughout the city, and might safely be imputed to the city council, as a whole, especially as no civic official had denied such an inference. *City of Toronto* v. *Toronto Electric Light Co.*; *City of Toronto* v. *Incandescent Light Co. of Toronto* and *The Toronto Electric Light Co.*, 6 O. L. R. 187.

The defendants organized plaintiff company, and sold to it the assets of two other companies which defendants owned, making a profit of $27,691. The plaintiff company in liquidation brought action to recover this amount from the defendants. The Court of Appeal held that it was the duty of the defendants to place the affairs of the two companies before an independent board of directors of the plaintiff company having full knowledge of the transactions proposed, and that this had not been done; that plaintiff company had not been properly represented at the bargaining, and that the defendants had made the sale without making proper disclosures, and should therefore be held liable to the extent of their profit from the sale. *Stratford* v. *Mooney*, 16 O. W. R. See also *Re Victor Wood Works*, 7 E. L. R. 55.

APPENDIX I.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company.	£
Divided into - - - - -	Shares of £ each. " " " " " "
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
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 those shares and debentures (*a*).	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ 4. Consideration.
Names and addresses of (*b*) vendors of property purchased or acquired, or proposed to be (*c*) purchased or acquired by the company. Amount (in cash, shares, or debentures (*a*)) payable to each separate vendor.	

(*a*) The word "debentures" includes debenture stock, s. 285, C. A. 1908.

(*b*) For definition of "vendor," see s. 81 (2) of the Companies (Consolidation) Act, 1908, *ante*, p. 117.

(*c*) See s. 81 (3) of the Companies (Consolidation) Act, 1908, *ante*, p. 117.

Amount (if any) paid or payable (in cash or shares or debentures (*a*)) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash - - - - £ Shares - - - £ Debentures - - £ Goodwill - - - £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures (*a*) in the company, or Rate of the commission - - -	Amount paid. ,, payable. Rate per cent.
Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business 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 auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or	

(*a*) See note (*a*) on p. 541.

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 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 by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures (*a*) receiving and inspecting balance 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 authorized in writing.) _____

_____

_____

(*a*) See note (*a*) on p. 541.

APPENDIX II.

FORM OF PROSPECTUS OF A NEW COMPANY.

This Prospectus has been filed for Registration with the Registrar of Joint Stock Companies (*a*).

The Subscription List will be opened on (*b*) *the day of , and will be closed at o'clock on the day of for Town, and at o'clock on the day of for the Country.*

Applications will be received by (*c*).

(*d*) LIMITED.

Incorporated under the Companies (Consolidation) Act, 1908, whereby the liability of shareholders is limited to the amount unpaid on their shares.

SHARE CAPITAL . . . . £ .

divided into

——— (*e*) per cent. Cumulative Preference Shares of £ each . . . . . £

——— Ordinary Shares of £ each . . . . . £

——— Founders' (Management) Shares of £ each . . £

£

DEBENTURE STOCK.

——— per cent. First Mortgage Debenture Stock . . . . £

£

All the above Stock and Preference Shares, and *l.* of the Ordinary Shares are now offered for subscription at par, payable as follows:—

(*a*) This statement must appear on the face of the prospectus. See C. A. 1908, s. 80.
(*b*) Here insert times and dates.
(*c*) Insert names of banks or persons.
(*d*) Insert name of company.
(*e*) Insert number, denomination, and total nominal amount of shares, and rate of dividend attached to the preference shares, and rate of interest on the debenture stock.

	Preference Shares.	*Ordinary Shares.*	*Debenture Stock.*
On application (*f*)	per share .... £	per share .... £	per cent.
On allotment (*f*)	,, ... £	,, ... £	,,
On	,, ... £	,, ... £	,,
	£	£	£100

Trustees for the Debenture Stockholders.
Directors (*g*).
Bankers,
Brokers,
Solicitors.
Auditors (*h*).
Secretary and Offices.

The minimum subscription upon which the directors will proceed to allotment is *l.* per cent. of the shares offered for subscription (*i*).

Debenture Stock. The interest will be payable half-yearly in and , and the first payment calculated from the due dates of the several instalments will be paid on .

The stock is secured by a trust deed containing a specific mortgage upon the freehold and leasehold property of the company, and a floating charge on all the other property and assets of the company excluding [including] its uncalled capital. The Registrar of Joint Stock Companies has given his certificate that the trust deed has been duly registered in pursuance of sect. 93 of the Companies Act, 1908.

The debenture stock, or any part thereof, may be redeemed at the option of the company, at any time after the year , on six months' notice at the rate of per cent., and is redeemable at the same rate in the event of a voluntary winding-up.

Preference Shares. It is intended to pay dividends on the preference shares half-yearly in and , the first dividend being payable in , calculated from the due dates of the instalments. The preference shares confer the right to a cumulative preferential dividend at the rate of per cent. per annum, and also to priority in repayment of capital, but no other right to participate in the company's profits or assets.

Founders' [Management or Deferred] Shares. [Insert here the

(*f*) The amount payable on application for shares must not be less than five per cent. C. A. 1908, s. 85 (3).

(*g*) Insert names, descriptions, and addresses of the directors or proposed directors. C. A. 1908, s. 81, sub-s. 1 (c).

(*h*) Insert names and addresses of auditors. C. A. 1908, s. 81, sub-s. 1 (l).

(*i*) This amount must be the same as the amount fixed by the memorandum or articles of association. This statement may be omitted where no allotment will be made unless all the share capital offered for subscription is subscribed before proceeding to allotment. C. A. 1908, s. 85, sub-s. 1.

clauses in the memorandum, and/or articles of association as to the nature and extent of the interest of the holders of these shares in the property and profits of the company (*k*).]

PROSPECTUS.

[Insert here the principal objects of the company, particulars of the business and assets to be acquired by the company, and a statement of the assets and liabilities to be taken over, and of the profits and prospects of the business. The reports of accountants and other experts and valuations should either be set out or referred to, and in the latter case copies of the reports and valuations should be sent with the prospectus (*l*).]

Particulars of Contracts (*m*).

By a contract dated the , and made between A. B., of of the one part, and C. D., of of the other part, it was agreed that A. B. should sell, and C. D. should purchase, the business of carried on by A. B. at and elsewhere, and all the assets connected therewith, as a going concern as on the day of , subject to the payment of the trade liabilities then existing, for the sum of *l.*

By a contract dated the , and made between C. D. of the one part and this company of the other part, C. D. agreed to sell to the company the said business and assets, subject to the payment of the said liabilities at the price of *l.*, to be paid and satisfied as to *l.* in fully paid ordinary shares, and as to *l.* in cash.

The company has entered into contracts for the underwriting (*n*) of the whole of the shares offered for subscription at the rate (*o*) of per cent. on such amount.

Particulars of Underwriting Contracts.

Dates of Contracts.	Names of Underwriters.

The estimated amount of the preliminary expenses (*p*) of the company up to and including the allotment of its capital, including the preparation, printing and registration of its memorandum and articles of association

(*k*) C. A. 1900, s. 10, sub-s. 1 (a).

(*l*) See C. A. 1908, s. 84.

(*m*) Assuming that these contracts are the only material contracts other than contracts made in the ordinary course of the business of the company, and that no separate amount is specified as payment for goodwill, the particulars given will satisfy the C. A. 1908, s. 81, sub-s. 1 (e), (f), (g), (h) and (k), and sub-ss. 2 and 3.

(*n*) Particulars of the commission payable to sub-underwriters need not be stated. C. A. 1908, s. 81, sub-s. 1 (h).

(*o*) This rate must not exceed the rate authorised by the articles of association. C. A. 1908, s. 89.

(*p*) C. A. 1908, s. 81, sub-s. 1 (i).

and trust deed, the costs of preparing, printing, advertising, and issuing this prospectus, together with registration fees, stamps, and charges of solicitors, brokers, valuers and accountants, is *l.*, which will be paid by the company out of the proceeds of this issue.

The articles of association provide as follows:—[*Here set out all the articles of association as to the qualification and remuneration of directors* (*q*).]

E. F., who is the promoter of the company, is to be repaid the sum of *l.* paid by him on account of the preliminary expenses of the company, and is to receive from C. D., the vendor to the company, the sum of *l.* in cash and *l.* in fully paid ordinary shares of that nominal amount as the remuneration for his services in the promotion and formation of the company (*r*).

The directors have no interest in the promotion of the company or in the property to be acquired by the company (*s*), except so far as they are interested as the holders of the founders' [management or deferred] shares and of the shares for which they have subscribed the memorandum of association.

Each shareholder is entitled to one vote for every preference, ordinary, or founders' [management or deferred] share of which he is the registered holder (*t*).

A print of the trust deed for securing the debenture stock and of the contracts herein referred to, or copies thereof, together with the memorandum and articles of association, and the certificates and reports of the accountants and valuers, or copies thereof, may be seen at the offices of the company's solicitors, Messrs. , of , at any time between eleven and four o'clock, on any day before the subscription list is closed (*u*).

Early application will be made for a settlement in and Stock Exchange quotation for the debenture stock and preference and ordinary shares.

Applications for debenture stock, preference or ordinary shares, should be made on the accompanying forms and forwarded together with cheque for the amount payable on application to .

If no allotment is made the application money will be returned in full, and where the amount of stock or the number of shares allotted is less than that applied for, the surplus will be credited in reduction of the amount payable on allotment, and any excess will be returned to the applicant.

Failure to pay any instalment when due will render the previous payments liable to forfeiture.

(*q*) *Ibid.* sub-s. 1 (b).
(*r*) *Ibid.* sub-s. 1 (j).
(*s*) *Ibid.* sub-s. 1 (m).
(*t*) *Ibid.* sub-s. 1 (n).
(*u*) *Ibid.* sub-s. 1 (k).

Prospectuses and application forms may be obtained at the offices of the company, and of the bankers, brokers and solicitors.

Dated the day of (*x*).

MEMORANDUM OF ASSOCIATION OF , LIMITED.

[*Copy to be set out except in any advertisement in a newspaper of the prospectus* (*y*).]

Names, Addresses and Descriptions of the Signatories to the Memorandum of Association.	Number of Shares taken by each Subscriber.

[*This must be filled up except in any advertisement in a newspaper of the prospectus* (*y*).

(*x*) C. A. 1908, s. 80, sub-s. 1. (*y*) *Ibid.* s. 81, sub-ss. 1 (a) and 5.

APPENDIX III.

EXTRACTS from the Rules and Regulations of the Stock Exchange.

Special Settling Days.

138. *Special settling-days in shares of new companies.*]—The Secretary of the Share and Loan Department shall give three days' public notice of any application for a special settling-day in the shares or other securities of a new company previously to such application being submitted to the committee, who will appoint a special settling-day provided that sufficient certificates or scrip are ready for delivery (*a*).

The committee will not fix a special settling-day for bargains in shares or securities issued to the vendors, credited as fully or partly paid, until six months after the date fixed for the special settlement in the shares or securities subscribed for by the public, but this does not necessarily apply to re-organisations or amalgamations of existing companies, or to cases where no public shares are issued, or to cases where the vendors take the whole of the shares issued for cash (*vide* Appendix 25, B.).

Official Quotation.

139. *Quotation of new companies—Magnitude and Importance—Notice—Documents—Prospectus—Proportion of public allotment to issue—Articles of association—Debentures—Broker.*]—The committee may order the quotation in the official list of any security of sufficient magnitude and importance.

Application for quotation must be made to the Secretary of the Share and Loan Department and must comply with such conditions and requirements as may be ordered from time to time by the committee (*vide* Appendix 26).

Three days' public notice must be given of every application.

A broker or member of the Stock Exchange must be authorized to give the Committee full information as to the security, and to furnish them with all particulars they may require.

140. *Quotation of vendors' shares.*]—Securities issued to vendors credited as fully or partly paid, shall not be quoted until six months after the date fixed for the special settlement of the securities of the same class

(*a*) *Burdett* v. *Standard Exploration Co.* (1899), 16 T. L. R. 112.

subscribed for by the public, provided a quotation for the latter is also granted.

25. SPECIAL SETTLEMENTS.

The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for a Special Settlement :—

A. Scrip or Bonds of New Loans.

A Specimen of the Scrip or Bond.
A Copy of the prospectus, circular or advertisement relating to the issue.
A Statutory Declaration stating
1. The amount allotted
   (*a*) to the public.
   (*b*) to others.
2. The distinctive numbers and denomination of each Class of Scrip or Bond.
3. The amount paid up thereon.
4. That the Scrip or Bonds are ready to be delivered.

B. Shares of New Companies.

The Certificate of Incorporation.
A Specimen of the Share Certificate.
A Copy of the Prospectus, *the statement in lieu of Prospectus as filed with the Registrar of Joint Stock Companies*, circular or advertisement relating to the issue.
A specimen call letter.
Certified printed Copies of Contracts relating to the issue of Shares credited as fully or partly paid.
A letter from the Secretary of the Company, stating:
1. That the Share Certificates are ready to be issued.
2. The distinctive numbers of the shares allotted
   (*a*) to the public.
   (*b*) to the vendors.
3. The particulars of the Company's Capital.
4. The nominal amount of each share, and the amount paid in cash or credited as paid on each share.
5. In cases where the whole of the Capital has not been issued at the time the application is made, whether the unissued shares are Vendors' Shares or are held in reserve for future issue.

C. Stock or Debenture Stock of New Companies.

A Specimen of the Scrip or Stock Certificate.
A Copy of the prospectus or the statement in lieu of Prospectus as filed with the Registrar of Joint Stock Companies, circular or advertisement relating to the issue.
A letter from the Secretary of the Company stating:
1. The amount allotted
   (*a*) to the public.
   (*b*) to others.
2. The amount paid in cash per £100 Stock.
3. That the Scrip or Stock is ready to be issued.

26. OFFICIAL QUOTATIONS

A. Conditions Precedent to an Application for Official Quotation.

1. That the Prospectus—
   Shall have been publicly advertised;
   Agrees substantially with the Act of Parliament or Articles of Association;
   Provides for the issue of not less than one-half of the Authorized Capital and for the payment of 10 per cent. upon the amount subscribed;
   If offering Debentures or Debenture Stock states fully the terms of redemption.
   In cases where a Company has sold an issue of Debentures or Debenture Stock which is subsequently offered for public subscription either by the Company or any subsequent purchaser, states the authority for the issue and all conditions of sale.
2. That two-thirds of the amount proposed to be issued of any class of Shares or Securities, whether such issue be the whole or a part of the authorized amount, shall have been applied for by and unconditionally allotted to the public, Shares or Securities granted in lieu of money payments not being considered to form a part of such public allotment.
3. That the Articles of Association, and the Trust Deed where such is required, contain the provisions specified hereafter.
4. That the Certificate or Bond is in the form approved.

B. Articles of Association.

Articles of Association should contain the following provisions:—

1. That none of the funds of the Company shall be employed in the purchase of or in loans upon the security of its own shares.
2. That Directors must hold a share qualification.
3. That the borrowing powers of the Board are limited.
4. That the non-forfeiture of dividends is secured.
5. That the common form of transfer shall be used.
6. That all share and stock certificates shall be issued under the common seal of the Company, and shall bear the signatures of one or more Directors and the Secretary.
7. That fully paid shares shall be free from all lien.
8. That the interest of a Director in any contract shall be disclosed before execution, and that such Director shall not vote in respect thereof.
9. That the Directors shall have power at any time and from time to time to appoint any other qualified person as a Director either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed, but that any Director so appointed shall hold office only until the next following Ordinary General Meeting of the Company, and shall then be eligible for re-election.
10. That a printed Copy of the Report accompanied by the Balance Sheet and Statement of Accounts shall at least seven days previous to the General Meeting be delivered or sent by post to the registered address of every member, and that two copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London.
11. That the charge for a new Share Certificate issued to replace one which has been worn out lost or destroyed shall not exceed one shilling.

C. Trust Deeds.

Trust Deeds should contain the following provisions:—

1. Where provision is made that the security shall be repayable at a premium either at a fixed date or at any time upon notice having been given the Trust Deed must further provide that should the Company go into voluntary liquidation for the purpose of amalgamation or reconstruction the security shall not be repayable at a lower price.
2. The following clause should be inserted in all Deeds:—
   "The statutory power of appointing new Trustees hereof shall be vested in the Company, but a Trustee so appointed must in the first place be approved of by a Resolution of the Debenture (or Debenture Stock) holders passed in the manner specified in the Schedule hereto. A Corporation or Company may be appointed a Trustee of these presents."
3. In the clause regulating the convening of meetings of Debenture (or Debenture Stock) holders, the following words should be inserted, "and the Trustee or Trustees shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of Debentures (or Debenture Stock) for the time being outstanding."
4. The clause defining an "Extraordinary Resolution" must provide that "the expression 'Extraordinary Resolution' means a resolution passed at a meeting of the Debenture (or Debenture Stock) holders duly convened and held at which a clear majority in value of the whole of the Debenture (or Debenture Stock) holders is present in person or by proxy and carried by a majority consisting of not less that three-fourths of the persons voting thereat upon a show of hands, and if a poll is demanded then by a majority consisting of not less than three-fourths in value of the votes given on such poll."
5. Should Debentures or Debenture Stock be entitled "First Mortgage," provision must be made for the creation of a specific first mortgage in favour of the Debenture or Debenture Stock holders.

D Share and Stock Certificates.

All Certificates should state on their face the authority under which the Company is constituted and the amount of the authorized capital of the Company.

The following footnote should appear on all Stock and Share Certificates:—"The Company will not transfer any Stock [Shares] without the production of a Certificate relating to such Stock [Shares]; which Certificate must be surrendered before any Deed of Transfer, whether for the whole or any portion thereof, can be registered or a new Certificate issued in exchange."

Where the Capital of a Company consists of more than one class of Shares of the same denomination, the distinctive numbers of the Shares of each class must be printed on the face of the Share Certificates.

All Preference Share Certificates should bear on their face a statement of the Company's Capital and the conditions both as to capital and dividends under which the Shares are issued.

Debentures and Debenture Stock Certificates should in addition to legal requirements state on their face the authority under which the Company is constituted, the nominal Capital of the Company, the dates when the interest on the Debentures or Debenture Stock is payable and the authority under which the issue is made (*i.e.* Articles of Association and resolution), and on their back the conditions of issue, redemption, and transfer.

F NEW COMPANIES.

Before the application form can be issued for signature there must be supplied:—

A Copy of the Prospectus.

Two Copies of the Articles of Association.

In the case of Debentures or Debenture Stock the trust deed [where possible before execution].

G After the application form has been signed there must also be supplied in the case of:—

SHARES.

The Certificate of Incorporation and the Certificate that the Company is entitled to commence business.

Two certified copies of the Prospectus endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original letters of Application.

The Allotment Book, containing a List of Applicants, the number applied for by each, and the result of each Application, with a Summary signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application a certified list of present shareholders will also be required.

A copy of the Letter of Allotment and the date when posted.

A Specimen of the Share Certificates.

The Bankers' Pass Book, accompanied by a Certificate on a special Form from the Company's Bankers, stating the amount of Deposits received by them, and the number of Shares on which such Deposits (*i.e.*, application money only, being £ per Share) were paid.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations, and certified printed copies of all Contracts and Agreements.

A Statutory Declaration by the Chairman and Secretary, stating the following particulars:—

1. That the Prospectus complies with the provisions of the Companies Acts.
2. That all documents required by the Companies Acts have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos. to), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos. to).
6. The amount of deposits paid, and that such deposits are absolutely free from any lien.
7. That the Share Certificates are ready for delivery, that the purchase of the properties has been completed, and the purchase-money paid, and that no impediment exists to the settlement of the Account.
8. The total number of Allottees and the largest number of Shares (*a*) applied for by and (*b*) allotted to any one applicant.

H After the application form has been signed there must be supplied in the case of:—

Debentures and Debenture Stock.

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

A Certified printed copy of the Mortgage Deed or other similar document, and the Official Certificate of the Registration of the Mortgage or Charge.

Certified copies of the Articles of Association, Resolutions, or other authority for the present issue.

Two Certified copies of the Prospectus.

The original Letters of Application.

The Allotment Book containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole, signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a Certified List of present Stockholders will also be required.

A copy of the Allotment Letter, and the date when posted.

A Specimen of the Debentures or Debenture Stock Certificate, and of the Scrip where Scrip is issued; Certificates of Debenture Stock allotted to vendors in lieu of money payments being enfaced "Issued to Vendors."

A copy of the last published Report and Accounts.

The Bankers' Pass Book, accompanied by a Certificate, on a special form, from the Company's Bankers, stating the amount of Deposits received by them and the amount of Debentures or Debenture Stock on which such Deposits (*i.e.* application money only, being *l.* per Debenture) were paid.

A Statutory Declaration by the Chairman and Secretary, stating:—

1. That the Prospectus complies with the provisions of the Companies Acts, and that all documents required by the Companies Acts have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
2. The amount of Stock applied for by the public.
3. The amount unconditionally allotted to the public (Nos. to).
4. The amount, viz.: *l.* per cent., paid thereon in cash.
5. The amount allotted for a consideration other than cash (Nos. to).
6. The total amount of Deposits, and that such deposits are absolutely free from any lien.
7. That the Debentures or Debenture Stock Certificates are ready for delivery, and that there is no impediment to the settlement of the Account.
8. That a Trust Deed has been executed and completed, if such be the case.
9. The effect of such Trust Deed, and the nature of the charge created thereby in favour of the Debenture-holders.
10. The total number of Allottees.
11. The largest amount of Debentures or Debenture Stock (*a*) applied for by, and (*b*) allotted to any one applicant.

A Statutory Declaration by the Chairman and Secretary, stating:—

1. The total amount of the Authorized Capital of the Company, and how constituted.
2. The number of Shares allotted unconditionally to the public (Nos. to) and the amount paid on each Share in cash.
3. The number of Shares taken by Concessionaires, Owners of Property, Contractors, or other parties not included in the Public allotment (being Nos. to).
4. That the share Certificates have been delivered, that the purchase of the properties has been completed, and the purchase-money paid.

I SCRIP.

In addition to the requirements made in the case of definite Stock or Bonds, a Specimen of the Scrip Certificate must be supplied.

K After the application form has been signed, there must be supplied, in the case of :—

FURTHER ISSUES.

A King's printers' copy of the Act of Parliament authorizing Resolutions, etc., creating, and circular or Prospectus offering new issue.

If Shares have been issued credited as fully or partly paid, certified printed copies of the Contracts relating thereto.

A Copy of the Allotment letter.

A Copy of the last Report and Accounts.

A Specimen of the Share certificate.

The allotment book unless the allotment is *pro ratâ*.

A Statutory Declaration by the Secretary, stating—

1. That the Prospectus or Circular complies with the provisions of the Companies Acts.
2. That all documents required by the Companies Acts have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.
3. That the Shares (Nos. to) have been applied for by and unconditionally allotted to the shareholders or the public, or sold upon the market, as the case may be.
4. The amount per share paid in cash.
5. The total number of Allottees and the largest number of Shares applied for by and allotted to any one applicant.
6. That Certificates are ready to be issued, and that there is no impediment to the settlement of the Account. It must also be stated whether or not the shares are in all respects identical with those already quoted in the Official List.

The statement that Shares are in all respects identical means that—

They are of the same nominal value, and that the same amount per share has been called up.

They carry the same rights as to unrestricted transfer, attendance, and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

The statement that Stock is in all respects identical means that—

All the Stock is entitled to the same rights as to unrestricted transfer and in all other respects.

All the Stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each 100*l.* of the stock will amount to exactly the same sum.

L After the application form has been signed, there must be supplied, in the case of :—

VENDOR'S SHARES.

A Certified List of the Present holders of the Vendor's Shares.

A Certified Copy of the last-published Report and Accounts of the Company.

A specimen of the Share Certificate.

A Statutory Declaration by the Secretary, stating—

1. That the Vendor's Shares (Nos. to) have all been issued, and Certificates delivered.
2. That the Shares are in all respects identical with those already quoted in the Official List.

M After the application form has been signed, there must be supplied, in the case of :—

OLD COMPANIES.

The Certificate of Incorporation or Act of Parliament, and the Certificate that the Company is entitled to commence business.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations.

Certified copies of all Prospectuses, original or otherwise, endorsed with the date when first advertised.

Two Certified copies of the Memorandum and Articles of Association.

A Specimen of the Share Certificate and of the Allotment Letter.

A Certified copy of present Registrar of Shareholders.

Certified printed copies of Contracts, Agreements, etc., together with copies of all Contracts relating to the issue of Shares credited as fully or partly paid.

A Certified copy of the Company's last published Report and Accounts.

A short history of the Company, setting forth its origin, progress, dividends, etc., the number of transfers registered during the last twelve months, and the number of Shares represented by such transfers.

Statutory Declaration by the Chairman and Secretary, stating the following particulars :—

1. That the Prospectus complied with the provisions of the Companies Acts.
2. That all documents required by the Companies Acts have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos. to), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos. to).
6. That the Share Certificates have been delivered; that the purchase of the properties has been completed and the purchase money paid.

N After the application form has been signed, there must be supplied in the case of :—

COLONIAL AND FOREIGN COMPANIES.

The Certificate of Incorporation, or Act of Parliament, or other similar document.

Two copies of the Statutes or Articles of Association or notarial translations of the same.

A Certified List of present Shareholders.

A Specimen of the Share Certificate.

Copies of all Agreements, Concessions, Deeds, etc., or notarially certified printed translations of the same.

A Certified copy of last published Report and Accounts, or translation of the same.

Official evidence of quotation in the country to which they belong, or where the issue has been made.

A short history of the establishment and progress of the Company from its incorporation to the present time, including particulars as to the issue of the Capital.

A Declaration stating:—

1. The number of Shares allotted;
2. The amount per Share paid in cash;
3. That the Shares are ready for delivery, and that no impediment exists to the settlement of the Account.

O After the application form has been signed, there must be supplied in the case of:—

RECONSTRUCTED COMPANIES.

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

A statement of the plan of reconstruction, together with certified copies of all resolutions passed and Circulars issued in connection with the reconstruction.

The Allotment Book, with a Summary signed by the Chairman and Secretary.

The Allotment Letter, and the date when posted.

A Specimen of the Share Certificate.

Two Certified copies of the Memorandum and Articles of Association.

Certified printed Copies of all Contracts, Agreements, etc.

Copies of all Contracts relating to the issue of fully or partly paid Shares.

A Statutory Declaration by the Chairman and Secretary stating:—

1. That all Documents required by the Companies Acts have been duly filed with the Registrar of Joint Stock Companies and dates of filing.
2. The Authorized Capital of the Company.
3. The number of Shares to which Shareholders in the old Company were entitled; the number and distinctive numbers of Shares unconditionally allotted to such Shareholders; and the amount per Share (*a*) paid thereon in cash, and (*b*) credited as paid up.
4. The number and distinctive numbers of Shares applied for by and allotted unconditionally to the public, and the amount per Share (*a*) credited as paid up, and (*b*) paid thereon in cash.
5. That the Share Certificates have been or are ready to be delivered, and that there is no impediment to the settlement of the Account.

(a)
capital
Un
given l
Under
compan
Ontario
Und
Patent
the Secr
be inser
occasion
of the co
(b) I
1. N
incorpor
2. Tl
in duplic
3. Th
and cont
(a) P
(b) Tl
(c) Tl
to be situ
(d) Tl
and the a
(e) Th
the applic
(f) Tl
the provis
M.C.L.

APPENDIX I.

PROCEDURE FOR INCORPORATION.

ONTARIO.

(*a*) In the case of a company or corporation with or without share capital:

Under the Dominion and Ontario Companies Act no notice need be given by the applicants of their intention to apply for Letters Patent. Under the Ontario Act notice of the issue of Letters Patent creating a company is caused to be inserted by the Provincial Secretary in the *Ontario Gazette*. R. S. O. c. 191, s. 16.

Under the Dominion Companies Act notice of the issue of Letters Patent incorporating a company is inserted in the *Canadian Gazette* by the Secretary of State by two insertions, and a copy of said notice must be inserted by the company in at least one newspaper on four separate occasions in the county, city or place where the head office or chief agency of the company is established.

(*b*) In the case of a company with share capital:

1. No less than five persons may apply for Letters Patent of incorporation.

2. There must be a memorandum of agreement and stock book filed in duplicate in the form according to the Schedule B of the Act.

3. There must be a petition in the form of Schedule A to the Act and containing:

(*a*) Proposed corporate name of the company.

(*b*) The objects for which the company is to be incorporated.

(*c*) The place within Ontario where the head office of the company is to be situated.

(*d*) The amount of the capital of the company, the number of shares, and the amount of each share.

(*e*) The name in full, the place of residence, and the calling of each of the applicants.

(*f*) The names of the applicants, not less than three, who are to be the provisional directors of the company.

(*g*) The amount of stock subscribed by each applicant in the memorandum of agreement and stock book.

(*h*) That the proposed name of the company is unobjectionable.

(*i*) That no public or private interest will be prejudicially affected by the incorporation.

(*k*) The petition must be signed on the page containing the prayer of the petition by at least two of the applicants.

4. Affidavits of execution should be attached to the memorandum of agreement and stock book and to the petition.

5. To the petition must be annexed, or the petition must be accompanied by, an affidavit verifying it.

The object of the company should be briefly expressed in general terms, as, for example, "To manufacture and sell glassware."

The objects of Mining Companies which are subject to the provisions of Part XI. of the Act, similar to the former, Mining Companies Incorporation Act (that is to say, Companies without personal liability), will be expressed in the following set terms: "(*a*) To acquire, own, lease, prospect for, open, explore, develop, work, improve, maintain and manage mines and mineral lands and deposits and to dig for, raise, crush, wash, smelt, assay, analyse, reduce, amalgamate, refine, pipe, convey and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable and to sell and otherwise dispose of the same or any part thereof or interest therein: (*b*) To take and acquire and hold as consideration for ores, metals or minerals, or for goods supplied or for work done by contract or otherwise, and to sell or otherwise dispose of, shares, debentures or other securities of or in any other company having objects similar in whole or in part to the company hereby incorporated, and to sell and otherwise dispose of the same."

If Part XI. of the Companies Act is to be made applicable to a mining company, the applicants must add the necessary words to that effect to the prayer of their petition.

Sections 17 and 18 of the Companies Act provide very wide, incidental and ancillary powers. They have been drawn without change from Palmer's Precedents. These incidental and ancillary powers have been made as wide as possible for the purpose of avoiding repeating them in Letters Patent. These clauses, therefore, should not be repeated in an application for Letters Patent, nor should variations of them be inserted. There is no objection, however, to other clauses which are not provided and which may be required.

(To be executed in duplicate: one duplicate to be deposited in the office of the Provincial Secretary.)

The Company of (Limited).

Memorandum of Agreement and Stock Book.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a Company under the provisions of the Ontario Companies Act, under the name of The Company of (Limited) or such other name as the Lieutenant-Governor may give to the company, with a capital of dollars, divided into shares of dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written and to become shareholders in such company to the said amounts.

In witness whereof we have signed :

Name of Subscriber.	Seal.	Amount of Subscription.	Date.	Place.	Residence of Subscriber.	Name of Witness.

It is sufficient if the incorporators subscribe for one share of stock each.

The duplicate originals must both be forwarded to the Provincial Secretary.

Where the incorporators are more or less scattered it is frequently convenient to have them execute powers of attorney.

If executed under power of attorney, the power of attorney must be filed together with affidavit if execution of same.

The signature of the subscribers must be proved by affidavits of witnesses.

At least two signatures must be on the page containing the Memorandum of Agreement.

Petition.

To his Honour, etc., etc., Lieutenant-Governor of the Province of Ontario.

The petition (write in full the names, places of residence, and occupations of the petitioners) (who must not be less than five).

Humbly sheweth as follows :—

1. Your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a charter, under the provisions of the Ontario Companies Act, constituting your petitioners and such others as may

become shareholders in the company thereby created, a body corporate and politic under the name of The Company (Limited) or such other name as shall appear to your Honour to be proper in the premises.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which the incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any individual or partnership, or any name on which any known business is being carried on, or so nearly resembling the same as to deceive (add when required, as provided by section 28 of the Act, except the name), and your petitioners have received the necessary consent to the use of the said name herein applied for as provided by section 28 of the said Act.

3. Your petitioners are satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.

4. Your petitioners are of the full age of twenty-one years.

5. The object for which incorporation aforesaid is sought by your petitioners is to (state objects—incidental powers are given by section 17 of the Act).

6. The head office of the Company will be at .

7. The amount of the capital stock of the Company is to be dollars.

8. The said stock is to be divided into shares of dollars each.

9. The said (there must at least be three directors and they must be applicants and shareholders, holding stock absolutely in their own right) are to be provisional directors of the Company.

10. By subscribing therefore in a Memorandum of Agreement, duly executed in duplicate, with a view to the incorporation of the Company, your petitioners have taken the amount of stock set opposite their respective names, as follows :—

Petitioners.	Amount of stock subscribed for.
	$
	$
	$

Your petitioners, therefore, pray that your Honour may be pleased by Letters Patent under the Great Seal to grant a charter to your petitioners constituting your petitioners and such others as have or may become subscribers to the Memorandum of Agreement and stock book of the Company thereof created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound, will ever pray.

Signatures of witnesses.	Signatures of petitioners.

Dated at this day of 19 .

NOTE.—If it is desired to hold meetings of the shareholders and directors out of Ontario, this should be stated in the petition. See section 44 of the Ontario Act.

NOTE.—The date of petition should be the same as or subsequent to the latest date of the Memorandum of Agreement or stock book.

NOTE.—If petition be executed under power of attorney, the power of attorney must be filed and must be specific power and accompanied by an affidavit of execution.

It would be advisable to include in the petition the number of directors the company intends to have.

AFFIDAVIT OF EXECUTION.

Province of Ontario } In the matter of the herein application for the
County of } incorporation by the grant of Letters Patent
TO WIT: } of

I, of the of in the City of Make oath and say:—

1. That I did see the annexed petition for incorporation duly signed and sealed by .

2. That the said petition was so signed at the aforesaid.

3. That the name subscribed as witness to the said petition is the proper handwriting of me this deponent.

SWORN before me at the of }
in the County of }
this day of , 19 . }

AFFIDAVIT VERIFYING PETITION.

Province of Ontario } In the matter of the herein application for the
County of } incorporation by the grant of Letters Patent
TO WIT: } of

I, (one of the applicants for incorporation) make oath and say:—

1. That I am one of the applicants herein.

2. That I have a knowledge of the matter and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.

3. That I am informed and verily believe that each petitioner is of the full age of twenty-one years.

4. That the proposed corporate name of the company is not on any public ground objectionable, and that it is not that of any known company incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on or so nearly resembling the same as to deceive.

NOTE.—If the same be similar to that of a subsisting corporation association, partnership, individual or person, the consent to the use of the name is required by section 28, and the affidavit, in such case may be added to as follows :—"Except the name of and it is elsewhere shown that your petitioners have received the necessary consent to the use of the name applied for."

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the company aforesaid.

SWORN before me at the of)
in the of)
this day of , 19 .)

SUPPLEMENTARY LETTERS PATENT.

1. Supplementary Letters Patent may be issued for the following purposes :—

(*a*) Increasing or decreasing the capital, provided, however, that the capital of a company shall not be increased until ninety per centum thereof has been subscribed and ten per centum paid thereon, and further provided, that on a reduction of the capital of a company the liability of shareholders to persons who at the time of such reduction are creditors of the company shall remain as though the reduction had not been made.

(*b*) Re-dividing the capital of the company into shares of smaller or larger amount.

(*c*) Extending the powers of the corporation to any objects which the corporation may desire.

(*d*) Limiting or increasing the amount which the corporation may borrow upon debentures or otherwise.

(*e*) Vary any provision contained in the special Act or Letters Patent incorporating the corporation.

(*f*) Making provision for any other matter or thing in respect of

which provision might have been made had the corporation been incorporated under this Act, R. S. O. c. 191, s. 17–21, 102, 106, amended.

2. Each application must be a formal petition of the corporation, signed by the executive officers of the corporation, and passed under its common seal.

3. The petition must set forth the corporate name, the date of incorporation, and the nominal capital of the company, and other material facts, and show that the corporation is not in arrears in making its annual returns.

4. If it be in respect of a reduction of capital, the petition must show that the reduced amount is sufficient for the due carrying out of the undertaking of the company and advisable, and the *bonâ fide* character of the decrease of capital thereby provided for.

5. If it be in respect of a re-division of the existing shares, the petition must explain the reason why such re-division is, in the opinion of the company, necessary and desirable, and

6. If it be in respect of the increase of the capital of the company, the petition must make it clear (1) That at least nine-tenths of the capital of the company has been subscribed and ten per centum thereon paid in; (2) That the capital of the company is insufficient for the purposes of the company; (3) That the proposed increase is considered by the company to be requisite for the due carrying out of its undertaking, and (4) The par value of new shares must be the same as that of the old shares, unless the old shares are being expressly and at the same time re-divided.

7. If the Supplementary Letters Patent be for other purposes than above referred to, the necessity, therefore, must be set out in the petition.

8. The facts in the petition contained must be verified by affidavit to be made by the president and secretary of the corporation.

9. The signatures to the petition and the impression of the seal must be verified by affidavit.

10. With the petition, the corporation must produce the following:—

(*a*) The original bye-law of the corporation, duly completed, providing for the increase, decrease or sub-division, etc.

(*b*) A declaration proving that such bye-law has been lawfully passed by the directors and confirmed by a vote of not less than two-thirds in value of the shareholders or members present in person or by proxy at a general meeting of the Company duly called for considering the same, by notice specifying the terms of the bye-law to be confirmed or unanimously sanctioned in writing by the shareholders or members of the company. Such declaration should also produce and verify—

(1) A copy of such bye-law duly certified as such under the seal of the company.

(2) A copy of the proceedings at the meeting of shareholders with respect to the passage and sanction of the bye-law.

(3) An extract from the general bye-laws of the company as to the calling of the meeting of shareholders, and

(4) A copy or notice mailed, copy of advertisement in "Gazette" or local paper of the holding of such shareholders' meetings.

(c) Affidavit or statutory declaration verifying truth of facts as set forth in the petition and of *bonâ fide* character of the increase, decrease, or sub-division.

Changing the Name of a Corporation.

The corporate name of a corporation may be changed by an order of the Lieutenant-Governor passed under the provisions of section 31.

The application must be by the formal petition of the executive officers of the corporation, passed under the corporation's common seal.

In addition to the other material statements, the petition must show:

1. That the corporation is in a solvent condition.

2. That the change desired is not for any improper purpose and is not otherwise objectionable.

3. That the new name is not that of any known corporation, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

4. That the corporation has authorized the making of the application, and

5. That the corporation is not in arrears in making its annual returns.

Evidence of the solvency of the corporation must consist of a sworn copy of the last balance sheet or other sufficient statement of the affairs of the corporation, prepared by some responsible person conversant with its business. The statement should, with reasonable detail, show the nature, character, and value of the corporation's assets, and the character of its liabilities. If more than a month or so has elapsed since the preparation of the statement, the affidavit verifying its contents must, if such be the case, show that the position of the corporation has not materially changed since the statement was prepared.

Permission to hold meetings out of the Province may be conferred by Supplementary Letters Patent. This permission may also be given by the original Letters Patent.

The Keeping of Books out of the Province.

Permission to keep books out of the Province may be granted by Order-in-Council.

An application must be by formal petition of the company, signed by its executive officers, and passed under its common seal. The petition should set forth the corporate name, the date of incorporation, nominal capital of the company and other material facts, and should show that

the company is not in arrears in making annual returns. It should also be shown that the bulk of the shareholders live without the Province, and that it is a matter of convenience to the company to have the books removed therefrom. A certified copy of the resolution authorizing the application should be filed. The contents of the petition and its execution should be verified by affidavit. The power of attorney should be in form similar to that given by extra-provincial corporations, referred to on page 24 of this pamphlet. The company is also required to file a consent to the winding up of the Company, which consent shall be in the following form :

After application made to the Provincial Secretary of the Province of Ontario by any person entitled thereto for the inspection of such of the books of hereinafter called "the company" as are mentioned in section 114 of the Ontario Companies Act, and upon the failure of the company to comply with all proper and reasonable directions for such inspection, which may, upon due notice to the company, be made by the said Provincial Secretary, and upon its appearing to the satisfaction of a Judge of the High Court of Justice for Ontario, upon a petition in that behalf, presented by such persons applying as aforesaid upon due notice to the company that such person has suffered substantial loss or damage by reason of such failure. THE COMPANY DOTH HEREBY CONSENT to an order of such judge for winding up the company.

IN WITNESS WHEREOF the Company has caused its corporate seal to be affixed hereto by the hands of its proper officers in that behalf, this day of 19 .

By

WITNESS :

President (seal)

Secretary.

The company shall also give a bond to the Provincial Treasurer in the sum of $500, which bond shall be in the following form :—

WHEREAS section 114 of the "Ontario Companies Act," provides that the books therein referred to shall be kept at the head office of every company within the Province of Ontario.

AND WHEREAS the said section 114 further provides that, upon the conditions therein mentioned, the Lieutenant-Governor in Council may relieve any company permitted to hold its meetings out of Ontario from the provisions of the said section 114 upon such terms as may be fit.

AND WHEREAS the Company hereinafter mentioned, being a Company permitted to hold its meetings out of Ontario, has by its petition in that behalf prayed that it may be relieved from the provisions of the said section 114.

AND WHEREAS the Provincial Secretary of the Province of Ontario has directed that, as a condition of granting the said relief, these presents be executed by the said company.

NOW THEREFORE THESE PRESENTS WITNESS that is held and firmly bound unto the Provincial Treasurer of the Province of Ontario for the time being in the penal sum of Five Hundred Dollars ($500) to be paid to the said Provincial Treasurer for the time being, or to any person

who may be entitled, upon assignment from the said Provincial Treasurer for the time being, to recover the sum hereby secured, for which payment well and truly to be made binds itself, its successors and assigns, firmly by these presents.

IN WITNESS WHEREOF has caused its corporate seal to be affixed hereto by the hands of its proper officers in that behalf this day of 19 .

By

Witness (Corporation) Seal

President

Secretary

THE CONDITION OF THIS OBLIGATION IS SUCH that if doth at all proper times allow the books mentioned in section 114 of the "Ontario Companies Act" aforesaid to be inspected by any person entitled thereto as the Provincial Secretary of the Province of Ontario may direct from time to time by due notice to the said company, after application to him by such person for such inspection, then this obligation is to be void, otherwise to remain in full force and virtue.

CHANGE OF PLACE OF HEAD OFFICE.

A bye-law passed for the purpose of changing the head office of a company from one place to another may be acted upon when notice of the proposed change has been given twice in a newspaper published at each of the places where the head office was fixed and where it is to be removed, and once in the "Ontario Gazette."

The bye-law with proof of such publication, should be filed in the Provincial Secretary's Department.

TARIFF OF FEES UNDER ONTARIO ACTS.

See Order in Council, December 2, 1909.

FOR LETTERS PATENT.

When the proposed capital of the applicant company is $40,000 or less, the fee to be $100.

When it is more than $40,000, but does not exceed $100,000, the fee to be $100 and $1 for every $1000 or fractional part thereof in excess of $40,000.

When it is over $100,000, but does not exceed $1,000,000, the fee to be $160 and $2.50 for every $10,000 or fractional part thereof in excess of $100,000.

When it is $1,000,000, the fee to be $385, and $2.50 for every $10,000 or fractional part thereof in excess of $1,000,000.

For incorporation of a cheese or butter company the fee is to be $10. (If the capital does not exceed $10,000.)

When the charter is for an educational institution not carried on for the purpose or object of gain, the fee is to be $10.

For the incorporation of a cemetery company not to be carried on for gain, or which shall undertake to use in the improvement of its property any gain derived by the company the fee is to be $10. (If the capital does not exceed $10,000.)

For Supplementary Letters Patent.

When the capital of a company is increased, the fee to be according to the above list, but on the increase only.

If an increase of capital be not desired the fee is $100.

For Licences.

The amount of fee to be charged for a licence is determined as each case arises. The following are illustrations of the fees.

Fee for licences to corporations coming within Classes 7 or 8 as described in 63 V. c. 24 (Dominion Companies). If the capital stock of the company does not exceed the sum of $100,000, the fee to be $25. If the capital stock of the company exceeds the said sum of $100,000, the fee to be $50.

Fee for licences to corporations coming within Class IX. of 63 V. c. 34.

The fees payable shall be the same as the fee now payable upon the incorporation of a company by Letters Patent under the Ontario Companies Act, and are calculated on the amount of capital proposed to be used in Ontario.

When the proposed capital of the applicant company is $40,000 or less, the fee to be $100.

When it is more than $40,000 but does not exceed $100,000 the fee to be $100, and $1 for every $1,000 or fractional part thereof in excess of $40,000.

When it is over $100,000 but does not exceed $1,000,000 the fee to be $160, and $2·50 for every $10,000 or fractional part thereof in excess of $100,000.

When it is $1,000,000 the fee to be $385 and $2·50 for every $10,000 or fractional part thereof in excess of $1,000,000.

For Orders-in-Council, etc.

Order-in-Council changing the name of a company, $25.

Order-in-Council accepting the surrender of a charter, $20.

1. Filing the annual statement required under the Ontario Act, of a company having a capital stock of $50,000 or under . $2.00

2. Filing the annual statement of a company having a capital stock exceeding $50,000 but not exceeding $100,000 . . $3.00
3. Filing the annual statement of a company having a capital stock exceeding $100,000 . . . . . $5.00
4 Filing bye-law for sale of mining company's stock at a discount $5.00
5. Filing bye-law increasing or decreasing number of directors or changing company's chief place of business $2.00
6. Filing any other bye-law or document $2.00

Cheques, post office orders and drafts should by payable to the order of the Provincial Treasurer.

CANADA.

Procedure for Incorporation.

1. No less than five persons may apply for Letters Patent of incorporation, and each of the said applicants must be of the full age of twenty-one years.

2. There must be a memorandum of agreement and stock book filed in duplicate in the form according to Schedule "B" of the Act (R. S. C. c. 79).

3. There must be an application in the form of Schedule "A" to the Act and containing:—

(*a*) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds objectionable;

(*b*) The purposes for which its incorporation is sought;

(*c*) The place within Canada which is to be its chief place of business;

(*d*) The proposed amount of its capital stock;

(*e*) The number of shares and the amount of each share;

(*f*) The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

(*g*) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant and the manner in which the same has been paid and is held for the company, 2 Edw. VII. c. 15, s. 6.

4. To the petition, memorandum of agreement and stock book must be annexed affidavits of execution.

5. To the petition must be annexed an affidavit establishing the sufficiency of the petition and of the memorandum of agreement and stock book, and the truth and sufficiency of the facts therein stated.

Also that the proposed corporate name of the company is not that of any other known incorporated or unincorporated company (section 10).

6. Notice of the granting of the Letters Patent must be inserted forthwith by the company in four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency of the company is established.

PETITION.

To the Honourable the Secretary of State of Canada.

The application of (names, addresses and occupation of each of the applicants) respectfully sheweth as follows:—

The undersigned applicants are desirous of obtaining Letters Patent under the provisions of the first part of the Companies Act (chapter 79 of the Revised Statutes of Canada, 1906) constituting your applicants and such others as may become shareholders in the company, thereby created a body corporate and politic under the name of " Limited" or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which corporation is sought is not the corporate name of any other known company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Four applicants are of the full age of twenty-one years.

The purposes for which incorporation is sought by the applicants are:

The operations of the company to be carried on throughout the Dominion of Canada and elsewhere.

The chief place of business of the proposed company within Canada will be at the of in the county of in the Province of .

The amount of the capital stock of the company is to be $.

The said stock is to be divided into shares of $ each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively.

Applicant.	Amount of stock subscribed.

The said will be the first or provisional directors of the Company.

A stock book has been opened and a memorandum of agreement by

the applicants under seal in accordance with the statute has been executed in duplicate; one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the company a body corporate politic for the purposes above set forth.

Signatures of Witnesses.	Signatures of Applicants.

Dated at this day of 19.

NOTE.—If any cash has been paid in on stock or if any property is intended to be accepted on account of stock it should be here stated.

The petition must be signed by each of the applicants in person and in presence of a witness.

However, the applicants may sign by an attorney, but the original power of attorney or a duly authenticated notarial copy thereof must be produced. Each signature should be verified by an affidavit or statutory declaration made by the witness thereof.

(To be executed in duplicate: one duplicate to be transmitted with the application.)

The (Limited)

MEMORANDUM OF AGREEMENT AND STOCK BOOK.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the first party of the Companies Act (chapter 79 of the Revised Statutes of Canada, 1906) under the name of (Limited) or such other name as the Secretary of State may give to the company, with a capital of dollars, divided into shares of dollars each.

And we do hereby severally, and not one by the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written and to become shareholders in such company to the said amounts.

In witness whereof we have signed :

Name of Subscriber.	Seal.	Amount of Subscription.	Date and place subscription.		Residence of Subscriber.	Name of Witness.
			Date.	Place.		

AFFIDAVIT OF EXECUTION.

CANADA
Province of
County of
TO WIT :

In the matter of the application of and others for incorporation under the first part of the Companies Act (chapter 79, of the Revised Statutes of Canada, 1906), under the name of

I, of the City of in the County of make oath and say that :—

1. I was personally present and did see within petition and memorandum of agreement and stock book duly signed and executed by the parties thereto.

2. The said petition and memorandum of agreement and stock book were executed at the City of aforesaid.

3. I know the said parties.

4. I am a subscribing witness to the said petition and memorandum of agreement and stock-book.

SWORN before me at the City of in the County of this day of A.D. 19 .

AFFIDAVIT VERIFYING PETITION.

Province of
County of
TO WIT :

In the matter of the application of and others for incorporation under the first part of the Companies Act (chapter 79 of the Revised Statutes of Canada, 1906) as under the name of

I, of the City of in the County of Province do solemnly declare :—

1. That I am one of the applicants herein.

2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and fact.

3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years and that the name and description have been accurately set out in the preamble thereto.

4. That the proposed corporate name of the company is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself, and am assured that no public or private interest will be prejudicially affected by the incorporation of the company aforesaid.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act, 1893.

DECLARED before me at
of in the County of
this day of
A.D. 19 .
A Commissioner, etc.

NOTICE.

Public notice is hereby given that under the first part of the Companies Act Letters Patent have been issued under the seal of the Secretary of State bearing date the day of incorporating (names and addresses and occupation of each applicant) for the purpose of (state the undertaking of the company set forth in the Letters Patent) with a total capital stock of dollars divided into shares of dollars each.

Dated at the office of the Secretary of State for Canada this day of 19 .

Secretary.

NOTE.—By s. 13, R. S. C. (1906), c. 79, copy of this notice must be inserted forthwith on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency of the company is established.

FEES UNDER DOMINION ACT.

No step shall be taken in the department of the Secretary of State towards the issue of any Letters Patent or Supplementary Letters Patent under the Companies Act, 1902, until after all fees therefor are duly paid.

The following is the tariff of fees payable under section 17 of the Act :—

Where the proposed capital stock of the company is $20,000 or less than $20,000	$50.00
Where the proposed capital stock of the company is more than $20,000 and less than $50,000	$150.00
Where the proposed capital stock of the company is $50,000 or upwards and less than $100,000	$200.00
Where the proposed capital stock of the company is $100,000 or upwards and less than $150,000	$225.00
Where the proposed capital stock of the company is $200,000 or upwards and less than $300,000	$300.00
Where the proposed capital stock of the company is $300,000 or upwards and less than $400,000	$325.00
Where the proposed capital stock of the company is $400,000 or upwards and less than $500,000	$350.00
Where the proposed capital stock of the company is $500,000 or upwards and less than $600,000	$375.00
Where the proposed capital stock of the company is $600,000 or upwards and less than $700,000	$400.00
Where the proposed capital stock of the company is $700,000 or upwards and less than $800,000	$425.00
Where the proposed capital stock of the company is $800,000 or upwards and less than $900,000	$450.00
Where the proposed capital stock of the company is $900,000 or upwards and less than $1,000,000	$475.00
Where the proposed capital stock of the company is $1,000,000	$500.00
For every additional million dollars of capital stock or fractional part thereof	$100.00
For supplementary Letters Patent to increase the capital stock of a company, the fee to be according to the above tariff, but on the increase only.	
For Supplementary Letters Patent for any purpose other than an increase of capital a fee of	$100.00

All fees must be paid in cash or by an accepted cheque made payable to the order of the Honourable the Secretary of State, and should be transmitted to him by registered letter.

APPENDIX II.

EXTRA PROVINCIAL LICENCES.

BRITISH COLUMBIA.

Before a licence is issued to an extra-provincial company in British Columbia, the company must file with the registrar a true copy of the "charter and regulations" of the company. These words are very wide, and, as explained by the interpretation clause of the "Companies Act," mean "the charter of the company and the Articles of Association and all bye-laws, rules and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company." It must also file a statutory declaration that the company is still in existence and legally authorized to transact business under its charter: a power of attorney in the prescribed form: notice of the place where the head office without the Province is situate: notice of the city or town in British Columbia where the head office of the company is proposed to be situate: the amount of the capital of the company and the number of shares into which it is divided: and in the case of an insurance company, a copy of the last balance sheet and auditor's report thereon.

The following forms may be used :—

STATUTORY DECLARATION.

CANADA
Province of
City of
TO WIT:

In the matter of the "Companies Act" of the Province of and Amending Acts, and in the matter of an extra-provincial company seeking to become licensed to carry on business in the Province of .

I, of the of in the Province of ,

DO SOLEMNLY DECLARE :—

1. THAT I am the Managing Director of having its head office in the of aforesaid.

2. THAT the company is incorporated in , under (*here fill in the correct title of your "Companies Act"* and any amendments thereto under the provisions of which the company is *incorporated*), and is still in exist-

ence, and legally authorized to transact business under its Charter, and has authority to carry on business in the Province of .

3. THAT now shown to me and marked Exhibits "A," "B," "C," etc., hereto are true copies of the charter of the company and the articles of association, and all bye-laws, rules, and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company, which, together with the above entitled "Act" (and amending Acts, if any), comprise the whole of its charter and regulations within the meaning of the words "Charter" and "Charter and Regulations" as defined by the "Companies Act" of as I am advised by my solicitors and verily believe.

4. THAT the amount of the nominal capital of the said company is $ divided into (*fill in*) shares of $ each.

5. THAT the said company is actually carrying on an established business beyond the Province of B.C. in which at least fifty per cent. (50%) of its capital is invested. Said capital is invested as follows:—(*Here fill in detailed information showing how and where at least 50% of the company's capital is invested*). (The purpose of this paragraph is to bring the company within the clause allowing a commutation fee of $250).

6. THAT of the of in the Province of aforesaid (occupation) has been duly appointed attorney for the company as required by the Statute in that behalf.

7. THAT now shown to me and marked Exhibit " " hereto is the power of attorney appointing the said attorney of the said company.

8. THAT the company does not intend placing any of its stock upon the market in British Columbia, and consequently the preponderance of convenience is in favor of exempting the said company from empowering its attorney to issue and transfer stock.

9. THAT the head office of the company is situate at Street, , , and that the head office of the Company in the Province of British Columbia will be at in the City of aforesaid.

AND I make this solemn declaration conscientiously believing the same to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act."

Declared before me at the City of in the Province of , this day of A.D. 1911.

A Notary Public in and for the

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS that we, , whose head office in the Province of British Columbia is at , do hereby nominate, constitute, and appoint (name) , (occupation) of aforesaid, our true and lawful attorney and agent, for us and

in our name, place and stead to act on our behalf in the Province of British Columbia, and to sue and be sued, plead or be impleaded in any Court in the said Province, and generally on behalf of the said company and within the said Province, to accept service of process and receive all lawful notices. AND for all and every of the purposes or matters aforesaid, do hereby give and grant unto our said attorney full and absolute power and authority to do all acts and to execute all deeds, and other instruments as fully and effectually as the said company could do if in British Columbia and acting therein, the said company hereby ratifying and confirming, and agreeing to ratify and confirm, and allow all and whatsoever their said attorney shall lawfully do or cause to be done in the premises by virtue hereof.

IN WITNESS WHEREOF the said Company have caused their common seal to be hereunto affixed this day of , one thousand nine hundred and

WITNESS: }
}

I HEREBY CERTIFY that personally known to me, appeared before me and acknowledged to me that he is the managing director of " ," that he is the person who subscribed his name to the above (or hereto annexed) instrument as managing director of the said , and affixed the seal of the said company to the said instrument, and that he is duly authorized to subscribe his name as aforesaid, and to affix the said seal to the said instrument.

IN TESTIMONY WHEREOF I have hereunto set my hand and seal of office this day of , 191 .

An extra-provincial company duly incorporated under the laws of Great Britain and Ireland, the Dominion of Canada, any of the Provinces of Canada, and any insurance company may obtain a licence in this manner; any other extra-provincial company may apply by petition for registration. The same documents are required to be filed as in the case of an application for a licence.

The form of power of attorney given above is the form used with an application for a licence. When the application is for registration, the companies to which registration applies must empower their attorney "to issue and transfer shares of stock." By section 161, it is provided that the Registrar may accept a power of attorney which omits to empower the attorney named to issue and transfer stock upon it being shown either that the company is not a public company whose stock is upon the market or that, although it is a public company and its stock upon the market, yet, that either owing to the small quantity of the shares of its stock held in the Province and to the fact that the company

does not propose to place any stock upon the market in the Province, or to the fact that the consent of the holders of shares or stock within the Province has been obtained, the preponderance of convenience is in favour of exempting the company from empowering their attorney in the manner specified.

If the registrar accepts the evidence given, the company is relieved from complying with section 143 of the Act (1910), which provides for the company at its head office or chief place of business in the Province a register of all shares issued at such head office or chief place of business and of all transfers of shares in the company made within the Province.

The fees payable for a licence to or registration of any extra-provincial company (excepting an insurance company) are the same as are payable for registering a new company. They are as follows:

1. For registration of a company whose nominal capital does not exceed $10,000, a fee of $25.

2. For registration of a company whose nominal capital exceeds $10,000, the above fee of $25, with the following additional fees, regulated according to the amount of nominal capital, that is to say:—

For every $5000 of nominal capital, or part of $5000, after the first $10,000, up to $25,000	$5.00
For every $5000 of nominal capital, or part of $5000, after the first $25,000 up to $500,000	$2.50
For every $5000 of nominal capital, or part of $5000 after the first $500,000	$1.25

3. For registration of any increase of capital made after the first registration of the company, the same fees per $5000 or part of $5000 as would have been payable if such increased capital had formed part of the original capital at the time of registration. This provision shall apply to an extra-provincial company licensed or registered which increases its capital, excepting an insurance company.

In the case of an extra-provincial trading or business company which proves to the satisfaction of the Registrar that it is actually carrying on an established business beyond the Province of British Columbia in which at least fifty per cent. of its capital is invested, there shall be accepted in commutation of the fees prescribed a fee of $250.

The company shall also publish at its own expense a copy of the Registrar's certificate, and a statement by the Registrar of the objects for which the company has been established and licensed, for four weeks in the "British Columbia Gazette," in the newspaper published or circulating in the place where the head office of the company in British Columbia is situate; and in one newspaper published or circulating in the district or locality where the company proposes to carry on business.

The penalty for doing business in the Province without a licence is fifty dollars a day, and so long as it remains unlicensed or unregistered it

shall not be capable of maintaining any action, suit or other proceeding in any Court in British Columbia in respect of any contract made, in whole or in part, within the Province in the course of or in connection with its business. Section 166, chap. 7 of 10 Edward VII. (B.C.).

No unlicensed company can acquire or hold lands or any interest in lands in British Columbia or register any title thereto under the "Land Registry Act" (section 167).

APPENDIX III.

EXTRA PROVINCIAL LICENCE.

ONTARIO.

THE FOLLOWING FORMS MAY BE USED.

PETITION FOR LICENCE FOR EXTRA PROVINCIAL CORPORATION.

To His Honour the Lieutenant-Governor of the Province of Ontario in Council.

The petition

humbly sheweth:

1. That your petitioner was incorporated under the (state laws under which the Company was incorporated) under the name of by Letters Patent (or as the case may be) dated the day of .

2. That the head office of your petitioner is situated in the of .

3. That there is no limit, either statutory or otherwise, to the existence of your petitioner.

4. That your petitioner is a valid and subsisting corporation.

5. That your petitioner may, under the provisions of its charter, carry on business in Ontario and may hold the lands necessary for so carrying on such business.

6. That by its charter your petitioner is authorised to carry on the following business (state objects):—

7. That your petitioner desires that a licence may be issued to it under the provisions of 63 V., c. 24, Ontario, authorizing your petitioner to use, exercise and enjoy within the Province of Ontario all or so many of the powers, privileges and rights as were granted to your petitioner by its said charter, and may be approved by your Honour in Council.

(*a*) Here set out the laws under which the Company was incorporated (or as the case may be).

8. That the authorized capital stock of your petitioner is the sum of $ divided into shares of dollars each. Of which $ has been subscribed and issued and fully paid up.

9. That the chief place of business of your petitioner in the Province of Ontario is in the said of .

10. That your petitioner has, by the power of attorney, duly executed under its common seal, hereto annexed, appointed of the of , in the Province of Ontario, Esquire, to be your petitioner's attorney and representative in Ontario in accordance with the said Act, being 63 V. c. 24, and his consent to so act is herewith attached.

11. That the herein application for a licence to carry on business in Ontario was duly authorized and approved at a meeting of the directors of your petitioner held at the of , on the day of 19 , and that a true copy of the resolution in that behalf is hereto attached.

Your petitioner therefore prays that your Honour will be pleased to issue a licence to your petitioner authorizing your petitioner to use, exercise and enjoy within the Province of Ontario all (or so many of) the powers, privileges and rights set forth in its said charter, as shall be approved of by your Honour.

And your petitioner, as in duty bound, will ever pray, etc.

Secretary. President.

AFFIDAVIT VERIFYING PETITION FOR LICENCE.

Province of
County of
TO WIT:

In the matter of the application under an Act respecting the licensing of extra-provincial corporations, for the grant of licence to the Company.

I, , of the City of , in the County of , Esquire, make oath and say :—

1. That I was personally present and did see and president and secretary, respectively, of the said company, sign the said petition hereto annexed marked exhibit "A" hereto; and affix thereto the common seal of the Company, that I know the said parties, and that signatures " " and " " are the true signatures of the said parties.

2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.

SWORN before me at the City of in the County of this day of 1911.

A Notary.

POWER OF ATTORNEY FROM EXTRA PROVINCIAL CORPORATION.

KNOW ALL MEN BY THESE PRESENTS, that the company, for good and valuable considerations, has made, nominated, constituted

and appointed, and by these presents does make, nominate, constitute and appoint of the of , merchant, the true and lawful attorney and representative of the Company to act as its said attorney and representative, and to sue or be sued, plead or be impleaded in any Court in Ontario, and, generally on its behalf and within the Province of Ontario, to accept service of process and to receive all lawful notices, and for the purposes aforesaid to do all acts, and to execute all deeds, and other instruments, relating to the matters within the scope of this power of attorney, and the Act being 63 V. c. 24 (Ontario); and the said the Company does hereby confirm and agree to confirm all and singular that its attorney and representative shall lawfully do or cause to be done in the premises by virtue hereof.

Until due lawful notice of the appointment of another and subsequent attorney and representative has been given to and accepted by the Provincial Secretary of Ontario, service of process, or of papers and notices upon the said shall and will be accepted by this said company as sufficient service in the premises.

In witness whereof the corporate seal of the Company has been hereunto affirmed, and the hands of its president and secretary have hereunto been set this day of in the year of our Lord one thousand nine hundred and eleven.

WITNESS:

(Seal)

President.

Secretary.

(Affidavit of execution must also be filed.)

CONSENT TO ACT AS ATTORNEY FOR AN EXTRA-PROVISIONAL CORPORATION.

I, of the of in the County of , and Province of Ontario, having been appointed by the company, its attorney and representative in the Province of Ontario by power of attorney, under date the day of , 1911, hereby accept said appointment and agree to act as said attorney under the provisions of 63 V. c. 24, until due lawful notice of the appointment of another and subsequent attorney and representative has been given to, and accepted by the Provincial Secretary of Ontario.

Dated at this day of , 1911.

(Affidavit of execution must also be filed.)

There should also be evidence that the copies of the creating instruments filed, or the amendments thereto are true and correct copies of all records affecting the status of the company or varying the terms of its original incorporation.

INDEX.

A. List of Contributories, 469, 470.

Acceptance,
of allotment of shares, 128–131.
application for shares, 129–133, 135.
bills of exchange on behalf of companies, 224, 227, 228, 252, 393.
bribes by directors, 221, 351, 352, 397.
office of directors, 128, 134, 137–139.
transfer of shares by transferee, 191.

Accident Insurance Companies. See *Assurance Companies.*

Accountants,
are experts, 372, 386.
not liable for error of prospectus, 375.

Accounts, 304–323.
Assurance Companies', 289, 293, 305.
audit of, 304–308, 317.
balance sheets, examples of, 309, 310.
capital, 309–318.
consideration of, at ordinary meetings, 306, 307, 320, 321, 325–327.
debenture holders' right to inspect register, receive and inspect balance sheets, reports, etc., 264, 304.
disposal of, on dissolution of companies, 538.
duty of directors as to keeping, 304, 309, 342.
falsification of, 305, 308, 388–400.
of liquidators, 534–538.
prepared by manager, 304, 305.
secretary, 304.
preference shareholders' right to receive and inspect balance sheets, reports, etc., 304.
profit and loss,
allowance to be made for depreciation in, 310, 313–316, 320.
dividends not to be declared in absence of, 304, 305.
in absence of, directors must prove dividends were paid out of profits, 304, 305.

ACCOUNTS—*continued.*
railway companies', 305.
revenue, 304, 305, 309–318, 320.
to be submitted to statutory meeting, 325, 326.
supplied by directors and promoters in winding-up, 455–457.
verification of, by directors, 304.

ACQUIESCENCE. See *Ratification.*
after misrepresentation discovered, 142.
by infant after reaching majority, 129.
person registered as a holder of shares, 137.
shareholders in acts *ultra vires* of directors, 108, 202, 203.
in forfeiture of shares, 202, 203.
right to rectification lost by, 212–215.

ACQUISITION OF PROPERTY,
by chartered companies, 299.
companies governed by the Companies Acts, 299.
railway and other public companies, 297–299.

ACTION OF DECEIT. See *Deceit; Misrepresentation.*

ACTIONS,
by and against companies, 408–412.
consolidation of, 373.
debenture holders', 271–276, 282–285, 426, 460, 462, 463, 496.
representative, 46, 110–112, 373, 410–412.
stay of proceedings in, 373, 427.
stay of, in winding-up, 422–427.
test actions, 373.
transfer of, in winding-up, 460.

ACTS ULTRA VIRES. See *Ultra vires.*

ADJOURNED MEETING,
continuation of original meeting, 331.
notice of, 97.

ADJOURNMENT,
chairman's right as to, 331.
of meetings of company, 111, 331, 332.
public examination, 458.
statutory meeting, 326.
poll on question of, 111.

ADJUSTMENT,
of rights of contributories in winding-up, 68, 428, 476, 479, 502, 503, 534.

ADMINISTRATION,
to deceased shareholder granted to company's nominee, 171.
liquidator, 466.

ADMINISTRATORS. See *Legal Personal Representatives.*

ADMISSION,
by chairman evidence against company, 99.

ADVANCES. See *Borrowing.*

ADVERTISEMENTS,
costs of, as preliminary expenses of company, 66–68.
form of, when settled in chambers, 531.
inviting subscriptions for shares, 115, 116, 125, 551.
notice of meetings of shareholders when given by, 329, 537.
of company wherein its name does not appear in legible characters, 403.
of prospectuses, 115, 116, 125, 548, 551.
schemes of arrangements, 525, 526, 531.
winding-up petitions, 439, 440.
restrained, 442.
resolutions, 293, 507.
public notice by, 293, 369, 372, 384.

AFFIDAVIT,
to stay payment of dividends, 184.
transfer of shares, 184.
verifying winding-up petition, 442.
statement of affairs of company, 455.

AGENTS,
board of directors are agents of company, 76–78.
company's liability for torts of, 108–110.
contracts for sale to, for intended company, 217, 218.
difference between directors and ordinary, 77.
directors are, 75–78.
not liable for negligence of properly appointed, 361.
not liable for acts of sub-agents of company, 395.
liability of agent for intended company on contracts of sale to him, 217.
sales under Companies Act, 1908, s. 192, may be made to agent for intended company, 518.

AGREEMENTS. See *Agreements to purchase Shares; Agreements to take Shares; Contracts; Hire-Purchase Agreement.*

AGREEMENTS TO PURCHASE SHARES, 180–182, 448, 474.

AGREEMENTS TO TAKE SHARES, 127–145.
at a discount, 40–42, 131, 137, 163, 164, 207, 213, 435.

AGREEMENTS TO TAKE SHARES—*continued.*
by directors, 87, 127–129, 138, 139. See also *Qualification Shares.*
companies, 130, 298, 299.
infants, 129, 213.
married women, 130.
subscription of memorandum of association, 135–137.
conditional, 131, 132.
directors' power to rescind, 41, 143, 144.
essentials of, 128–131.
express, 129.
implied, 129, 136–139.
repudiation of, 130, 137, 141–143.
rescission by consent of, 143, 144.
for misrepresentation, 108, 109, 140–143, 206, 209, 212, 228, 363, 364.
specific performance of, 144, 145, 155, 438.

ALIENATION OF LAND,
by companies, 32, 297–299.

ALIENATION OF PROPERTY, 297–301.
by chartered companies, 30, 310.
companies governed by the Companies Acts, 299, 300.
railway and other public companies, 32, 297–299.

ALLOTMENT OF SHARES,
acceptance of, 128–131.
before application, 133.
as fully or partly paid up, 117, 121, 136, 149, 163–170, 289, 325, 550, 551, 553, 555–557.
at an undervalue, 347.
cancellation of, 168, 358.
cash payable on first, 146, 147.
conditional, 131.
conditions precedent to, 48, 49, 131, 146–149.
delay in, ground for repudiation, 135.
delegation of directors' power of, 104, 150.
director must act in good faith in, 150.
not liable to applicant for not making, 393.
directors' liability for irregular, 147, 148.
powers as to, 97, 99, 100, 104, 106, 129, 146–154.
first, 147.
invalid, 129, 131.
irregular, remedy in case of, 147–149.
"minimum subscription," 33, 117, 141, 142, 146–149, 164
notice of,
how sent, 133, 134.

ALLOTMENT OF SHARES—*continued.*
notice of—*continued.*
to agent of applicant, 134.
to applicant, necessary, 133.
stamp on, 134.
unstamped, receivable as evidence, 134.
when implied, 134, 135.
performance of conditions precedent to, 131, 146, 147, 151.
quorum of directors necessary for, 97, 99, 100.
repudiation of. See *Repudiation.*
rescission of, 41, 140–144, 147–149.
restrictions on, 146–149.
returns of, to be filed with registrar, 149, 292, 399, 404, 521.
stamp on letter of, 134.
penalty for not stamping, 134.
to companies, 130.
directors, 134, 135.
infants, 129, 213, 344.
married women, 130.
nominees of persons entitled, 128, 149, 167.
trustee for company, 81, 344.
valid though only part of capital applied for, 105, 146–148.
void unless duly authorized by directors, 129.
voidable, 135, 140–144, 147–149.
withdrawal of application before notice of, 133.
without consideration, 251, 343, 344.

ALLOWANCE FOR DEPRECIATION,
in the case of wasting property, 313–316, 320.

ALTERATION,
of articles of association, 25, 26, 48–56, 337, 517.
capital, 24, 47–56.
deed of settlement, 18–21.
memorandum of association, 16, 18–21.
name of company, 15, 16, 20.
objects of company, 18–21.
after issue of prospectus, 141.

AMALGAMATION, 512–522. See also *Sales under Companies Act,* 1908, s. 192.
agreements for sale upon, 167, 300, 513–522.
dissentient members, provision for payment of, on, 514–520.
rights of, on, 26, 514–520.
distinguished from sale and re-construction, 512, 513.
duties of directors of purchasing company as to, 522.
selling company as to, 522.
filing of contracts on, 521.

AMALGAMATION—*continued.*
how effected, 512–522.
meaning of, 512.
of assurance companies, 515.
chartered companies, 513.
companies incorporated by special Act, 513.
unregistered company, 514.
powers of, 299, 522.
secret profits of directors on, 347.
shareholders' rights on, 26, 300, 513–522.
validity of, how impeached, 520.
when desirable, 520.

ANNUAL SUMMARY. See *Summary of Capital.*

ANNUITIES, proof for, in winding-up, 485.

APPLICATION FOR SHARES,
acceptance of, must be unqualified, 131.
alteration of objects of company after, 141.
brokerage to persons procuring, 35, 72, 118, 342–344, 349.
conditional, 131–133.
delay, effect of, in accepting, 135.
minimum percentage payable in cash on, 147.
withdrawal of, 133–135.

APPOINTMENT,
of auditors, 95, 305–307, 327, 328, 399, 402.
at ordinary meeting, 327, 328.
committee of inspection in winding-up, 418.
directors, 84–89, 95, 127, 327, 328, 399, 402.
restrictions imposed on, 85, 87, 90, 116.
inspectors by Board of Trade, 159.
liquidators, 418–422, 505, 507, 512.
receivers, 81, 111, 272–282.
and managers, 272–282.
penalty for not giving notice to directors and managers of their appointment with unlimited liability, 402.

ARBITRATIONS,
to ascertain value of dissentient members' interest upon sale under Companies Act, 1908, s. 192 .. 514, 515, 518, 519.
under Building Societies Acts, 112.

ARRANGEMENTS. See also *infra.*
by companies, 524–533.
special Act, 524.
meaning of, 524.
often for benefit of creditors, 524.
under powers in debenture trust deeds, 527.
with consent of creditors, 527.

ARRANGEMENTS BY COMPANIES GOVERNED BY COMPANIES ACTS,
approval of, by shareholders, 520, 527, 528, 531, 532.
binding upon creditors and members, contributories and liquidators, 527, 528, 531.
by special Act, 525.
classification of, 527.
costs of, 533.
discount, meaning of, in, 529.
dissenting shareholders, provisions for, 529.
foreign creditors, votes of, 531.
how effected, 527–533.
majority required for sanction of, 525, 528, 529, 531, 532.
meetings to consider schemes of, 530–532.
orders for, how obtained, 529–533.
procedure, course of, 529–533.
rights of creditors against sureties for companies not affected by, 529.
sanction of creditors and for members or classes of them, 527–533.
schemes of, by Court, 528, 532.
petition for, 533.
when required, 533.
schemes of, 529, 530.
stay of execution pending holding of meetings cannot be granted, 531.
sureties, rights against, need not be reserved, 529.
under Companies Act, 1908, s. 191 .. 527.
s. 120 .. 527–533.
powers contained in debenture trust deeds, 527.
votes may be given by proxy at meetings to consider schemes of, 531, 532.
by holders of debentures at meetings of creditors to consider schemes of, 532.
winding-up unnecessary, 529.

ARRANGEMENTS BY RAILWAY COMPANIES,
advertisements of schemes of, 525, 526.
assents required for, 525.
by special Act, 524.
can only be made by insolvent companies, 525–527.
classes of creditors and shareholders bound by, 525–527, 539.
creditors' rights against shareholders how affected, 526, 527.
enrolling of schemes of, 526.
filing of schemes of, 526.
how effected, 525–527.
notices of, required, 525.
outside creditors not bound by, 527.

ARRANGEMENTS BY RAILWAY COMPANIES—*continued.*
outside creditors, rights of, 527.
schemes sanctioned by Court, 526.
stay of proceedings against companies in, 526.

ARTICLES OF ASSOCIATION,
alteration of, 25, 26, 48–56, 337, 517.
special resolution necessary for, 25, 337.
cannot adopt a contract made before incorporation of company, 218.
constructive notice of, persons dealing with companies have, 77, 102, 107.
shareholders have, 67, 80, 141, 212.
contracts made by, 92, 128, 218–220.
copies of, to be supplied to members, 160, 401.
filing of, did not satisfy Companies Act, 1867, s. 25 .. 168, 219.
invalid, 17, 26, 27, 305, 520.
legal effect of, 17, 25.
of companies limited by guarantee, 14.
minimum subscription fixed by, 33, 146, 147.
not a contract between promoter and company, 219.
penalty for not annexing copy of special resolution to, 403.
not giving shareholder copy of, 401.
powers of subscribers of, 95, 96.
registration of, 10, 14, 24, 25.
stamp on, 13.
Stock Exchange, requirements as to, in order to obtain quotation, 551.
Table A., when it constitutes, 7, 14, 25.

ASSETS. See *Surplus Assets.*
collection of, in winding-up, 451–480.
commission granted to ascertain value in winding-up, 519.
distribution in winding-up of, 41, 137, 153, 472, 497–504, 510.
guarantee fund for payment of dividends, when part of company's, 318.
valuation of, in calculating profits, 307–309, 311.

ASSOCIATION,
illegal, 4.

ASSIGNEES,
of debt, right of, to petition for winding-up, 436.
prove for debt, 489.
securities not transferable at law, 223, 268–271.
transferable at law, 223, 268–271.

Assurance Companies,
accounts of, 289, 293, 305.
amalgamation of, 515.
annual statements by, 293, 305, 405.
arrangements by, 531.
audit of accounts of, 307.
carrying on business of bond investment, 296.
clergymen may be directors of fire or life, 84.
definition of, 296.
deposit to be made by, 296.
foreign, 296.
incorporation of, 296.
penalties relating to, 403, 405.
reduction of contracts of, 438.
sanction of court required to sale of undertaking of, 515.
signing false documents relating to, 400.
valuation of policies of, 480.
winding-up of, 417, 434, 435, 438.

Attachment.
of debts due to company, 287.
directors' fees, 81.

Attorney, Power of,
foreign, how construed, 188.
how legalized, 188.
stamps on, 336.
transfer of shares under, 188.

Audit. See *Auditors.*

Auditors,
appointment of, 95, 305–307, 327, 328, 399.
articles of association as to, when *ultra vires*, 27, 305.
assurance companies', 307.
certificates of, 308, 317, 325, 399.
duties of, 305–309.
first, 305.
liability of, for negligence, 308.
may plead Statute of Limitations in actions for negligence, 308.
names and addresses of, 118, 308, 325.
officers of company, 307, 463.
penalty for signing false accounts, 305, 308, 399.
powers of, 306.
qualifications of, 305.
remuneration of, 95, 305, 399.
report on balance sheet by, 306, 307.
consideration of, at shareholders' meeting, 306, 327, 328.

AUDITORS—*continued.*
report, directors' duty as to communicating, to shareholders, 306, 307.
report to statutory meeting to be signed by, 325.
rights of, 306, 307.
statutory provision as to, cannot be varied, 27, 305–307.
AUTHORITY. See *Misrepresentation of Authority.*

B. LIST OF CONTRIBUTORIES, 469, 470.
liability of liquidator to be placed on, 516.
past holders of forfeited shares may be placed on, 208.

BALANCE ORDERS, 477.

BALANCE SHEETS,
assurance companies', 305.
banking companies', 293, 405.
consideration of, at shareholders' meeting, 306, 327, 328.
delusive, 38.
duty of auditors with respect to, 305–309.
examples of, 309, 310.
report on, by auditors, 306, 307.
directors' duty to communicate to shareholders, 306, 307.
verification of, by directors, 304.

BANKERS OF COMPANY,
as to liability of, 375, 376.
in what cases, may honour cheques of *de facto* directors, 103.
not "officers of the company," 237, 375, 376, 462.
overdraft at, is a loan, 254.

BANKING COMPANIES,
balance sheets to be published by, 293, 405.
penalty for not publishing half-yearly statement by limited, 405.
powers of, 44.
registration of, with limited liability, 294.

BANK OF ISSUE,
unlimited liability of members for its notes, 294.

BANKRUPT,
notice of forfeiture of shares to, when sufficient, 206.
shareholder. See *Bankruptcy of Contributories.*
undischarged, may be a director, 91.
vesting shares in trustee of, 180, 199.

BANKRUPTCY,
adjudication in, vests bankrupt's share in trustee, 180, 199.

BANKRUPTCY—*continued.*
calls provable in, 172, 473.
notice, 477.
of contributory, 208, 472, 473, 477, 483, 489, 493.
directors, 91, 357, 365, 384.
equitable mortgagor of shares, 183.
promoters, 357, 365, 384.
shareholders. See *Shareholders, bankrupt.*
order of discharge in, effect of, on liability of directors and promoters, 357, 365, 384.
rules in, applicable in winding-up of insolvent companies, 480–497.
trustee in, of shareholder, may disclaim bankrupt's shares, 208, 473, 477.
trustee in, of shareholder, may transfer bankrupt's shares, 188.
rights as to set-off, 489, 493.
when a contributory, 472, 473, 477.
validity of forfeiture of shares cannot be questioned in proceedings in, 208.

BEARER,
debentures, 237, 257, 264, 268, 436, 532.
scrip, 154, 157, 158, 265, 438.
share warrants to, 56, 57.

BENEFIT SOCIETY. See also *Building Societies.*
clergymen may be director of, 84.
Forged Transfer Acts apply to incorporated, 269.
half-yearly statements to be made by, 293, 405.

BILLS OF EXCHANGE,
acceptance of, on behalf of company, 224, 227, 228, 252, 393.
form of, 227, 293.
liability of company on, 106, 227, 252.
directors on, 227, 252, 392–394.
penalty on signing, where name of company not legible, 227, 393.
power of company to issue, 224, 225.
liquidators as regards, 466.
proof in respect of, 493.
when binding on Company, 227.

BILLS OF SALE, 237–245, 262, 483.

BOARD OF DIRECTORS. See *Directors.*

BOARD MEETING. See *Meetings of Directors.*

Board of Trade,
false certificate given to, 413.
incorporation of railway companies by the certificate of, 5, 218.
inquiry into affairs of companies, 405.
conduct of liquidators, 421.
licence of, to omit "limited" from name of company, 23.
penalty for refusing to produce books of company to inspectors appointed by, 405.
payments out of companies' liquidation account by, 535–537.
power of, to appoint inspectors of company's affairs, 159.
regulations as to auditing assurance companies' accounts prescribed by, 307.
release of liquidator by, 534.
sanction of, to change of name of company, 16.
to payment out of capital of interest on share, 317.

Bona Fides,
when not a defence, 125, 342.

Bona Vacantia, 611.

Bondholders,
appointment of receiver in actions by, 272.
bound by arrangements under Railway Companies Act, 1867 .. 525.
rights of, 272–275.

Bonds. See *Lloyd's Bonds*.
borrowing upon, 231, 234–237, 251, 254, 266, 268.
issued under Companies Clauses Act, 1845 .. 231, 234, 237, 266–268.
rights and remedies of holders of, 272–275.

Bonus,
on shares ordered to be repaid, 37.
shares, 251, 343–345.

Books and Documents of Company. See also *Register of Members*.
delivery of, to liquidator, 451.
directors not affected with constructive notice of contents of, 346.
production of, in winding-up, 451–455.
right to inspect, 83.
disposal of, in winding-up, 538.
falsifying, 398–400.
inspection of, by auditors, 306.
Board of Trade inspectors, 405.
creditors, 293, 295, 402.
directors, 83.
shareholders, 159, 401, 405, 450.

BOOKS AND DOCUMENTS OF COMPANY—*continued.*
inspection of, in winding-up, 450.
primâ facie evidence against contributories, 471.
production of, in winding-up, 295, 362, 450, 451–455, 468.

BORROWING. See *Bonds; Debentures; Debenture Stock; Mortgages.*
by building societies, 231, 252–254.
company having no borrowing powers, 252, 253.
railway companies, 231, 236, 267.
receivers, 280.
trading companies, 231.
company's power of, 230–256.
conditions precedent to, 33, 34, 231–233.
consent of general meeting to, 102, 231, 232.
debenture stock issued as collateral security, 251.
directors' liability for unauthorized, 230, 253, 394, 395.
directors' power of, 230, 251–256.
dividends may be paid out of moneys raised by, 320.
forms to be observed in relation to, 233.
implied powers of, 231.
irregular, when good against company, 232, 233.
irregularity in, effect of, 232, 233.
limited powers of company of, 252, 236.
directors of, 253.
loan to company, when irrecoverable, 252–255.
misrepresentation by directors of company's powers of, 230, 253, 394, 395.
on bonds, 230, 234–237, 250, 251, 254, 266–268.
debentures and debenture stock, 257–285.
Lloyd's bonds, 233, 256.
mortgages, 233–256.
powers must be exercised *bonâ fide*, 250.
for company's benefit, 251.
precautions to be observed by directors, 230–256.
ratification of, *ultra vires* of directors, 254.
restriction on powers of, 33, 34.
without obtaining registrar's certificate, 33, 404.
ultra vires of the company is void, 254, 255.
directors may be ratified, 255.

BREACH OF WARRANTY OF AUTHORITY. See *Misrepresentation of Authority.*

BREACHES OF TRUST,
bankers not "officers of company," 237, 375, 376, 462.
bonâ fide no defence in action against directors for, 342.
building societies, as to, 345.
by allotment of shares to infants, 344.

BREACHES OF TRUST—*continued.*
by improper investments, 221, 301, 343, 346.
payment for brokerage, 35, 72, 342, 343.
liquidators, 468.
payment improperly made to promoters, 349.
of costs of litigation unconnected with company, 35, 343.
directors' unauthorized remuneration, 79, 343.
dividends out of capital, 36, 322, 343, 354.
illegal taxes, 106.
secret commissions to directors, 343, 347, 348.
purchase of company's own shares, 342–345.
claim for, is a chose in action, 462.
classification of, 341.
directors cannot claim indemnity in respect of, 81, 344.
liability of, as trustees for company of its own shares, 344.
estate of deceased, liable for, 355.
may obtain injunction to restrain their co-directors from committing, 345.
right to contribution for, enforced by action, 358.
not enforceable in winding-up proceedings, 358.
when parties to, 345, 346.
estoppel of directors from denying knowledge of, 346.
fraudulent, 357.
interest recoverable on moneys paid in, 344, 345, 348, 353, 354.
rate of, in cases of, 344, 350, 353, 354.
joint and several liability of directors for, 354, 355.
liability for, barred by—
dissolution of company, 357.
order of discharge in bankruptcy, 357.
Statute of Limitations, 356.
by whom enforceable, 110–112, 355, 410–412, 461–464.
how enforceable, 355, 410–412, 461–464.
loans by director on personal security when, 302.
mortgages of uncalled capital are not, 176.
notice of, 345, 346.
relief in cases of, 359.
set-off when not allowed, 462.
summary remedy for, 461–464.
third persons' liability who take property with notice of, 344.
ultra vires of company cannot be ratified, 108, 355.
directors may be ratified, 107, 356.
what are, 342.

Brewery Companies.
Compensation under Licensing Act, 1904, payable to trustees of deeds securing debentures issued by, 273.

Bribes,
contracts procured by, voidable by company, 221.
directors' liability on qualification shares bought out of, 352.
shares received as, 352, 476.
directors not contributories in respect of fully paid-up shares given to them as bribes, 352, 476.
liability of directors for, 351, 352, 355, 357, 397.
of person who has agreed to be a director, 352.

Brokerage. See *Placing Shares.*
payment for, 35, 66, 72, 118, 342, 343, 349.
validity of, 35, 72, 342, 343, 349.

Brokers,
directors' liability on prospectus issued by, 366, 375, 396.
liability of, 375.
payments to, 35, 66, 72, 118, 342–344, 349, 519.

Building Societies,
acts *ultra vires* of, 30, 31, 44, 45, 254, 255.
arbitration between members of, and, 111–113.
borrowing by, 231, 252–254.
borrowing *ultra vires* is void, 254.
incapable of ratification, 254.
borrowing powers of permanent and terminating, 253.
cannot carry on business of land society, 31.
director's liability for breaches of trust, 344, 345.
disputes between members of, and, 112.
Forged Transfers Acts apply to incorporated, 269.
investment of funds of, 302.
powers of, 30, 31, 44, 45.
second mortgage by, 45.
winding-up of, 417

Business,
carrying on, with less than seven members, 293.
ceasing to carry on, 260, 276, 432, 433, 538–540.
certificate that company is entitled to commence, 33, 232, 399, 404.
commencing, before obtaining certificate, 404.
date at which company is entitled to commence, 33, 104, 105, 116, 232, 293, 325, 404.
delay in commencing, ground for winding-up, 432, 433.
extraordinary or special, 78, 100, 327, 328.
meaning of carrying on, 432.

BUSINESS—*continued.*
of company carried on by liquidators, 464, 467.
ordinary course of, 118, 122, 133, 243, 259–262, 447.
penalties as to carrying on business, 293, 403, 404.
sale of, 221.
suspension of, 260, 432, 433.

CALLS ON CONTRIBUTORIES, 163, 235, 476–480, 508.
interest when payable on, 479.
legal personal representative, liability of, 478.
notices to be given of, 477.
specialty debts, 477.
to adjust rights of contributories, 68, 428, 476, 479, 502, 534.

CALLS ON SHARES, 171–178. See *Calls on Contributories.*
administration of deceased shareholder's estate granted to company's nominee as creditor for, 171, 172.
by general meetings, 171.
directors, 97, 98, 104–106, 110, 171–176.
directors *de facto*, 173.
whom payable, 171.
conditions precedent to making of, 104–106, 173.
consent of general meeting to making, 174.
contracts for payment of, in goods, not *ultra vires*, 176–178.
deceased shareholder, liability of estate of, for, 171, 172, 199.
personal representatives of, 171, 172, 199.
difference in payment of, 171, 175.
directors cannot delegate power to make, 103, 173.
not restrained from making, enforcing, or expending proceeds of, 110.
power to make, 171.
how exerciseable, 173, 174.
is discretionary, 176.
forfeiture for non-payment of, 200–208.
formalities to be observed in making and enforcing, 174.
fraudulent preference in payment of, 105, 175.
general meeting may make, 171.
in arrear, refusal to register transfer, 171, 195, 196.
interest on, in arrear, 43, 177.
sums paid in advance of, 43, 177.
interference of Court to restrain making of, 110.
invalid, may be confirmed, 172.
joint holders, liability of survivor for, 172, 199, 472, 479.
making or not making, must be for company's benefit, 106, 175.
moneys payable on terms of allotment are not, 175.

Calls on Shares—*continued.*
mortgages of, 176, 234.
future calls, 176, 234, 235, 238, 478.
notice of, how given, 174.
payment by set-off of, 81, 176, 177.
in advance of, 105, 175.
cash, 176.
kind, 132, 176, 177.
of, by directors, 105, 175.
instalments, 174.
how made, 172–176.
in advance, 175.
time for, 171, 174, 175.
power to make, in whom vested, 171.
provable in bankruptcy, 172, 473.
quorum of directors necessary for making, 97, 98, 172.
registered holder liable for, 171.
regulations to company as to, 171.
resolution for, 172, 174.
rule in *Foss* v. *Harbottle* as applied to making, 110, 176.
specialty debts, 13, 477.
tender by shareholder of amount due for, 206.
transferor's liability for, until registration of transfer, 171.
valid although only part of company's capital subscribed, 105, 173.
validity of, 97, 98, 172–175.
when payable, 171.
when to be made in winding-up only, 163.

Canal Company,
cannot grant rights to take water from its canals, 32, 298.
dedication of footpath by, 298.

Cancellation. See *Forfeiture of Shares; Surrender of Shares.*
of allotment of shares, 168, 358.
forfeited shares, 202–205.
forfeiture of shares by liquidator, 205, 507.
lost capital, 50–54.
registration of invalid transfer of debentures, 270.
shares, when invalid, 200, 203–208.
surrendered shares, 208–211.
unissued capital, 24, 50, 51.

Capital,
account, 309–318.
alteration of, 24, 48–56.
cancellation of, 24, 50–54.
charges paid out of revenue may be repaid to revenue, 316.

CAPITAL—*continued.*
consolidation of, 24, 55, 56, 290, 402.
consolidation of classes of shares, 56.
conversion of fully paid, into stock, 24, 54, 55.
forfeiture of shares not a diminution of, 200.
fully paid, may be represented by share warrants, 56, 57.
fund for payment of creditors, 286.
increase of nominal, 47, 48.
penalty for not giving notice of, 402.
interest on unproductive, whether chargeable to capital account, 316–318.
invalid issue of, 139.
issue of, at discount, 40–42, 53, 137, 163, 164, 207, 213, 435, 436.
condition precedent to, 104, 146–148.
new, 47–50, 147–154.
majority required for, 337.
on behalf of persons entitled to, 375.
issued, meaning of, 47.
lost, 50–53, 313–318, 321.
memorandum of association to contain statement of, 12, 13, 24.
new, when to be first offered to members, 48, 151.
nominal, 47, 49.
partly subscribed, 105, 106, 146–148, 173.
payment of dividends out of, 36–39, 46, 304, 305, 313–318, 322, 343, 353.
reduction of, 24, 39, 42, 43, 49–54, 337, 402.
reserved, 23, 24, 161, 163, 235.
return of, to members, 24, 34–43, 49–54, 343.
in purchase of their shares, 26, 39, 40, 343.
in winding-up, 502–504.
statement of, to be delivered to registrar, 402.
subdivision of, 24, 48, 55, 56, 337, 402.
summary of, 289, 290, 401.
subscribed, fund for payment of creditors, 286.
uncalled, mortgage of, 176, 234, 235, 238, 478.
underwriting, 35, 62, 69–74, 118, 121, 122, 139, 349.
unissued, cancellation of, 24, 49–51.
watering, 397, 523.

CAPITAL ACCOUNT,
interest on unproductive capital charged to, 317, 318.
loss upon, whether to be made good out of profits, 313–316.

CAPITAL CHARGES,
paid out of revenue may be repaid to revenue, 316.

CASES CITED. See *Table of Cases*, p. xi.

CASH,
payment of calls in, 176.
shares to be made in, 33, 146–148, 163–170.
what is equivalent to, 165, 166.

CASTING VOTE,
of chairman at shareholders' meeting, 96, 337.

CASUAL VACANCIES,
appointment of auditors to fill, 306.
directors to fill, 88, 89.

CERTIFICATES. See below.
debenture stock, 258, 263, 264, 271, 404.
stamps on, 263, 264.
false, 399, 413.
of auditors as to accounts, 308, 317, 325, 399.
verifying reports to statutory meetings, 325.
Board of Trade incorporating railway companies, 5, 218.
liquidators, 536.
registrar of joint stock companies, 21.
of incorporation of companies, 11.
of registration of mortgages and charges, 248, 400, 404.
that companies are entitled to commence business, 33, 104, 232, 399, 404.
scrip, 154–159, 264, 438.
stamp on, 158.
Stock Exchange requirements as to share and stock, 552.

CERTIFICATES OF SHARES,
allottees entitled to, 151.
deposit of, 181–184.
effect of issue to transferee under a forged transfer, 189, 190.
forgery of, by secretary to company, 109, 190.
issue of, not necessary to issue of shares, 168.
notice of trust placed on, 191.
primâ facie evidence of title to shares, 151, 188.
required by company before registration of transfer, 186, 187–190.
transfer cannot be made by delivery of, 193.

"CERTIFICATION" OF TRANSFERS, 190.

CESTUI QUE TRUST,
of shares, rights of, 183, 190, 191.
liability of, 161, 213, 475.

CHAIRMAN OF MEETING,
admission by, evidence against company, 99.
authority of, 333.
casting vote of, 96, 337.
declaration of, when conclusive, 338.
effect of entry in minutes of meeting by, 334.
signing of minutes by, 334.
person to be, 332.
resolutions at meetings to be put by, 333.
right of, to adjourn meeting, 331.
ruling of, 333.

CHARGE. See *Mortgages.*

CHARTER. See *Chartered Companies.*

CHARTERED COMPANIES,
acquisition of property by, 299.
amalgamation of, 513.
dissolution of, 413.
forfeiture of charter of, 30, 32, 413.
holding of property by, 299.
incorporation of, 5.
memorandum and articles of association cannot be substituted for a royal charter, 21.
persons dealing with, have constructive notice of charter of, 107.
powers of, 30, 299.
repeal of charter of, 413.
return of paid-up capital of, 36.
sale of property by, 299.
surrender of charter by, 32.
transfer of shares in, 186.
winding-up of, 413, 417.

CHATTELS,
bills of sale of. See *Bills of Sale.*
rights of persons induced by misrepresentation to buy, 364.

CHEQUES. See *Negotiable Instruments.*
form of, 227.
liability of company on, 106, 227, 252.
liability of directors on, 227, 345, 346, 393–395.
penalty for signing where company's name not legible, 227, 403.
when binding on the company, 227.

CHOSES IN ACTION,
assurances of, not bills of sale, 242.
claims of company against director for breach of trust are, 462.
debentures are, 270.
shares are, 183
what are, 242.

CIRCULAR,
inviting persons to take shares, 115, 383.

CLASSES,
of creditors bound by arrangements, 524–533.
shareholders, rights of, 25, 26, 50, 51, 116, 120, 151–154, 304, 322, 323, 330, 501–504.
shares. See *Shares, classes of.*

CLERGYMEN,
may be directors of benefit society, 84.
fire assurance society, 84.
life assurance society, 84.
may not be directors of trading companies, 84.
penalty for acting as director, 84.
trading contracts by, not void, 85.

CO-DIRECTORS,
contribution between, 357, 358, 388.
directors' liability on bills accepted by, 393.
rights against, 82, 83, 357, 358, 388.

COLLECTION OF ASSETS IN WINDING-UP, 451–480.

COMMENCEMENT OF WINDING-UP, 415, 506, 511.

COMMISSION,
for "placing" shares, 35, 66, 118, 347.
subscribing for shares, 69.
underwriting shares, 66, 69–74, 118, 121, 349.
payment to directors of secret, 343, 347, 348.
promoters of secret, 343.
to be mentioned in prospectus, 118, 121.
to examine witnesses abroad to ascertain value of assets, 519.
to stockbroker for brokerage, 35, 66, 118, 342, 343, 349, 519.

COMMITTEE OF DIRECTORS, 82, 103, 104, 227.

COMMITTEE OF INSPECTION IN WINDING-UP,
appointment of, 418.
investments made at request of, 536.
sold at request of, 536.
liquidators to have regard to directions of, 501.
out of pocket expenses of, 498.
powers of liquidator exercisable with consent of, 464–466, 498, 501.

COMMITTEE OF LUNATIC,
voting at meetings of shareholders by, 335.

COMPANIES. See also *Corporations.*
acquisition, holding and alienation of property by, 32, 297–302.
actions by and against, 408–412.
acts and dispositions *ultra vires* of, 28–46.
agreements of, effect of directors' fraud and misrepresentation upon, 228, 229.
agreements to take shares in other, 130, 299.
amalgamation of, 512, 513, 521–522.
application of funds of, 34–36, 46, 342–345.
"arrangements" by, 514, 524–533.
banking, powers of, 35, 44, 45.
limited, must publish half-yearly statement, 293, 405.
bills or notes, issuing, 224, 225.
books of. See *Books of Company.*
borrowing powers of, 33, 230–285.
business, commencement of, by, 33, 104, 105, 116, 232, 293, 325, 404.
calls may be made although capital only partly subscribed, 105, 173.
calls must be made for benefit of, 174–176.
capital, return of, to members of, 22, 34–43, 49–54, 343, 502–504.
commencement of business of *Supra, business, commencement of.*
compulsory winding-up of. See *Winding-up by the Court.*
contracts before incorporation of, 65–68, 218, 219.
form of, 225–228.
with directors, when voidable, 222–224.
creation of, 4.
defamation of, 2, 35.
by, 109.
defunct, 538–540.
delegation of powers of statutory, 299.
directors must account to, 342.
dissolution of, 4, 357, 413, 428, 534–540.
distribution of surplus assets of, 41, 137, 153, 159, 312, 499–504.
foreign, 8, 9, 296, 303, 408, 416, 417, 517.
funds, application of, 34, 35, 46, 342–345.
governed by the Companies Acts, 5-8.
Clauses Consolidation Acts, 6.
holding of property by, 3, 11, 297–302.
illegal, 4.
incorporation of, 5-14.
injunction against. See *Injunction.*
insurance. See *Assurance Companies.*
interference of Court with internal management of, 110–113, 176.

COMPANIES—*continued.*
investment of surplus funds of, 301, 302.
legal proceedings by and against, 408–412.
liability of, on bills, cheques, contracts, and notes, 106, 227, 228, 252.
for wrongs of agents, directors, and servants, 108–110.
libel, when liable for, 109, 394.
lien of, on member's shares, 176–179, 182–184.
limitation of powers of, 28–46.
limited by guarantee, 8, 11–14, 22–24, 49, 402.
shares, 8, 11–14, 22–24.
may sue for slander of title, 2.
meetings of. See *Meetings of Shareholders.*
misrepresentation by directors of borrowing powers of, 230, 394, 395.
or fraud of director, effect on, 108, 109, 140–144, 228, 229.
names of, 14–16, 20, 227, 292, 293, 393, 403, 539.
notice to directors, how far notice to, 99.
objects of, 17, 18.
how altered, 18–21.
paid-up capital, return of, 36–46.
payments, what may be made by, 34–46
power of, to promote other companies, 18.
take shares in other companies, 130, 298, 299.
powers under memorandum of association. See *Ultra Vires.*
how altered, 18–21.
private. See *Private Companies.*
property of, allowance for depreciation of, 313–316, 320.
property, unauthorized disposition of, 342–345.
proxies for, who may be, 336.
public, 7, 297.
purchase of own shares by. See *Purchase of Company's own Shares.*
ratification by. See *Ratification.*
reconstruction of, 512–521, 522–524.
register of members of. See *Register of Members.*
registered office of, 12, 16, 154–157, 248, 290, 393, 403, 408.
rescission of contracts of. See *Rescission.*
rights of, against directors, 341–362.
sale of assets, property, or undertaking of, 297–301. See also *Amalgamation; Reconstruction; Arrangements.*
share warrants, issue of, by, 56, 57.
shares, investment in, 130, 298, 299.
subject to Companies Act, 1908 .. 6, 370.
Clauses Acts, 6.

COMPANIES—*continued.*
trustees of, contracts by, 60, 61, 124, 217.
trusts, how affected by notice of, 187, 190, 191.
ultra vires acts do not bind, 28–46, 107–109.
unlimited, 11, 21, 23.
unregistered, 415–417, 433, 514, 522.
may register as limited or unlimited, 14.
voluntary winding-up of. See *Voluntary Winding-up.*
winding-up of. See *Voluntary Winding-up; Winding-up; Winding-up by the Court; Winding-up under Supervision.*

COMPANIES ACT, 1867, s. 38 .. 118, 119, 122–125, 391.

COMPANIES ACTS,
application of, 5, 6.
companies governed by, 6.

COMPANIES CLAUSES CONSOLIDATION ACTS,
application of, 5, 6.

COMPANIES LIQUIDATION ACCOUNT, 535–537.
payments into, 535.
out of, 535–537.

COMPROMISES. See *Arrangements.*
implied powers of directors as to, 95.
in winding-up, with contributories, 464, 467, 469, 479, 520.
creditors, 464, 467, 508, 520, 524–533.
with debenture holders, 274, 275.

CONCESSIONS,
contracts with promoters for purchase of, 60, 124.
wasting property, 313, 315.

"CONCLUSIVE EVIDENCE,"
certificate of incorporation, 11.
registration of mortgages or charges, 248.
order for reduction of capital, 52.
that company is entitled to commence business, 33.
declarations of chairman when, 338.

CONDITIONS,
precedent, 48, 101, 104, 105, 131, 193, 194, 231–233, 266.
non-performance of, pertaining to internal management of company, 101, 232–233.
to allotment of shares, 48, 146-148, 151.
borrowing, 33, 231–233.
exercise of power of forfeiture of shares, 205, 206.
to mortgage, 231-233.
issue of debenture and debenture stock, 231–233.
prospectus. See *Prospectus.*

CONDITIONS—*continued.*
precedent—*continued.*
to making of calls, 105, 106, 173.
registration of companies, 10.
transfer of shares, 193, 194, 196, 197.
subsequent to application for shares, 132, 133.

CONSENT,
of general meeting to exercise of directors' powers, 95, 100–102, 174, 232.
contracts between directors and company, 223.

CONSOLIDATION OF SHARES, 24, 47, 55, 56, 290, 402.
how effected, 47, 55.
notice to be given to registrar of joint stock companies of, 290.
of different classes, 56.

CONSPIRACY,
criminal liability of directors and promoters for, 397, 398.

CONTINGENT DEBTS AND LIABILITIES,
proof for, 480, 481, 486–488.

CONTRACTORS,
contracts between promoters and, 124.
guarantees of dividends by, 221, 317.
issue of capital by company for, 116.
of company by, 116.

CONTRACTS. See below, and *Agreements to take Shares*
articles of association,
cannot adopt or ratify contracts made before incorporation of company, 218.
contracts constituted by, 92, 128, 168, 218–220.
before incorporation of company, 65–69, 217–219.
between company and directors, 77, 90–92, 221–224, 362.
company and promoters, 64, 217, 221, 222, 349, 351.
binding only when company is entitled to commence business, 33, 34, 220.
by parol, 129, 149, 180, 225–228.
promoters, 59–68, 118–124, 217–222, 350, 351, 389–391.
consent of general meeting when necessary to, 102, 223.
disclosure of, in prospectus, 118, 119, 122–125, 389–391.
disqualification of directors by making contracts with company, 90–92, 223.
effect on, of petition for winding-up, 447.
equivalent to payment for shares in cash, 165, 166.
executory, 227, 265.
filing of, 149, 164–169, 521.

CONTRACTS—*continued.*
for payment of calls in money's worth, 132, 176, 177.
for shares in money's worth, 132, 164–170.
sale of goods, 227.
sale of land, 227.
sale of foreign land, 221.
sale of shares, 178–182, 448, 474.
sale on amalgamation, 167, 300, 513–522.
sale by promoter, 64, 111, 221, 222, 350, 351.
sale to agent or trustee for intended company, 60, 61, 217–219, 518.
sale to company, 118, 122–124, 217–222.
directors' duties as to, 218–222.
sale to intended company not binding on company after incorporation, 218.
guaranteeing dividends and interest, 221.
how made, 225–228.
illegal, 4.
in restraint of trade, 221, 362.
liability upon,
of agent or trustee for intended company, 217.
of directors on contracts made by them for company, 392–394.
made before company entitled to commence business, 33, 34, 220.
made in ordinary course of business, 118, 122, 123, 243, 259, 447.
"material," 118, 122–125, 390.
modification of, 220, 325.
of marine insurance, 228.
part performance of, 227.
particulars of, to be stated in prospectus, 118, 122–125.
procured by bribes to directors, voidable by company, 221.
misrepresentation, voidable, 108–110, 140–144, 228, 229, 363, 364.
provisional, 33, 220.
ratification of, 218, 223, 351.
rescission of. See *Rescission.*
ultra vires, 31, 32, 45, 224,
under seal, 226, 227.
underwriting, 70–74, 118, 122.
variation of, before statutory meeting, 220, 325.
when binding on the company, 220–229.
with subscribers of memorandum of association, 219.

CONTRIBUTION,
director's right to, against co-director, 357, 358, 388.
shareholders, 358.
enforced by action, 358.

CONTRIBUTION—*continued.*
director's right to, not enforceable in winding-up, 358.
persons entitled and liable to, 388.
promoter's liability to make, 63, 388.

CONTRIBUTORIES,
A. list of, 469, 470.
absconding, arrest of, 460.
adjustment of rights of, in winding-up, 68, 428, 476, 479, 502, 534.
applications in winding-up by, 421, 509.
bankrupt, 208, 472, 473, 477, 483, 489, 493.
B. list of, 208, 468, 470, 516.
calls in winding-up on, 476–480, 508, 534.
compromises with, 464, 467, 469, 479, 520.
criminal liability of, 400.
infants as, 475.
joint holders as, 199, 472, 479.
legal personal representatives as, 472–474, 479, 535.
liability of, 468–473, 476–480, 488, 502.
is specialty debt, 13, 478.
directors as, 344, 352, 353, 476.
subscribers of memorandum of association as, 136.
upon holders of shares not issued for cash as, 164, 169.
married women as, 471, 475, 478.
may take part in public examination of directors and others, 458.
meetings of, 418, 419, 444, 465, 509, 518–532, 537.
petitions by, 438, 439.
proof of debts in winding-up by, 488, 489.
rights of, against directors and others in winding-up proceedings, 453–455, 460–463.
set-off by, 452, 488, 489.
settlement of list of, 468–474, 507, 508.
surplus assets divided amongst, 502–504.
trustees in bankruptcy, when, 472, 473, 478, 535.

CONVERSION,
of fully paid-up shares into stock, 48, 54, 55.
stock into fully paid shares, 48, 54, 55.

CORPORATE BODY. See *Corporations.*

CORPORATIONS. See *Companies.*
acts *ultra vires* of, 4, 28–46.
repugnant to objects of, 32.
act through agents, 3.
application to unauthorized purposes of funds of, 34, 35.
appointment of proxy by, 336.
attributes of, 1–4.
common seal of, 3.

CORPORATIONS—*continued.*
contracts *ultra vires* of, 31–37, 45, 46.
creation and classification of, 5.
definition of, 1.
differ from partnerships, 2.
distinct from their members, 2.
joint holders of shares, rights and liabilities as, 199.
liability of, for wrongful acts by agents and servants of, 108.
limitation of powers of, 29–32.
members not liable upon contracts of, 2.
nature of, generally, 1.
number of members of, 4.
payment of debts of, 3.
property of, generally vested in, 3.
proxies for, 336.
rights, powers, and liabilities of, 1–4.
COSTS,
in debenture holders' actions, 283, 284.
of arrangements by companies, 533.
compelling witness to attend for examination under Companies Act, 1908, s. 174 .. 453.
directors, 35, 82, 343.
litigation against directors when payable by company, 35, 343.
making statement of affairs, 455, 456, 498.
misfeasance summonses, 463.
obtaining special Act, 65–68.
official receivers, 493.
person whose name is placed on a prospectus without his consent, 387, 388.
petitions for winding-up, 442–447.
proceedings for libel on directors, 35.
promoting companies, 65–68.
public examinations, 458.
realization, 280.
receivers, 280.
scheme of arrangement, 533.
shareholders repudiating irregular allotment of shares, 147, 148.
solicitor employed by liquidator, 467, 511.
winding-up, 442–446, 469, 470, 476, 497, 498, 511, 534.
payable by directors upon irregular allotment of shares, 148.
payable by directors in actions against them for breach of trust, 354.
security for, 445, 446, 520.
taxation of, 511.
to be paid by liquidators, 466, 467, 485, 498.

COUNTY COURTS,
holding of public examinations by judges of, 458.
jurisdiction of, as to friendly, industrial, and provident societies, 112–113.
winding-up jurisdiction of, 430, 431.
COUPONS,
for interest on debentures, 257.
forged, 399.
presentation of, 257.
to share warrants, 56, 57.
COURT,
jurisdiction of, in winding-up, 430–432.
powers of, in a winding-up, 451, 464.
CREDITORS,
applications in winding-up by, 427, 428, 450, 453, 461, 463, 484, 495, 501, 505, 509, 534.
arrangements by companies with, 524–533.
capital of limited company is the fund for payment of, 286.
compromises of companies with, 464, 467, 508, 524–533.
concealment of names of, liability of directors for, 53, 400.
delegation in a voluntary winding-up of powers by shareholders to, 338, 420, 505.
directors not liable to, for negligence, 286, 394.
dividends in a winding-up paid to, 500, 501, 536.
execution, 247, 249, 261, 278, 287, 422–427, 483, 509.
executors of, petition by, 436.
extraordinary resolution necessary to delegate powers to creditors in a voluntary winding-up, 338, 505.
foreign, security required from, 446, 480.
fraudulent preference of, 80, 105, 175, 252, 294, 448–450, 493.
judgment rights of, 287, 509.
majorities required to sanction arrangements binding on, 524–533.
meetings of, 294, 295, 418, 421, 444, 465, 525–533.
of defunct company, rights of, 539.
payment of, in winding-up, 499–501, 536.
proof by, in winding-up, 480–497.
right to inspect company's register of members, 288, 402.
inspect company's register of debentures and mortgages, 236, 237, 248, 293, 405.
inspect copies of mortgages and charges, 248, 293, 405.
inspect documents filed in Joint Stock Companies Registry, 288.
rights of, against company, 3, 286–296.
in winding-up, 294–296.
debenture holders when their security is unregistered, 238, 247.

CREDITORS—*continued*.
rights of, against directors and others in winding-up, 452–456, 460–463.
shareholders, 3, 162, 287, 293.
to petition for winding-up, 435.
to take part in public examination of directors and promoters, 458.
protected upon alteration of company's objects, 19, 20.
protected upon reduction of capital, 52, 53, 400.
secured. See *Secured Creditors; Borrowing Powers; Debentures; Debenture Stock; Mortgages.*
undue preference of, 80, 105, 175, 252, 294, 448–450, 493.
unsecured, cannot prevent company paying dividends out of capital, 46, 286.
voting by proxy, 528, 529, 531.
when bound by arrangements, 524–533.
CRIMINAL LIABILITY OF DIRECTORS, PROMOTERS, AND OFFICERS, 53, 397–407.
offences punishable with imprisonment, 53, 397–401.
by pecuniary penalties, 401–407.
CROWN DEBTS,
priority of, 499.
CURATOR,
voting at meeting of shareholders by, 335.

DAMAGES,
for fraudulent misrepresentation, 363–368.
irregular allotment of shares, 147–149.
misrepresentation of authority, 394.
omissions in prospectus, 388–391.
refusal to register transfer of shares, 189, 196.
measure of, 129, 145, 189, 353, 383, 390, 395.
proof for, in winding-up, 489, 490.
DEBENTURES, 257–285.
actions to enforce, 271–276, 282–285, 426, 460, 462, 463, 496.
agreements to issue, 250, 265.
arrangements and compromises with holders of, 274, 275, 524–533.
assent of holders of, to arrangements by railway companies, 275, 525.
bearer, 237, 257, 258, 263, 264, 436, 532.
bills of sale, 237, 245.
borrowing upon, 231–239, 254, 257–285.
calls by liquidator for benefit of holders of, 234, 235, 478.
cancellation of registration of transfer of, 270.
choses in action, 270.

DEBENTURES—*continued.*
Conveyancing Act, 1881, s. 19, does not apply to, 258.
coupons for interest on, 257, 258.
covering deed to secure. See *Trust Deed.*
creating personal obligation only, 257, 264.
creation of, 238.
directors' liability for unauthorized issue of, 394, 395.
directors' power to create specific charge having priority over, 259, 260.
issue at discount, 251.
distinguished from perpetual debenture stock, 258.
floating security constituted by, 258–263.
foreclosure of, 283, 284.
forged transfers of, 270.
Forged Transfers Acts apply to, 269.
holding of, as qualification for directors, 85.
inspection by holders of, 264, 304.
interest on, 272–275, 491, 492.
issue of, 231–233, 250–252, 265–267.
as collateral security, 251, 449.
to secure debenture stock, 263.
at a discount, 251.
conditions precedent to, 231–234, 266.
how authorized, 232.
how made, 232.
by joint stock and trading companies, 266.
by railway companies, 232, 254, 266.
precautions to be taken by directors before, 231–236.
under special Act, 266.
when a fraudulent preference, 448–450.
landlord's right to distrain as against holders of, 261.
meaning of, 257.
modification of rights of holders of, 274, 275, 530.
mortgages of, 251, 270.
notice of proposed alteration of objects of company to be given to holders of, 19.
payment out of capital of interest on, is not *ultra vires*, 316, 317.
payment of stolen, 270.
presentation for payment of, 257, 258, 272.
priorities of, 267.
proof in winding-up in respect of, 273, 497.
prospectus inviting subscriptions for, 114–126, 265, 308, 363–391.
ratification of issue *ultra vires* of directors, 108.
receivers appointed on behalf of holders of, 273–282.
redemption of, 271, 272.

DEBENTURES—*continued.*
registration of, as bills of sale, when required, 237.
transfers of, 269, 270.
precautions to be taken by directors before registering, 270.
with Joint Stock Companies Registrar, 238–249.
rights and remedies of subscribers for, against directors and others for misrepresentation, 363–388.
holders of, against company, 272–285.
foreclosure, 283.
personal judgment, 284.
receiver and manager, 275–282.
sale, 282.
winding-up, 273, 435.
scrip certificates, 265.
specific performance of agreements to issue, 249, 265.
stamps on, 263, 264.
stolen bearer, payment of, 270.
rights of holder of, 270.
transfer of, 268–271.
trust deed to secure. See *Trust Deed.*
voting by holders of, 53.

DEBENTURE STOCK, 257–285. See *Debentures.*
assent of holders of, to arrangements by railway companies, 275, 525.
certificates, 258, 263, 264, 271, 404.
containing a charge, 258, 263.
creation and form of, under Companies Clauses Act, 1863 .. 232, 266, 337.
debentures issued as collateral security for, 263.
directors' liability for unauthorized issue of, 394, 395.
distinguished from debenture, 258.
Forged Transfers Acts apply to, 269.
holding of, as director's qualification, 85.
inspection of register of, by holders of, 236, 237, 264.
irredeemable, 258, 265, 267.
issue of, as security, 251, 449.
conditions precedent to, 231–234, 266.
how authorized, 232.
irredeemable, how authorized, 267.
under Companies Clauses Act, 1863 .. 36, 232, 267, 337.
notice to be given of proposed alteration of objects of company to holders of, 19.

DEBENTURE STOCK—*continued.*
perpetual. See *irredeemable, supra.*
prospectus inviting subscriptions for, 114–126.
rights and remedies of subscribers for, against directors and others for misrepresentation, 363–388.
holders of, against company, 272–285.
scrip certificates for, 264.
specific performance of agreements to issue, 249, 265.
trust deed to secure. See *Trust Deed.*

DEBTS,
inability to pay, 433, 434.
interest, when payable on, 491, 492.
proof of. See *Winding-up, Proof of Debts in.*
service of demand for payment of, 433, 434.

DECEIT, ACTION OF. See *Misrepresentation; Untrue Statement.*
against company, 109.
directors and promoters, 363–368.
damages must be proved in, 365.
differs from action under Companies Act, 1908, s. 84 .. 364, 368, 374, 378, 385, 386.
effect of death of plaintiff on, 364.
facts to be proved by plaintiff in, 365.
liability of directors and promoters in, 363–365.
plaintiff must prove fraud in, 365, 366.

DECLARATIONS. See *Statutory Declarations.*

DEED,
effect of material alteration in, 182, 192.
transfers, when required to be made by, 182, 186, 192.

DEED OF SETTLEMENT,
alteration of, 18–21.
directors have constructive notice of, 346.
execution of, by transferee when required, 193.
forfeiture of shares under power in, 200–203.
incorporation of companies by execution and registration of, 5.
persons dealing with company have constructive notice of, 191.
substitution of Memorandum and Articles of Association for, 21.

DEFERRED SHARES, 116, 120, 125.

DEFUNCT COMPANIES, 538–540.

DELAY. See *Laches.*
effect of, in accepting application for shares, 135.
in applying for rectification of share register, 140–143, 147, 148, 212–215, 472, 493.

DELEGATION,
of directors' powers, 103, 150, 173, 227.
shareholders' power to appoint liquidators, 338, 420.
statutory powers by public company, 299.

DEPOSIT SOCIETIES, 293, 405.

DEPOSITIONS,
of witnesses in winding-up proceedings, when evidence, 454, 458.
in bankruptcy or insolvency, 399.
inspection of, 454, 458.

DEPRECIATION,
allowance for, in cases of property of wasting nature, 313–317, 320.
in market price of securities of trust companies, 316.
reserve fund for making good, 314.
sinking fund for making good, 315.

DIRECTORS,
absenting themselves from board meetings, 91, 92.
acceptance of bribes by, 221, 351, 352, 397.
office by, 128, 134, 138.
accounts, duty as to, 304, 309, 342.
acknowledgment of debt, barred by Statute of Limitations, owing to, 224.
actions against, by dissentient shareholders, 110–112, 408–412.
actions of deceit against, what must be proved in, 365.
acts *ultra vires*. See *Ultra Vires of Company; Ultra Vires of Directors.*
advances to company by, repayment of, 81, 82.
agents of the company, 75–78.
agreement to take qualification shares by, 87, 90, 116, 127–129, 134, 138, 218.
allotment of shares by, 97, 100, 104, 106, 129, 146–154.
notice of, to agent, 134.
implied, 134, 135.
to, 134, 135.
amalgamation, duties of directors of purchasing company as to, 522.
selling company as to, 522.
appointment of, 84–89, 95, 127–129, 328, 329, 402.
restrictions on, 85, 87, 90, 116.
with unlimited liability, 402.
auditors' report to be communicated to shareholders by, 306, 307.
bankruptcy of, 91, 357, 365, 384.
books, have not constructive notice of company's, 346.

DIRECTORS—*continued.*
borrowing powers of, 230–256. See *Borrowing.*
extent of, 251–256.
precautions to be observed in exercise of, by, 230.
breaches of trust by. See *Breaches of Trust.*
calls made by. See *Calls on Shares.*
payment of, by director, 105, 174–176.
clergymen cannot be, of trading company, 84. See *Clergymen.*
committee of, 82, 104.
compensation for loss of office, 347, 518.
composition by, with their creditors, 91.
consent of general meeting, 101–103, 223.
consents to act as, filing of, 116.
to be signed and filed by directors, 116.
constructive notice to, 99, 346.
contracts. And see *Contracts.*
between companies and directors under Companies Clauses Act, 1845 .. 223.
directors and company, ratification of, by company, 223, 351.
directors and company, when voidable, 222–224.
directors and promoters to provide directors' qualification, 352.
directors' power to enter into, 222–225.
disqualification of directors for making contracts with company, 91, 92, 223.
for sale to company, directors' duty as to, 220–222.
procured by misrepresentation of, 108, 109, 228.
procured by bribes to, voidable by company, 221.
to take qualification shares from company, to be signed and filed by, 87, 116.
voidable between director and company may be affirmed, 222.
voting of directors on contracts in which they are interested, 90–92, 223, 224, 335.
contribution,
rights against co-directors to, 357–359, 388.
rights against shareholders to, 358.
contributories, directors are not, in respect of fully paid-up shares given to them as qualification, 353.
copy of register of, 290, 403.
costs of, 35, 82, 343.
criminal liability of, 53, 397–407.
for concealing names of creditors of company, 53, 400.
conspiracy, 397, 398.
destroying or falsifying books, 398–400.
fraudulent falsification of accounts, 398–400.

DIRECTORS—*continued.*
criminal liability—*continued.*
for fraudulently taking property of company, 398.
to penalties, 401–407.
damages against. See *Damages.*
de facto. See *Directors de facto.*
deceased director, liability of estate of, 355, 364, 376.
declaration by, of interest in contracts, 91, 92, 222–224.
defective acts of, 100–103, 173, 232, 233.
delegation of powers of, 103, 150, 173, 227.
determination of office of, 85, 89–93, 198, 222–224.
powers of, on winding-up, 113, 450, 507.
disclosure to be made by, 222, 349–351.
in prospectuses, 114–125, 389–391.
discretionary powers of, 108, 176, 194, 195.
disposition of company's property for unauthorized or improper purposes by, 342–344, 353.
disqualification of, 85, 90–92, 198, 222–224.
by making contracts with company, 90–92, 222.
distinguished from partners and trustees, 75–78, 222.
dividends paid out of capital by. See *Dividends.*
election of. See *Appointment of.*
errors of judgment, not liable for, 106, 361.
examination of, 452–455, 457–460. See also *Examination under Companies Act*, 1908, s. 174; *Public Examination.*
expenses properly incurred, right to payment of, 81–83, 342.
false particulars in annual summary as to, 399.
fees unpaid not debts due to directors as members, 79. See also *Remuneration.*
forfeiture of shares by, 200–208.
fraud of directors, effect of, upon agreements, 108, 109, 140–144, 228.
when company liable for, 108–110.
fraudulent prospectus, liability at common law for, 363–368.
liability under Companies Act, 1867, s. 38 for, 391.
preference of, 80, 105, 175.
gratuity to, for past services, 78, 328.
implied powers of, 95, 225.
imprudence of, not liable for losses caused by, 361.
incidental powers of, 94, 95, 225.
increasing number of, 94.
indemnity, right of, to, 81–83, 344, 384, 387, 388.
independent board of, 220, 221, 349, 350.
injunctions against, 36–38, 46, 82, 83, 100–112, 313–315, 320, 345, 362, 369, 388.

DIRECTORS—*continued.*
interest payable by, upon breaches of trust and fraud, 344, 350, 353, 354.
interest of, in promotion of company to be stated in prospectus, 118, 125.
investment of reserve fund by, 301, 302.
surplus funds of company by, 301, 302.
irregularities in exercise of powers of, 100–103, 108, 173–175, 204–207, 232, 233.
issue of shares by, 146–154.
legal personal representatives of, liability of, 355, 364, 376.
liability of,
as contributories, 344, 352, 353, 476.
criminal, 53, 397–407.
effect of order of discharge in bankruptcy on, 357, 365, 384.
for acts and negligence of agents, 361.
bills of exchange, 227, 252, 392–395.
breaches of trust, 341–359.
bribes. See *Bribes.*
cheques, 227, 345, 346, 392–395.
contracts of company, 392–394.
dividends paid out of capital, 305, 322, 342, 343, 353.
fraud, 111, 112, 356, 357, 363–368, 394, 397–401.
improper investments, 301, 302, 342–346, 358, 361.
infringement of patent by company, 396.
irregular allotment of shares, 147, 148.
libel, 394.
losses on loans, 360, 361.
misapplication of company's funds or property, 342–359.
misrepresentation, 119, 123–125, 368–388, 391.
of authority, 394, 395.
negligence, 286, 359–361, 394.
negotiable instruments, 227, 392, 393.
non-disclosure of contracts in prospectus, 118, 388–391.
payment of costs of litigation by, 35, 82, 343.
payments fraudulently made by, 80, 343.
improperly made to promoters by, 343.
promissory notes, 227, 392, 393.
prospectus issued by brokers, 366, 375, 396.
purchase of company's own shares, 342–345.
qualification shares. See *Qualification Shares.*
registration of transfer of shares, 196.
secret commissions, 343, 344, 347.
secret profits, 347–349.
shares allotted to directors as trustees for company, 81, 344.

DIRECTORS—*continued.*
liability of—*continued.*
shares allotted to directors at an undervalue, 347.
infants, 129, 344.
without consideration, 343, 344.
for shares received as bribes, 351–353, 476.
unauthorized borrowing, 230, 255, 394, 395.
issue of bills of exchange, 395.
debenture and debenture stock, 395.
naming in prospectus of a person as, or as having agreed to become, a director, 11, 371, 387, 403.
remuneration paid to directors, 79, 343.
statutory, 148, 368–391, 397–407, 451–464.
to company, 148, 341–362, 447.
debenture holders, 363–396.
stockholders, 363, 391.
other persons, 106, 107, 391, 392.
shareholders, 363–391.
unlimited, 10, 13, 23, 286, 337, 402.
libel, payment of costs of, by, 35, 343.
limitation of powers of, 94, 107, 108.
management of company's business, right to participate in, 82, 86.
managing. See *Managing Directors.*
meetings of. See *Meetings of Directors.*
members of company, when not required to be, 85.
minimum number, when below, cannot act, 89, 99–101.
misapplication of company's funds or property by, 342–356.
misrepresentations by, liability of company for, 108–110, 140–144, 228, 229.
misrepresentation by, personal liability for, 363–391, 394, 395.
steps to be taken on discovering, in prospectus, 370. See also *Misrepresentation.*
names, descriptions, and addresses of, 117, 289, 290, 403.
negligence of agent, not liable for, 361, 395.
liability for, 286, 293, 359–361.
notice of allotment of shares to, when implied, 134, 135.
trust as to shares to, 187, 190.
notice to, when notice to company, 99.
number of, 95, 99, 100.
order of discharge in bankruptcy of, 357, 365, 384.
partners differ from, 75, 76.
penalties affecting, 401–407.
personal liability. See above, *Liability of.*

DIRECTORS—*continued.*
powers of,
between presentation of petition and winding-up order, 113, 447.
determination of, on winding-up, 143, 450, 507.
exercise of, principal rules of law as to, 96, 113.
with consent of general meeting, 101, 106.
implied, 94, 95, 226, 230.
must be exercised for company's benefit, 105, 150, 203, 220, 250.
must be exercised in good faith, 105, 150, 203, 220, 250.
nature and extent of, 94–109.
to borrow, 230, 251–256.
compromise, 95.
exercise powers of company, 94, 95.
issue bonds, 230–237, 266, 267.
debentures, 230–237, 266, 267.
debenture stock, 230–237, 266, 267.
negotiable instruments, 224, 227.
shares, 96, 97, 140–154.
make contracts, 217–229.
to mortgage, 230–256.
rescind agreements to take shares, 41, 144.
precautions to be taken by,
before becoming directors, 368–370.
borrowing, 33, 230–256.
entering into contracts, 33, 220–222.
exercising any powers, 28, 29.
issuing debentures, 33, 231–236.
prospectus, 114–126, 368–370.
shares, 48, 50, 150, 151.
registering transfers, 187–192, 270.
sanctioning mortgages, 230.
payment of dividends, 304.
private examination of, 452–455, 459.
production of books and documents by, in winding-up, 395, 451–455, 509.
profit and loss account, duties respecting, 304.
prosecution of, in winding-up proceedings, 400.
prospectus, duty as to issue of, by, 114–126.
prudence, degree of, to be exercised by, 106, 361.
public examination of, 457–459.
qualification of. See *Qualification Shares.*
quantum meruit, cannot claim remuneration on a, 78.
quorum of, 95–101, 149, 150, 172. See *Quorum.*
ratification by, of issue of prospectus, 366, 374.

DIRECTORS—*continued.*
ratification of unauthorized acts of, 29, 107, 108, 202, 203, 253–255.
reducing number of, 95.
register of, 290, 403.
regulations of company, have constructive notice of, 346.
removal of, 82, 83, 89, 92, 93, 111.
remuneration of. See *Remuneration of Directors.*
unauthorized, 347, 355.
rescission of improper sale to company by, 349–351.
resignation of, 89, 90.
retirement of, 89, 90, 209.
rights against co-directors, 82, 83, 357, 358, 388.
rights against company, 78–83.
of persons named as, in prospectus, or as having agreed to become, without their authority, 387, 388.
to participate in management of company's business, 82.
to inspect books and documents of company, 83.
rotation of, 89, 90.
secret profits of, 347–350.
set-off by, in winding-up, 493.
special resolution as to unlimited liability of, 10, 23, 286, 338, 402.
statement of affairs to be made to official receiver, 455–457.
steps to be taken upon discovering misrepresentation in prospectus, 370.
sub-agents of company, directors not liable for acts of, 361.
subrogation, right of, 81.
summary remedy against, in winding-up, 460–464.
sureties for company, rights of, as, 81, 82.
surrender of shares by, 210.
transfer of debentures, precautions to be taken by director before registering, 270.
transfer of shares by. See *Transfer of Shares.*
trustees differ from, 75.
trustees of company, rights of, as, 81.
ultra vires acts of. See *Ultra Vires of Company; Ultra Vires of Directors.*
undue preference to. See *Fraudulent preference of.*
unlimited liability of, 10, 13, 23, 286, 337, 402.
vacation of office of, 85, 89–93, 198, 222–224.
verification of accounts by, 304.
"watering" of capital by, 397.
who may be, 84–86.
withdrawal of application for shares by, 134.

DIRECTORS DE FACTO,
acts of, when binding upon company, 100, 103.

DIRECTORS DE FACTO—*continued.*
calls made by, 173.
fiduciary relation between company and, 341.
liability of, 462.
remuneration of, 79.

DISCHARGE,
order of. See *Bankruptcy.*

DISCLAIMER,
of shares by trustee in bankruptcy, 208, 473, 478.

DISCLOSURE,
by directors, 114–125, 222, 349–351.
promoters, 64, 114–125, 222, 349, 350.
in prospectus, 114–125, 389–391.

DISCOUNT,
contract to take shares at a, not enforceable, 40–42, 137.
debentures can be issued at a, 251.
as collateral security, 251.
effect of issue of shares at a, 40–42, 137, 149, 163, 164.
forfeited shares may be re-allotted at a, 42, 207.
issue of shares at a, 40–42, 53, 137, 163, 164, 207, 213, 435.
liability of holders of shares improperly issued at a, 40–42, 137, 213, 564.
meaning of, in scheme of arrangement, 529.
repudiation of shares improperly issued at a, 40–42, 137, 213.
rescission of allotment of shares improperly issued at a, 40–42, 137, 213.

DISQUALIFICATION,
of clergymen as directors of trading company, 84.
directors, 85, 90–93, 198, 222, 223.
directors by ceasing to hold qualification shares, 85, 90, 91, 198.
making contracts with company, 90–92, 222, 223.

DISSENTIENT MEMBERS. See *Arrangements* and *Sales under Companies Act*, 1908, s. 192.

DISSOLUTION OF COMPANY, 4, 357, 413, 428, 429, 534–540.
postponing, 538.
setting aside, 538.
winding-up after, 417.

DISTRESS. See *Landlords* and *Winding-up.*

DISTRIBUTION OF ASSETS IN WINDING-UP, 41, 137, 153, 472, 497–504.

DISTRINGAS ON SHARES AND STOCK, 184.

DIVIDENDS,
to creditors in a winding-up, 499–501, 536.

DIVIDENDS ON SHARES, 304–323.
apportionment of, as between tenant for life and remainderman, 7, 319.
calculation of profits for, 318.
cumulative preference, 322, 323.
declaration of, 95, 259, 318–323, 327, 332.
directors' liability for, if paid out of capital, 304, 305, 322, 343, 353.
distribution of, 111, 151–154, 318–323.
estimated profits, when not available for, 319.
forfeiture of, 323.
guarantee by contractor of, 221, 317.
vendor, 221, 318.
guarantee fund for payment of, when part of company's assets, 318.
may be paid out of profits although debts of the company remain unpaid, 111, 320.
non-cumulative preference, 314, 322, 323.
paid-up capital cannot be returned to members as, 36–39.
payment of,
improperly to one class may be restrained by other classes, 320, 321.
may be out of profits earned but not received, 318.
must generally be in cash, 321, 322.
out of borrowed moneys, 320.
capital, 36–39, 46, 304, 305, 313–316, 322, 343, 354.
burden of proving, 39, 304.
net profits, 318, 323.
profits earned, 319, 320.
profits realized, 319.
restrained, 36–39, 46, 212, 257, 313, 317, 320, 321.
preference shareholders, rights of, to, 25, 48, 151–154, 311–315, 320–323.
profit and loss account,
dividend not to be declared in absence of, 304.
in absence of, directors must prove dividends were paid out of profits, 304.
right of executors and administrators to, 199.
shareholders to, 151–154, 318–323.
special resolution may affect rights to, 151–154.
stopping payment of, by notice in lieu of distringas, 184.
trust companies, paid by, 316.
unclaimed, 323, 537.

DOCUMENTS OF COMPANY. See *Books and Documents of Company.*

ELECTION OF DIRECTORS. See *Appointment.*
declaration of chairman, evidence of, 88.

EMPLOYERS' LIABILITY INSURANCE COMPANIES. See *Assurance Company.*

ESTOPPEL,
against director, 128, 137, 168, 346.
liability of company by, on transfers of shares, 189–191.
directors, for qualification shares by, 128.
upon shares by, 128, 137, 168.
rights of equitable assignees of debentures, by, 271.

EXAMINATION UNDER COMPANIES ACT, 1908, s. 174. See also *Public Examination*, 452–455.
appeal against order for, 453.
costs of compelling attendance under, 453.
depositions not receivable in evidence, 454.
order for, by whom obtained, 453.
private, 454, 459.
questions which may be asked in, 454.
rights of examinee upon, 454.
who may be examined, 455.

EXECUTION CREDITORS, 247, 249, 261, 278, 287, 422–427, 483, 509.

EXECUTIONS,
stay of, in winding-up, 422–427, 509.

EXECUTORS. See *Legal Personal Representatives.*

EXPENSES. See *Preliminary Expenses.*
of obtaining special Act may be paid out of funds of company, 34, 67.
promoter in forming company, 63, 65–68, 121, 349.
proxy papers when payable by company, 35, 335.
statement of affairs payable out of assets of company, 559.
person summoned for examination entitled to, 452.
properly incurred, director entitled to repayment of, 80–82, 342.

EXPERTS,
accountants are, 370–372, 386.
directors' duty as to procuring reports of, 220.
engineers are, 370–372, 386.
meaning of, 372, 386.
reasonable grounds for belief in competency of, 369, 386.
reports of, 220, 370–372.
untrue statements made on authority of, 370–372.
valuers are, 370–372, 386.

EXTRAORDINARY BUSINESS,
insufficient number of directors cannot transact, 99, 100.
notice convening meeting for transaction of, must state nature of business, 327.
special or, what is, 328.

EXTRAORDINARY RESOLUTION,
delegating powers to creditors of appointing liquidators in voluntary winding-up, 328, 420.
directing liquidators to dispose of books, &c., of a company, 538.
notice of, 340.
requisites of, 338–340.
sanctioning arrangements as to powers of voluntary liquidators, 338, 497.
in voluntary winding-up between company and its creditors, 338, 527.
to wind up company voluntarily, 338–340, 414, 506, 507.

FALSE ACCOUNTS,
misdemeanour to fraudently make or publish, 308, 398–400.
penalty for signing, 305, 308, 398–400.

FALSE IMPRISONMENT,
liability of company to action for, 109.

FALSIFICATION,
of accounts, 305, 308, 398–400.
books, 398–400.

FEES. See *Remuneration of Directors.*

FIRE INSURANCE COMPANIES. See *Assurance Companies.*

FIRST MEETING OF COMPANY,
penalty for not holding, 324, 326, 403.
statutory meeting, 325, 326, 432.
report to, 325, 326, 432.
time for holding, 325.

FLOATING SECURITY,
conversion of, into fixed charge, 259–262, 277.
debentures constituting, 259–263.
invalid in Scotland, 262.
meaning of, 259.
registration of, 236, 237, 238, 245–249.

FOREIGN COMPANY,
action against, 8, 408.
carrying on assurance business, 296.
holding of land by, 9, 303.

FOREIGN COMPANY—*continued.*
penalties applicable to, 406.
registered address for service of process on, 8.
regulations as to carrying on business in United Kingdom by, 8.
service of process on, 8.
sale to, 517.
status of members of, 8.
winding-up of, 416, 417.

FOREIGN COUNTRY,
commission to examine witnesses in, 519.
registration of mortgages of land in, 246.
sale of land in, 221.

FORFEITURE OF SHARES, 200–208.
acquiescence in, effect of, 202, 203.
allotted as qualification shares, 202.
cancellation of, 205.
cancellation of shares upon, 202–205, 207.
conditions precedent to, must be strictly complied with, 205.
cost-book company, power of, 201.
deed of settlement under power in, 201–203.
default in payment of calls, 200–208.
for commencing litigation against company invalid, 200.
invalid, 200, 203–206, 213.
irregular, relief against, may be barred by laches, 206.
when valid against company, 207.
liability of shareholders upon, as past members, 208, 470, 515.
not a diminution of capital, 200.
notice of, given to bankrupt, may be sufficient, 206.
must be served in required manner, 205, 206.
of bankrupt shareholder, 206, 208
of directors, 202.
on disclaimer by trustee in bankruptcy, 208.
power of,
not implied, 200.
object of, 200.
only exerciseable for company's benefit, 200, 204, 205.
unaffected by assignment of uncalled capital, 201.
valid, 200.
when invalid, 200.
principal rules applicable to, 203–208.
re-allotment of forfeited shares at a discount on, 42, 208.
under Companies Clauses Act, 1845 .. 205, 207.
Joint Stock Companies Act, 1844 .. 201.
validity of, 200, 202, 205, 207.
cannot be questioned in bankruptcy, 208

FORFEITURE OF SHARES—*continued.*
when not a bar to recovery of calls, 207.
Forged Share Warrants and Coupons, 399.

FORGED TRANSFERS, 188–191, 213, 270.
effect of issue of share certificate to transferee under, 190.
registration of, 190.
precautions to be taken for preventing registration of, 188-191.
rectification of share register in consequence of, 188–190, 213.
rights of transferee under, 189, 190.

FORGED TRANSFERS ACTS, 189, 269.

FORMALITIES,
directory and imperative, 101, 174, 233.

FOUNDERS' SHARES, 62, 69, 116, 120, 125.

FRAUD. See *Companies Act*, 1867, *s.* 38; ***Misrepresentation.***
criminal liability of directors and promoters for, 397–401.
directors personally liable for, 111, 112, 363–368, 394, 397–401.
effect of, on company's agreements, 228.
liability of company for directors', 108–110.
of directors, interference of Court, 111, 112.
promoters, or officers of the company, report of official receiver as to, 457, 459.
rescission of contract induced by, 121–123, 140–144, 228, 363.
upon election of directors, 88, 110.
removal of directors, 93.

FRAUDS, STATUTE OF,
contracts required to be in writing by, 226, 227.

FRAUDULENT PREFERENCE. See *Undue Preference.*

FRAUDULENT PROSPECTUS. See *Prospectus.*

FRIENDLY SOCIETIES,
disputes between members of, how decided, 112.
Forged Transfers Acts apply to incorporated, 269.
unincorporated, 31.

FUNDS OF COMPANIES,
expense of sending out proxy papers, when payable out of, 35, 335.
investment of surplus, 301, 302.
liability of director to compensate for loss of, 302, 342–344.
unauthorized application of, 33–43, 46, 342–345.

FUTURE DEBTS,
proof in winding-up for, 491.

FUTURE PROPERTY,
mortgages of, 234, 235, 244.

GENERAL MEETING. See *Meeting of Shareholders.*

GOODWILL,
covenants protecting, 221.
increase in value of, not to be reckoned in ascertaining profits, 311.
price paid for, to be stated in prospectus, 54, 118, 121.

GRATUITY,
to directors for past services, 78, 328.
to servants, 44, 95.

GUARANTEE,
companies limited by, 8, 11–14, 22–24, 49, 402.
contract of, must be in writing, 227.
fund for payment of dividends when part of company's assets, 318.
of dividends, 227, 317, 318.

HIRE-PURCHASE AGREEMENT,
of rolling stock, 254, 280.
when a bill of sale, 240, 245.

HOLDING OF LAND,
by companies governed by Companies Acts, 11, 297.
foreign companies, 303.
railway and other public companies, 297.

HOLDING OF PROPERTY,
by chartered companies, 299.
companies governed by Companies Acts, 11, 297.
railway and other public companies, 297.

INCORPORATION OF COMPANIES,
certificate of, 11.
false, 399.
how effected, 5, 10, 11.

INCREASE OF CAPITAL,
how effected, 48, 49.
notice of, to be given to Registrar of Joint Stock Companies, 402.

INDEMNITY,
cannot be claimed by directors in respect of breaches of trust, 81, 344.
right of directors to, 81–83, 344, 384, 387, 388.
to contributory sued for debt of company, 434.

INDUSTRIAL AND PROVIDENT SOCIETIES,
acts *ultra vires* of, 30, 31.
contracts, how made by, 226, 228.
disputes between members of, and, 112.
Forged Transfers Acts apply to, 269.
incorporation of, 5.
investment of funds of, 302.
limitation of powers of, 30, 31.
negotiable instruments, issue of, 225, 227.
penalty for default in supplying half yearly statements, 405.
summary remedy for misfeasance or breaches of trust of directors of, 462.
winding-up of, 417, 431, 462.

INFANTS,
acquiescence after reaching majority of, 129.
agreement to take shares voidable by, 129, 213.
directors' liability in respect of allotment of shares to, 129, 344.
may refuse registration of transfer of shares to, 191.
liability of, as contributory, 475, 476.
subscription of memorandum of association by, 12.
transfer of shares by and to, 187, 191, 475, 476.
vote by guardians of, 335.

INFORMALITIES,
in acts of directors, 100–103, 172, 204–207, 232, 233.

INJUNCTION. See *Stay of Actions*.
against company to restrain unauthorized disposition of property of company, 36–38, 46.
against co-director committing breach of trust, 345.
co-director restraining issue of prospectus, 369, 388.
directors, when granted, 37, 38, 46, 82, 83, 106, 110–112, 313, 320, 345, 362.
intended company being registered under name similar to existing company, 15.
mandatory, to enforce inspection of shareholders' address book, 160.
not obtainable by shareholder, when, 110, 111.
unsecured creditor, when, 46, 286.
obtainable by shareholder in cases of acts *ultra vires*, 36–38, 46.
restraining advertisement of winding-up petitions, 442.
exclusion of director, 82, 83.
payment of dividends out of capital, 36–39, 46, 212, 257, 313, 317.
presentation of winding-up petitions, 442.
when obtainable by dissentient member on sale under Companies Act, 1908, s. 192.. 519.

INSOLVENCY OF COMPANIES, 413, 431–434, 480, 506.

INSPECTION,
of books and documents of companies, 83, 159, 293, 295, 450.
copies of mortgages and charges, 159, 236, 237, 248, 293, 405.
depositions in a winding-up, 454, 458.
file of documents in Joint Stock Registry, 159, 288.
register of debentures and debenture stock, 236, 237, 264.
members, 159, 160, 218, 288, 402.
mortgages, 159, 236, 237, 248, 293, 404, 405.
statement of affairs, 295.

INSPECTORS. See *Board of Trade.*

INSURANCE. See *Marine Insurance.*

INSURANCE COMPANIES. See *Life Assurance Companies.*
half-yearly statements to be made by, 293, 405.
may pay losses for which they are not legally liable, 44, 95.
payment of dividends out of capital by, 37.

INTEREST,
coupons, 257, 258.
in cases of breaches of trust, 344, 345, 348, 350, 353, 354.
on calls in advance and arrear, 43, 177.
debentures, 272–274, 491, 492.
when chargeable to capital account, 316, 317.
moneys paid in advance of calls, 43, 177.
shares, when payable out of capital, 36, 37, 317, 318.
paid by contractors, 221, 317.
unproductive capital, whether chargeable to capital account, 317.
payable on rescission of contract of sale, 350.
payable to shareholder upon rescission of contract to take shares, 143.
proof in winding-up for, 491, 492.
rate of, in cases of breach of trust, 344, 350, 353.
fraud, 353.
when payable on calls on shares after forfeiture, 207.
contributories, 479.
on debts, 491, 492.

INTERNAL MANAGEMENT OF COMPANY,
interference of Court in, 110.
non-interference of Court in, 29, 111, 176.
third persons not affected by irregularities in, 101, 102, 232, 233.

INTERNAL REGULATIONS OF COMPANY,
effect of non-compliance with, 101, 103, 207, 232, 233.

INTRA VIRES. See *Ultra vires.*
distinction between acts *ultra vires* and acts, 29, 202.

INVESTMENTS. See *Acquisition of Property*.
in purchase of company's own shares are *ultra vires*, 39, 40, 81, 208, 287, 343, 344.
liability of directors for unauthorized or improper, 301, 302, 343, 344, 346, 358, 361.
of funds of building societies, 302.
industrial and provident societies, 302.
reserve fund, 302.
surplus funds, 301, 302.
on personal security, a breach of trust, 302.
IRELAND,
application of Companies Acts to, 6, 430.
Companies Clauses Consolidation Acts to, 5.
companies registered in, Court having jurisdiction to wind up, 431.
winding-up of, 431.
stay of actions and proceedings in, 427.
INTERMEDIATE DEBENTURE STOCK, 258, 265, 266.
IRREGULARITIES,
in allotment of shares, 146–149.
borrowing, when good against company, 232, 233.
forfeiture of shares, 207.
issue of debentures, 108.
securities, 232, 233.
making calls, 172–175.
persons dealing in good faith, when not affected by, 101–104.
ISSUE OF SHARES, 146–154. And see *Allotment of Shares*.
at a discount, 40–42, 53, 137, 163, 164, 207, 213, 435.
conditions precedent to, 48, 49, 146–154.
consideration for, 117, 121, 149, 163–170, 325, 404.
irregularities in, 146–149.
meaning of, 151, 168.
persons entitled to, 153, 154.
power to, cannot be delegated, 103, 150.
preference, 26, 48, 151–154.
quorum of directors must sanction, 97, 149.
registration of persons entitled to, 154.
unauthorized, 107, 108.
without consideration, 251, 343, 344.
JOINT HOLDERS,
liability of survivors of, for calls on shares, 172, 199.
as contributories, 472, 479.
lien on shares of, 178.
rights and liabilities of survivors of, 199.
transfer by, 187, 199.
voting at meetings by, 335.

JOINT HOLDERS—*continued.*
where corporation is one of, 199.

JOINT STOCK COMPANIES. See *Companies.*

JOINT STOCK COMPANIES ACTS,
application of Companies Acts to companies incorporated under, 5, 6, 370.
extent of powers of companies under, 30.

JOINT STOCK COMPANIES REGISTRY. See *Registry.*

JUDICATURE ACT, 1875,
effect of sect. 10 of, in winding-up of insolvent companies, 480–497.
effect of sect. 10 of, upon mortgages of after-acquired property, 235.

"JUST AND EQUITABLE,"
grounds for relief against non-registration of mortgages, 249.
under Companies Act, 1898 .. 169.
for winding-up, 432, 434, 435.

"KNOWINGLY," 119, 125, 401.

"KNOWINGLY AND WILFULLY," 401.

KNOWLEDGE. See *Notice.*

LACHES. See *Reasonable Time.*
right to rectification of register lost by, 214.
rights of shareholders upon irregular forfeiture of shares may be barred by, 206.

LAND,
acquisition of, by companies governed by the Companies Acts, 11, 299.
foreign companies, 303.
railway and other public companies, 297, 298.
alienation of, 32, 297–299.
contract for sale of, 227.
in foreign country, 221.
holding of, 297–299.

LANDLORDS,
distresses by, 261, 294, 422–426.
rights in a winding-up of, 422–426, 486–488.

LAND SOCIETY, 4, 31.

LEASE,
forfeiture of, by winding-up, 512.
of surplus rolling stock by railway company, 298.
undertaking of companies governed by Companies Acts, 299.

LEGAL PERSONAL REPRESENTATIVES,
action against director for misrepresentation maintainable by, 364, 373.
legal personal representatives of director for misrepresentation, when maintainable by, 364, 376.
contributories in a representative capacity, 472, 477–479.
their own right, 473.
dividends receivable by, 199.
entitled on death of shareholder to his shares, 187, 199.
liability of, for breaches of trust, 355.
calls on shares, 171, 172, 199.
misfeasance proceedings not maintainable against, 462.
personal liability upon shares, 172, 199.
registration of, when necessary to transfer of shares, 187, 199.
shares allotted to, and registered in names of, cannot be registered in name of testator, 144.
transfer of shares by, 183, 187, 199.
made by one of, 187.

LETTER OF ALLOTMENT. See *Allotment of Shares.*
stamp on, 134.

LIBEL,
companies can only sue for trade, 2.
may be sued for, 109.
when not liable to action for, 394.
costs of action for, upon directors, 35.
directors, when not liable to action for, 394.

LIEN OF COMPANY ON SHARES,
effect of notice of equitable mortgage of shares on, 182.
how enforced, 178, 179.
lost, 178.
only conferred by agreement or the regulations of the company, 177.
enforceable against registered holders, 178.
regulations may be altered so as to authorize, 25, 182,

LIFE ASSURANCE COMPANIES. See *Assurance Companies.*
accounts of, 289, 293, 305.
annual statements by, 293.
audit of accounts of, 307.
clergymen may be directors of, 84.
criminal liability of persons in relation to, 400.
deposit to be made before registration of, 296.
sanction of Court required for sale of undertaking of, 515.
winding-up of, 417, 434.

LIMITATIONS, STATUTE OF,
acknowledgment of debt owing to director barred by, 224.
actions for breach of trust may be barred by, 356.
specific performance of agreement to take shares may be barred by, 145.
auditor in action for damages for negligence may plead, 308.
defence to actions under Companies Act, 1867, s. 37., 391.
directors in actions for misrepresentation may plead, 365, 372, 384, 387.
effect of winding-up, on, 497.

"LIMITED,"
last word in name of company limited by shares or guarantee, 12, 13, 23.
licence to omit, from name of company, 23.
omission of, in bills, 8, 393.
penalty for wrongful user of, 406.

LIMITED PARTNERSHIPS, 1.

LIQUIDATORS,
accounts of, 534–538.
administration to deceased contributories granted to, 466.
agents of company, 468.
appeals against acts and decisions of, 501.
appointment of,
additional, 420, 510, 512.
as receivers, 278.
by creditors, 420.
in compulsory winding-up, 418–422.
voluntary winding-up, 418–422, 505, 507, 512.
winding-up under supervision, 420, 421, 510.
notice of appointment of, 400.
to fill up vacancies, 421.
balance order obtained by, 477, 478.
bills of exchange drawn, accepted or endorsed by, 466.
borrowing by, 466.
breach of trust by, 468.
business of company carried on by, 464, 467.
calls in winding-up by, 163, 477–480, 502, 503, 508.
certificate by, 535.
compromises by, 464, 437, 469, 479, 508, 518.
conduct of, inquiry by Board of Trade as to, 421.
contingent debt or liability, estimate of, by, 480, 481, 484–488.
control of, by committee of inspection, 501.
costs ordered to be paid by, 466, 485, 498, 499.
delivery of books and papers to, 451.
determination of powers of directors by appointment by voluntary, 113, 507.

LIQUIDATORS—*continued.*
discovery against, 468.
distribution of surplus assets amongst contributories, 502–504.
dividends paid to creditors by, 485, 499, 501, 537.
duties of, 451, 468, 501, 502, 508, 537.
employment of solicitors by, 465, 467, 511.
examination under Companies Act, 1908, s. 174 .. 452–455.
forfeiture of shares if valid cannot be cancelled by, 205.
half-yearly statements by, 535.
inquiry by Board of Trade into conduct of, 421.
liability of, 468, 516.
meetings of creditors and contributories convened by, 294, 418, 421, 444, 465, 509, 528–533, 537.
misfeasance proceedings against, 461.
by, 461–463.
mortgage by, 466.
notice by, of appointment to settle list of contributories, 474.
final settlement of list of contributories, 474.
official receivers when, 418, 419.
payments into and out of Companies Liquidation Account by, 535–538.
petition by, to sanction scheme of arrangement, 531.
powers of, 338, 464–468, 501, 506, 507, 510.
preferential debts to be paid by, 277, 498–500.
promissory notes made or endorsed by, 465.
proofs, admission or rejection of, by, 483–485, 501.
property of company does not vest in, 467.
prosecutions of directors by, 400.
proving for dividends in bankruptcy by, 465.
provisional, 415, 418, 419, 511.
purchase of property comprised in security by, 495.
realization of security at request of, 495.
"record book" of, 295.
rectification of register and list of contributories by, 465, 474–476, 507, 523.
redemption of security by, 495.
release of, 534, 535.
removal of, 420, 421, 510, 534, 535.
remuneration of, 498–500, 507, 511.
reports of, 463, 511.
resignation of, 535.
return of final meeting of company, 406, 538.
sales by, 465, 467, 513–522.
scheme of arrangement binding on, 528.
security given by, 419, 512.
settlement of list of contributories by, 465, 468–474, 507–509.

LIQUIDATORS—*continued.*
solicitor of, 465, 467, 511.
statement by, as to position of liquidation, 535, 536.
surrender of security to, 495.
taking out administration by, 466.
to be in same position as if they had been appointed by the Court as receivers, 451.
transfer of shares sanctioned by voluntary, 474.
trustees for company are, 468.
creditors and contributories, are not, 468.

LIST OF CONTRIBUTORIES,
notice of appointment for settlement of, 474.
final settlement of, 474.
rectification of, 214, 215, 474–476.
settlement of, 465, 468–474, 507–509.

LIST OF MEMBERS,
penalty for not furnishing, to Registrar of Joint Stock Companies, 401.
to be furnished to Registrar of Joint Stock Companies, 288, 289, 401.

LLOYD'S BONDS,
issue of, 256.
moneys recoverable upon, 256.
validity of, 233, 256.

LOANS. See *Borrowing.*
by directors on personal security, when breaches of trust, 302.
directors' liability for losses on, 360, 361.
irregularities, effect of, in issue of, 232, 233.
overdrafts at company's bankers are, 254.
re-payment of, after presentation of winding-up petition, 343.
securities given for, when void, 252.
to company, when irrecoverable, 252.
validity of, 232, 233, 250–252.

LOAN CAPITAL,
payment of interest on, is not *ultra vires*, 316–318.

LOAN SOCIETY, 28, 31, 269.

LONDON STOCK EXCHANGE. See *Stock Exchange.*

LUNATIC,
liquidator, removal of, 422.
transfer of shares of, 187.
voting at shareholders' meeting by committee of, 335.

MAJORITIES,
for passing resolutions at meetings of shareholders, 335–340.

MAJORITIES—*continued*.
required to pass extraordinary resolutions, 338.
special resolutions, 338.
modify rights of classes of members, 56, 332.
sanction arrangements binding on creditors, 525, 528–533.
sanction arrangements binding on shareholders, 528.
sanction consolidation of classes of shares, 56.
sanction creation and issue of debenture stock of railway companies, 232.

MALICIOUS PROSECUTION,
company may be sued for, 109.

MANAGEMENT OF COMPANY,
by directors, 76–78, 94, 95.
intervention of Court in, 110–112, 176.
right of directors to participate in, 82, 83.

MANAGEMENT SHARES, 116, 120 125.

MANAGERS OF COMPANY. See *Officers of Company*.
appointment of, with unlimited liability, 10, 13, 23, 286, 337, 402.
criminal liability of, for,
concealing names of creditors of company, 53, 400.
falsification of accounts, 398–400.
falsifying and destroying books, 398–400.
fraudulently taking property of company, 398.
delegation of directors' powers to, 96, 104, 150.
liability of, 401–405, 461, 539.
list and summary to be signed by, 288.
penalties affecting, 401–405.
preparation of accounts by, 304, 305.
register of, 170, 290, 403.
report to statutory meeting to be signed by, 325.
contain names and addresses of, 325.
secretaries may be, 401, 434.
service of demand for debt on, 434.
special, in a winding-up, 419, 498.
subscribers of memorandum of association appointed, 95, 96.

MANAGING DIRECTORS,
appointment of, with unlimited liability, 10, 13, 23, 286, 337, 402.
authority of, 225.
breaches of trust by, 345.
contracts between companies and, 90, 362.
fees of, 79.

MANAGING DIRECTORS—*continued.*
fraud of, 110.
powers of, 96.
removal of, 92.
rights and liabilities of, 362.

MANDAMUS, 9, 82, 88, 331.
against directors to admit a director duly elected, 88.
convene shareholders' meetings not granted, 331.
registrar to, 11, 170.

MARINE INSURANCE,
contracts of, must be in writing, 228.

MARRIED WOMEN,
agreement to take shares, when binding upon, 130.
director should not refuse registration of transfer of shares to, 191.
liability in a winding-up of, 471, 475, 478.
liability of husbands on shares in names of, 471, 475.
may transfer stock or shares without consent of their husbands, 188, 471.
separate property of, alone liable upon shares of, 130, 478.

MATERIAL CONTRACTS, 118, 121–124, 390.

MEETINGS OF CONTRIBUTORIES, 418–420, 444, 465, 509, 514–533, 537.

MEETINGS OF CREDITORS,
in a winding-up, 294, 418–420, 444, 465, 537.
to consider schemes of arrangement, 528–533.

MEETINGS OF DIRECTORS,
adjournment of, 97, 98.
admission by chairman at, 99.
business transacted at, invalid unless proper notice given, 98–100.
calls to be made at, 97, 98, 172.
casting vote of chairman at, 96, 337.
chairman's right of voting at, 96, 337.
convening of, 98.
issue of shares must be sanctioned by quorum at, 97, 149.
management of company at, 95–99.
minimum number, when below, 89, 99.
minutes of, 333.
notice of, 97, 98, 149, 150.
powers of directors to be exercised at, 95–99.
quorum at, 95, 99, 100, 172.
right of directors to attend, 82.
when necessary, 97, 98, 149, 150, 172.

MEETINGS OF SHAREHOLDERS, 324–340.
accounts considered at ordinary, 328, 329.
adjourned meeting a continuation of original meeting, 330–331.
adjournment of, 111, 330–333.
appointment of auditors at, 305, 306.
directors at, 88, 327.
authority of chairman of, 333.
business transacted at, 326–328.
void unless due notice given, 78, 328.
calls made at, 171.
casting vote of chairman at, 96, 337.
chairman of, 331–337.
directors, when chairman at, 332
chairman's right to adjourn, 331.
conduct of, 333, 334.
consent of, when necessary, 48, 95, 100–102, 151, 174, 205, 223, 231–233.
consideration of balance sheet at ordinary, 327.
convening of, 326–331.
declaration of dividends at, 95, 259, 318–323, 327, 332.
when quorum not present, 332.
deputy chairman of directors, when chairman of, 332.
disqualification for voting at, 335.
extraordinary, 324, 327, 328, 330, 331, 339.
notice of business to be transacted at, 327, 328.
rights of shareholders to call, 330.
special resolutions may be passed at, 339.
extraordinary resolutions of, 337–340, 413–415, 420, 506, 507, 528, 538.
first. See *First Meeting of Company.*
ordinary meeting in each year, business to be transacted at, 327.
in a winding-up. See *Meetings of Contributories.*
interval between notice and holding of, 328.
the two meetings required to pass special resolution, 338.
mandamus not granted ordering directors to call, 331.
"members," meaning of, 151, 155, 329, 335, 416.
minutes of. See *Minutes*, 334.
notice of,
by advertisement, 329, 537.
whom to be signed, 329.
called by directors upon requisition of shareholders, 328.
shareholders, 330, 331.
"clear days," meaning of, in, 329, 338, 339.
conditional notice to pass confirmatory resolution bad, 327, 339.

MEETINGS OF SHAREHOLDERS—*continued.*
notice of—*continued.*
contents of, 327.
must be given in prescribed way, 329.
of prescribed length, 328.
not be misleading, 78, 328.
specify all business to be transacted at extraordinary, 327, 328.
must specify all special business to be transacted at ordinary, 327, 328.
to be given by directors, 329.
shareholders, 331.
unconditional, 327, 339.
pass extraordinary resolution for winding-up, 338, 340, 413–415, 506, 507.
special resolution, 326, 338.
under Companies Acts, 330.
Clauses Acts, 330.
validity of, 328.
number of votes of members at, 334.
one shareholder cannot make a meeting, 171, 332.
ordinary, 324, 326–329, 339.
business to be transacted at first, in each year, 327.
definition of, 324.
notice of business to be transacted at, 327.
special resolution may be passed at, 339.
poll at, 111, 333, 334, 338, 339. See *Poll.*
proxies at, 82, 332, 334–336, 338, 528, 530–532. See *Proxies and Proxy Papers.*
quorum, proxies not reckoned in computing, 332.
required to transact business at, 332.
under Companies Clauses Act, 1845 .. 332.
removal of directors at, 92, 93, 95, 111.
remuneration of auditors and directors voted at, 78, 95, 328.
resolutions at. See *Resolutions.*
shareholder, when not bound to challenge ruling of chairman at, 333.
show of hands at, 334, 338.
special resolution. See *Special Resolutions.*
specific notice of business, when to be given to, 326–328.
statutory, 325, 326.
voting at, 111, 112, 194, 197, 199, 334–340. See also *Poll.*
by committee of lunatic, 335.
corporations, 335.
curators, 335.
executors and administrators, 199.

MEETINGS OF SHAREHOLDERS—*continued.*
voting at—*continued.*
by guardians of infants, 335.
joint holders, 335.
proxy. See *Proxies and Proxy Papers.*
show of hands, 334, 338.
transfer of shares to increase power of, 194, 197.

MEMBERS. See *Shareholders.*
assenting to sales under Companies Act, 1908, s. 192 .. 514, 516, 518.
carrying on business of company when less than seven, penalty on, 293.
dissenting from sales under Companies Act, 1862, s. 161. See *Dissentient Members.*
increase in number of, in companies limited by guarantee, 14, 402.
list of names, descriptions, and addresses of false, 399.
meaning of, 151, 155, 329, 335, 416.
not assenting to sales under Companies Act, 1908, s. 192 .. 518, 519.
past, 208, 469, 470, 516.
winding-up order may be made if less than seven, or than two, 431–433.

MEMORANDUM OF ASSOCIATION,
allotment of shares as fully paid to subscribers of, 136.
alteration of,
capital, 23, 24, 48–56.
objects, 16, 18–21.
under Mortgage Debenture Acts, 18.
ancillary powers in, 45.
capital and number of shares of company to be stated in, 12, 13.
construction of ambiguous terms in, by contemporaneous articles of association, 45.
general words in, 45.
constructive notice of, 77, 78, 107, 141, 346.
contents of, 12, 13.
to be stated in prospectuses, 116, 119, 186.
contracts made by subscribers of, 219.
incorporation of companies by subscription and registration of, 5, 10–13.
legal effect of, 13, 17, 18.
limitation of company's powers by, 17, 18, 28–32.
minimum subscription fixed by, 33, 147.
objects of company to be stated in, 12, 17, 21.
particulars to be stated in, 12, 13.
penalty for not annexing copy of special resolution to, 402.
giving shareholder copy of, 401.

MEMORANDUM OF ASSOCIATION—*continued.*
registration of, 5, 10–14.
rights of creditors protected on alteration of, 19, 20.
stamping of, 13.
subscription of, 10–12, 87, 135–137.
duplicate, 139.
variation between prospectus and, 141, 212.

MEMORANDUM OF SATISFACTION, 248.

MINIMUM,
number of directors when below, 89, 99–101.
percentage payable on application for shares, 147.
subscription of shares, 33, 117, 141, 142, 147, 164.

MINUTES,
of meetings of directors, 333.
shareholders, 333.
effect of entries in, by chairman, 334.
signing by chairman, 334.
how transcribed, 334
when evidence, 334.

MISFEASANCE,
costs of proceedings for, 463.
sale of claim for, 462.
summary remedy against directors, promotors, officers and liquidators of company for, 355, 461–464.

MISREPRESENTATION. See also *Companies Act*, 1867, s. 38; *Fraud*; *Misrepresentation of Authority*; *Prospectus.*
acquiescence, effect of, upon remedies for, 141, 142.
action against legal personal representatives of director for, 364, 376.
by legal personal representatives for, 364, 373.
for, may be barred by Statute of Limitations, 365, 373, 384, 387.
as to a matter of law, not actionable, 377, 395.
by directors, 363–388, 394, 395.
promoters, 363–388.
consolidation of actions for, 373.
contracts procured by, voidable, 108–110, 140–144, 228, 229, 363, 364.
effect of death of person making, on right of action for, 364, 376.
deceived by, on right of action for, 364, 373.
examples of, 378–381.
facts necessary to be proved to sustain action at common law for, 365.

MISREPRESENTATION—*continued.*
facts under Statute, 372.
if made with honest belief of its truth, not actionable at common law, 366, 368.
in prospectus, 114, 115, 140–144, 212, 363–388.
to whom made, 367, 376, 377.
liability by statute for. See *Companies Act*, 1867, s. 38; *Directors' Liability Act*, 1890.
liability of company for directors', 108–110, 140–144, 228, 229.
measure of damages in actions for, 383, 390, 395.
non-disclosure of facts alone is not, 141, 381, 382.
order of discharge in bankruptcy not a bar to actions for, 365, 384.
rectification of share register in consequence of, 140–144, 206, 212, 213, 363.
remedies of shareholders induced to take shares by, 108–110, 140–144, 206, 363–388.
subscribers for debenture and debenture stock against directors for, 363–388.
subscribers for shares, effect of winding-up upon, 140, 142, 143, 212, 364.
rescission of contracts induced by, 108–110, 140–143, 206, 209, 212, 228, 363, 364.
Statute of Limitations may be pleaded in action for, 365, 372, 384, 387.
stay of proceedings in action for, 373.
test action for, 373.
MISREPRESENTATION OF AUTHORITY,
liability for, 129, 394, 395.
measure of damages in actions against directors for, 395.
MORTGAGES. See *Debentures; Debenture Stock; Securities.*
borrowing upon, 230–258.
by companies governed by Companies Clauses Acts, 230, 232, 234, 236, 237, 251, 254, 266–268, 275, 279.
liquidators, 466.
compliance with forms prescribed for, 233.
terms of power as to, 234.
conditions precedent to exercise of power to create, 231–233.
consideration, when to be stated in, 234.
copies of, 248, 293.
defective execution of, how aided, 250.
form of, 234.
implied power of trading companies to create, 231.
memorandum of satisfaction of, 248.
misrepresentations by directors of company's power to make, 394.

MORTGAGES—*continued.*
of after-acquired property, 235, 236, 244, 259.
calls on shares, 176, 234.
qualification shares, 86.
shares, 182–184.
surplus lands by railway company, 236, 267, 275.
uncalled capital, 176, 234, 235, 236, 238.
appointment of receiver to enforce, 235.
by directors, is not a breach of trust, 176.
how authorized, 234, 235.
how enforced, 235, 478.
when prohibited, 235.
precautions to be taken by directors before sanctioning, 230.
register of. See *Register of Mortgages.*
registration of. See *Registration.*
rights and remedies of mortgages under Companies Clauses Act, 1845 .. 266, 272, 275.
securing issues of debentures or debenture stock. See *Trust Deed.*
terms of power to issue must be strictly complied with, 234.
under Companies Clauses Act, 1845, essentials of, 234.
under seal, 234.

MORTGAGE COMPANY,
limitation of objects of, 18.

MORTGAGE DEBENTURES, 257–285. See *Debentures.*

MUTUAL INSURANCE CORPORATION. See *Assurance Companies.*
when illegal, 4.

MUTUAL CREDITS IN WINDING-UP, 482, 492–494.

NAME OF COMPANY,
alteration of, 16, 20.
similarity in, 15.
striking off the register the, 538, 539.
to be painted or affixed at each office of company, 293, 393, 403.
to be used in negotiable instruments, 227, 393, 403.
used in construing objects of company, 15.

NEGLIGENCE,
auditors liable for, 308.
directors' liability for, 359–362, 394.
not liable to creditors of company for, 286, 393.
secretary's liability for, 308.

NEGOTIABLE INSTRUMENTS. See *Bills of Exchange; Cheques; Promissory Notes.*
issue of, by companies governed by Companies Acts, 225, 227.
incorporated by special Act, 224, 225, 227.
industrial and provident societies, 225, 227.
railway companies, 225, 227.
must be in writing, 227.
penalty payable by directors and officers upon improper issue of, 227, 393, 403.
personal liability of directors upon, 227, 392, 395, 403.
proof in winding-up on, 493.
when not binding on companies, 224, 228.

NET PROFITS, 309–323. See *Profits.*
payment of dividends out of, 318, 319, 321.
power of shareholders to decide what are, 319.

NOMINEES,
allotment of shares to, 158, 167.

NOTARIAL ACT,
foreign land and other immovable property generally conveyed by, 221.

NOTARY,
foreign power of attorney should be legalized before, 188.

NOTICE. See *Allotment of Shares; Meetings of Shareholders; Prospectus.*
constructive, 67, 77, 78, 80, 99, 102, 107, 141, 212, 346.
inviting subscription for shares. See *Prospectus.*
of allotment of shares, 132–135.
when implied, 134, 135.
appointment to settle list of contributories, 474.
breach of trust, liability of persons affected with, 344, 346.
calls by directors, 174.
liquidators, 477.
dismissal to servants, 278, 447, 490, 506.
dissent to sale under Companies Act, 1862, s. 161 .. 514, 518–520.
final settlement of list of contributories, 474.
forfeiture of shares, 205–207.
meetings. See *Meetings of Directors; Meetings of Shareholders.*
trust as to shares, 187, 190, 191.
to bankrupt of forfeiture of shares, when sufficient, 206.
be given to contributories, 477.
Registrar of Joint Stock Companies, 16, 288–292, 507.
the public by advertisement, 293, 369, 372, 384, 385.

NOTICE—*continued.*
to director of company's books not implied, 346.
regulations is implied, 346.
transfer of shares, 190, 191.
when notice to company, 99.
shareholders of misrepresentation in prospectus, 370.

OBJECTS,
alterations in objects of companies, 18–21, 141.
limitation of mortgage company's, 18.
of company, how defined, 17, 18.
powers of company limited by, 17, 18, 30–32.

OFFICE OF COMPANY,
copies of registered mortgages and charges to be kept at registered, 248, 293, 404.
memorandum of association must state situation of registered, 12, 16.
name of company to be painted or affixed at each, 293, 393, 403.
penalty for default, 293, 403.
notice must be sent to Registrar of Joint Stock Companies of situation of, or changes in, registered, 16, 290, 403.
penalty for default, 16.
penalty for carrying on business without having a registered, 16, 403.
register of directors and managers to be kept at registered, 290, 403.
register of members to be kept at registered, 156, 401.
service of legal process at registered, 408, 409.

OFFICERS OF COMPANY,
auditors are, 307, 463.
bankers are not, 237, 375, 376, 462, 463.
criminal liability of,
for concealing names of creditors of company, 53, 400.
destroying and falsifying books, 398–400.
falsification of accounts, 305, 308, 398–400.
fraudulently taking property of company, 398.
examination of, 453–455, 457–459.
liability of company for wrongful acts of, 108–110.
for issue of improper negotiable instruments, 227, 393, 403.
penalties affecting, 401–407.
public examination of, 457–459.
secretaries are, 462.
solicitors generally are not, 237, 462, 463.
statement of affairs by, under Companies (Winding-up) Act, 1890 .. 455–457.

Official Person,
statements contained in prospectus purporting to be made by, 369, 370, 385, 386.

Official Receiver,
appointment of, as receiver, 278.
special manager at request of, 419.
as liquidator, 418, 419.
provisional liquidator, 418, 419.
attendance of directors, officers of company, and promoters on, 456.
further report by, 457, 458.
absolutely privileged, 459.
liability for costs of, 485.
meetings of creditors and contributories to be convened by, 418 419.
misfeasance proceedings by, 461, 463.
petition for winding-up by, 436.
proofs, admission or rejection of, 483–485.
public examination of directors and promoters by, 457–459.
report by, 457–459.
in misfeasance proceedings, 463.
settlement of list of contributories by, 468.
statement of affairs required by, 457–459.

Omission,
of particulars in prospectus required to be specified by Companies Act, 1908, s. 84 .. 118–125, 389–391.
to state facts, not *per se* actionable at common law, 141, 381, 382.

Option to take Shares, 139.

"Order and Disposition," 183, 483.

Order for Examination. See *Examination; Public Examination.*

Order of Discharge. See *Bankruptcy.*

Overdraft,
at company's bankers, is a loan, 254.

Palatine Courts,
jurisdiction of, in winding-up, 430.
public examination under Companies (Winding-up) Act, 1890, may be held before registrars of, 459.

Part Performance,
companies bound by acts of, 227.

Parties,
to breaches of trust by directors, 345–347.
when, 345–347.

PARTNERS,
when promoters are, 63.

PAST MEMBERS,
liability of, 468–470.
holders of forfeited shares as, 208.
liquidators as, 516.

PATENT,
company formed to work patent may buy, 44.
liability of company for infringement of, 109.
director for infringement by company of, 396.

PAUPER,
transfer of shares to, 191.

PAYMENT FOR SHARES.
after presentation of petition, 447.
examples of agreements equivalent to cash, 165, 166.
in cash, 33, 146–148, 163–170.
otherwise than in cash, 132, 164–170.

PENALTIES,
list of principal, 401–407.

PERIODICAL PAYMENTS,
proof in winding-up for, 494.

PERMANENT BENEFIT BUILDING SOCIETIES. See *Building Societies.*

PERSONAL ESTATE,
shares are, 180, 199.

PERSONAL REPRESENTATIVES. See *Legal Personal Representatives.*

PETITION,
for sanction of Court to alteration of memorandum of association, 20, 21.
arrangements by companies, 526, 533.
reduction of capital, 49, 52.
for winding-up, 414, 436–446, 510.
costs of, 442–447.

"PLACING" SHARES,
agreement for, 72, 476.
directors must account to company for secret profits for, 347.
payments by company for, 35, 66, 118, 347.

POLL,
by whom to be demanded, 334, 339.
computation of votes upon, 334, 339.
declaration of chairman as to result of, 333.

POLL—*continued.*
how to be demanded, 334, 339.
taken, 334.
on question of adjournment, 111.
proxies not reckoned in demanding, 334, 339.
when to be demanded, 334, 339.
taken, 334.

POST,
application for shares sent by, 132–134.
notice of allotment of shares sent by, 132–134.

POWER OF ATTORNEY. See *Attorney, Power of.*

PREFERENCE SHARES,
alteration of rights of holders of, 25, 26, 56, 151–154.
cumulative, 322, 323.
dividends on, 314, 315, 320–323.
injunction granted to restrain payment of dividends to the prejudice of holders of, 320, 321.
not granted to restrain application to legislature to increase number of, 153.
issue of, 26, 48, 151–154.
non-cumulative dividends on, 314, 315, 322, 323.
payment of dividends out of capital on, 314, 315.
power to issue, 25, 151–154.
priority, in distribution of surplus assets, of holders of, 151–154, 502–504.
rights of holders of, 25, 48, 151–154, 304, 312, 314, 315, 320–323, 502–504, 564.

PREFERENTIAL DEBTS, 262, 277, 499, 500.

PRELIMINARY EXPENSES OF COMPANY,
disclosure in prospectus of amount of, 118, 121.
liability of company for, 65–68, 349.
promoters for, 65–68.
payment of,
authorized by memorandum and articles of association, 66
special Act, 65, 67.
before company is entitled to commence business, 642.
lump sum for "placing" shares and, 648.
rights of promoter as to receiving payment of, 65–68, 349.

PREMIUM,
repayment of, to holders of shares issued at a, 504.

PRIVATE COMPANIES, 4, 7, 10, 23, 33, 87, 289, 292, 293, 304, 325, 326, 344, 432.

PRIVATE SUBSCRIPTION,
shares, debentures, and debenture stock offered for, 617.

PROCEEDINGS, STAY OF,
and leave to proceed with, 373, 422–427.

PRODUCTION,
of books and documents of the company in winding-up, 295, 362, 451, 452, 468.

PROFITS. See *Dividends.*
accumulated, 40, 53, 54.
allowance for depreciation in ascertaining, 310, 312–316, 320.
anticipated, 319.
capital, when to be recouped out of, 313, 317, 321.
distribution of, although debts of the company are unpaid, 111, 320.
not restrained by Court, 111.
dividends,
may be paid out of profits earned though not received, 319.
should only be paid out of net, 318, 319, 322.
earned, 319, 320.
estimated, 319, 320.
goodwill, increase in value of, not to be reckoned in ascertaining, 311.
in hand, 319.
loss of capital, whether to be made good out of, 313–317.
meaning of, 319
mode of ascertaining, 304, 309–317.
of companies formed for acquisition and working of property of a wasting nature, 312, 313, 315.
purchase of company's own shares out of accumulated, 40, 53, 54.
realized, 38, 348.
regulations of company as to ascertaining, 319.
return to shareholders of undivided, 40, 53, 54, 337.
rights of majority of shareholders to determine what are, 111, 319.
secret. See *Secret Profits.*
surplus assets upon sale of company's undertaking, whether, 153, 311, 312.
valuation of assets in calculating, 307, 309–311.

PROFIT AND LOSS ACCOUNTS. See *Accounts.*

PROMISSORY NOTES,
form of, 227.
liability of company on, 224, 225, 227, 393.
directors on, 227, 392, 403.
making of, on behalf of company, 227.
power of company to issue, 224.

PROMISSORY NOTES—*continued.*
powers of liquidators as regards, 224.
when binding on company, 227.

PROMOTERS,
acts constituting persons, 59–61.
adjustment of rights of contributories on winding-up against, 68.
association of, for formation of company only are not partners, 63.
bankruptcy of, 357, 365, 384.
company, when bound by contracts of, 218.
company's liability for contracts of, 217–220.
consent of, to appointment as directors, when presumed, 128.
contracts by, 59–68, 118, 119, 122–125, 217–222, 349–351, 389–391.
between company and, 64, 65, 216–222, 349–351.
when voidable, 64, 221, 349–351.
contribution between, 63.
by, 388.
costs and expenses of, in obtaining special Act, 65–68.
criminal liability of, 397–407.
definitions of, 58–62, 373, 375.
discharge in bankruptcy, effect on liability of, 357, 365, 384, 400.
disclosure to be made by, 64, 114–125, 222, 349, 350.
in prospectus, 114–125, 389–391.
examination in winding-up of, 452–454, 457–459.
expenses of, 63, 65–68, 349.
fiduciary position of, 64, 341, 348.
founders' shares, subscribers for, may be, 62.
fraudulent formation of companies by, 66.
interest of, to be stated in prospectuses, 114–125.
liability for,
misrepresentation, 363–388.
preliminary expenses, 65–68.
secret profits, 66, 347–351.
unauthorized naming in prospectus of persons as directors, or as having agreed to become directors, 387, 388.
liability to,
company, 341–362.
co-promoters, 62–64.
holders of debentures and debenture stock, 363–391.
shares, 363–391.
liability, effect of order of discharge in bankruptcy upon, 357, 365, 366, 384.
limited companies as, 63.

PROMOTERS—*continued.*
meaning of, 58–62, 373, 375.
misfeasance proceedings against, 355, 461–464.
of private bills, liabilities of, 66–68.
syndicate company, 63.
payments for improper purposes by directors to, 343.
properly made to, 66, 67.
personally liable on all contracts made by them for intended company, 66.
persons acting professionally for promoters are not, 61, 372, 375.
preliminary expenses paid to, 63–68, 349.
liability for, 65–68.
right to sue for, 65–68.
sums paid for underwriting shares are not proper, 349.
production of documents in winding-up, by, 452.
profits may be made on sale to company by, 64.
prospectus, duty as to issue of, 114–126.
public examination of, 457–459.
quantum meruit for services of, 66.
question of fact who are, 58.
relation between company and, 64, 65.
rescission of sale to company by, 64, 221, 349–351.
rights of, against company, 65–68.
sales by, 59–65, 111, 221, 349–351.
secret profits of, 64, 343, 347–351, 355.
solicitors of company not, 61, 62, 375.
statement of company's affairs by, in winding-up proceedings, 455–457.
syndicates formed by, 60, 63.
underwriters, whether, 62.
when partners, 63.

PROOF OF DEBTS. See *Winding-up, Proof of Debts in.*

PROSPECTUS,
"abridged," included in "prospectus or notice," 125.
advertisement of, 115, 116, 125, 548, 551.
ambiguous statements in, construction of, 115, 382.
belief in truth of statements in, 366–369, 371, 385–387.
capital of companies usually raised by issue of, 114.
circular a, 115, 376.
construction of statements in, is for Court, 382.
contents of, 114, 126.
contracts to be disclosed in, 118, 119, 122–125, 546.
date of publication of, 116–118, 374.
definition of, 115.
disclosure to be made in, 114–125, 389–391.

PROSPECTUS—*continued.*
documents offered for inspection by, 118, 119, 122, 376, 547.
duties of persons issuing, 114–126.
effect of approving or issuing, 366, 374.
exaggeration in, 114.
examples of false representations by omissions in, 381, 382.
experts, statements of, or extracts from or copies of reports of, in, 369, 370–373, 377.
facts to be disclosed in, 114–126.
filing of, 116, 544.
form of, complying with Companies Act, 1908 .. 545.
fraudulent at common law, 363–368.
under Companies Act, 1867, s. 38 .. 119.
injunction to restrain issue of, 369, 388.
inviting subscriptions for shares, debentures, or debenture stock, 114–126, 265, 308, 363–391.
issue of,
by brokers, whether directors liable for, 366, 375, 376, 396.
conditions precedent to, 116.
how authorized by directors, 366, 374.
made, 116, 375.
ratified, 366, 374, 375.
parties to issue of, 115, 139, 366, 374, 375.
precautions to be taken by persons liable for, 114–126, 369, 370.
time of, 116, 374.
when director a party to, 366, 374.
withdrawal of consent to, 369, 384.
without consent, 371, 387, 388.
liability of directors and promoters for unauthorized naming in prospectus of persons as directors or as having agreed to become directors, 387, 388.
liability of solicitors, bankers, and other persons whose names appear on, 375, 376.
material contracts to be specified in, 118, 122–125.
mis-statements in, examples of, 378–381.
meaning of, 115.
minimum subscription named in, 33, 117, 146, 147.
misrepresentations in, 114, 115, 140–144, 212, 363–388.
to whom made, 367, 376, 377.
mistakes in, correction of, 470.
no constructive notice of any contract document or matter not specially referred to in, 391.
non-disclosure of particulars of contracts in, 118, 391–393.
official person, statements of, in, 125, 126, 369–371, 385.
omissions in, when actionable, 140, 141, 381, 382, 389–391.

PROSPECTUS—*continued.*
particulars to be stated in, 116–125.
promoters parties to the preparation of, 114–126, 366, 372, 375.
proper purpose of, 366–368.
"prospectus," what it includes, 115, 376.
public notice of withdrawal of consent to issue of, 369, 384.
public official document, copies of or extracts from, in, 125, 126, 369, 371, 385, 386.
reasonable ground for belief as to truth of statements in, 368, 371, 385.
reasonable ground for belief as to competency of expert to make statements contained in reports and valuations, 369, 371, 378, 386.
restrictions on naming of persons as directors in, 627–631.
rights of persons named in, without their authority, 387, 388.
sanguine view of company's prospects may be taken in, 114.
signing of, by directors named therein, 116.
statement in lieu of, 7, 33, 147, 292, 399, 541.
statements of opinion in, 377.
true at time of issue of, 385.
steps to be taken by directors upon discovering mis-statement in, 369, 370.
subscribing on faith of, 367, 370, 371, 376.
transferee of shares, &c., when entitled to sue for misrepresentation in, 366, 367, 376.
untrue statements in, 114, 115, 140–144, 212, 363–388.
variation between memorandum of association and, 141, 212.
verification of statements in, 369, 384.
waiver clause in, effect of, 119, 148, 391.
what is a, 115, 376.
withdrawal of consent to issue of, 369, 384.

PROVIDENT SOCIETIES. See *Industrial and Provident Societies.*

PROVISIONAL LIQUIDATORS, 415, 418, 419, 511.

PROXIES,
not reckoned on computing quorum for meeting, 332.
demand for a poll, 334, 339.
show of hands, 334, 339.
voting at shareholders' meeting by, 335, 336, 339, 518, 531.
of creditors by, 528–531.
who may be, 336.
of corporations, 336.

PROXY PAPERS,
defective, 82.
expense of sending out, how defrayed, 35, 335.
form of, 335, 531.

PROXY PAPERS—*continued.*
form of, settled in winding-up chambers, 531.
return of, to secretary of company, 336.
stamp required on, 336, 532.
time for sending to company, 336.
unattested, when bad, 335.

PRUDENCE,
degree of, to be exercised by directors, 106, 359, 361.

PUBLIC EXAMINATION,
adjournment of, 458.
before what Court or person to take place, 459.
committal of person summoned for, 459.
costs of, 458.
inspection of notes of, 458.
notes of, to be evidence, 458.
of directors, promoters, and officers of the company, 457–459.
official receiver to take part in, 457.
order for, 457–459.
questions to be answered upon, 458.
rights of person examined, 457.
who may take part in, 458.

PUBLIC NOTICE. See under *Prospectus.*

PUBLIC OFFICERS OF COMPANY. See *Officers of Company.*

PUBLIC OFFICIAL DOCUMENT,
copies of contained in prospectus, 125, 126, 369, 371, 385, 386.
untrue statements made on authority of, 369, 371, 385, 386.

PUBLIC SUBSCRIPTION,
debentures and debenture stock offered for, 114–126.
shares offered for, 114–126.

PURCHASE OF COMPANY'S OWN SHARES,
articles of association cannot authorize, 26.
by directors, as trustees for company, 81, 344, 345.
is a breach of trust, 343–345.
is *ultra vires*, 39, 40, 81, 107, 209, 299, 343, 344.
out of accumulated profits, 39, 40, 53.
prohibited by Joint Stock Companies Act, 1844 .. 201.

PURCHASE OF SHARES, 180–182, 185, 448, 474.

QUALIFICATION SHARES,
acceptance by directors of gift of, 347–352, 397.
of office by directors not *per se* an agreement to take, 128, 134, 138.
acquisition of, by transfer, 128.

QUALIFICATION SHARES—*continued.*
agreement to take, 87, 127, 128, 138.
articles of association do not constitute, 128, 219.
beneficial ownership of, whether necessary, 86.
company not bound to allot, 128.
contracts to take, when to be filed, 87, 116, 399.
directors appointed by statute, when bound to take, 127.
must not receive from promoters, 397.
directors' liability upon, if purchased out of bribes, 352.
when it ceases, 128, 138.
disqualification of directors by ceasing to obtain or hold, 87, 90, 198.
forfeiture of shares allotted as, 202.
holding of, when condition precedent to appointment as director, 85, 86, 128.
liability for, by estoppel, 129.
mortgage of, 86.
notice of allotment of, when implied, 134.
number of, to be stated in prospectus, 118.
penalty for acting as director after parting with, 403.
without acquiring, 403.
regulations of company as to, 85, 86, 127.
signing memorandum of association by directors for their, 87, 116.
Stock Exchange requires directors to hold, 551.
transfer of, 87, 91, 181, 198.
withdrawal of application for, 134, 135.

QUANTUM MERUIT,
claim of promoters on a, 66.
directors cannot claim remuneration on a, 78.

QUORUM,
of directors, 95–101.
how determined, 96, 97.
necessary to allot shares, 97, 110, 149.
forfeit shares, 97,
make calls, 97, 98, 172.
of shareholders, 332.
proxies not reckoned in computing, 332.

QUOTATIONS ON STOCK EXCHANGE,
Requisites of, 25, 171, 179, 548–557.

RAILWAY COMPANIES,
accounts of, 305.
acquisition, alienation, and holding of land by, 297, 298.
arrangements with creditors by insolvent, 275, 525–527.

RAILWAY COMPANIES—*continued.*
borrowing by, 231, 236, 267.
cannot carry on unauthorized business, 31, 32.
grant easements inconsistent with the user of their line, 298.
rights to build over line, 298.
issue or make bills of exchange, or promissory notes, 225.
sell their undertakings, 298.
hire-purchase agreement of rolling stock of, 254, 279.
incorporated by certificate of Board of Trade, 5, 218.
issue of bonds by, 230, 236, 266, 267.
debentures by, 230, 254, 266.
debenture stock by, 6, 230, 266.
Lloyd's bonds by, 256.
negotiable instruments by, 225, 228.
lease of surplus rolling stock by, 254, 298.
mortgages of, 236, 266, 267, 272.
payment of dividends out of capital by, 36, 37.
interest on shares during construction of railway by, 36, 317, 318.
receiver of undertaking of, 275, 279.
rolling stock of, letting of, 254, 326.
purchase of, 254, 279.
sale of, 254, 299.
superfluous land, sale of, 297, 298.
right of pre-emption on, 298.
vesting of, in adjoining owners, 297.
surplus land of,
mortgage of, 236.
proceeds of sale of, 236, 267, 275.
winding-up of, 272, 413, 416, 417.

RATIFICATION,
acts *ultra vires* of company incapable of, 4, 29, 45, 46, 108, 253, 254.
directors, but *intra vires* of company capable of, 29, 107, 108, 202, 203, 253.
by company of contracts with directors, 222, 351.
issue of debentures, 108.
directors of issue of prospectus, 366, 374.
contracts made before incorporation of company, incapable of, by company, 65–68, 217, 220.

REASONABLE TIME,
for acceptance of shares on sales under Companies Act, 1908, s. 192., 520.
registration of transfers of shares, 188, 214.

REASONABLE TIME—*continued.*
for repudiation of shares, 129, 135, 140–143, 213.
shareholder must ascertain contents of memorandum and articles of association within a, 141, 212.
RECEIVER. See *Receiver and Manager.*
appointment of, by way of equitable execution, 81.
until proper governing body of company constituted, 111.
liquidator to be in same position as if he had been appointed by the Court as a, 451.
in the case of public companies, 272, 275.
payments by, 278–280.
to enforce mortgages of uncalled capital, 235, 478.
RECEIVER AND MANAGER. See *Receiver.*
abstract of receipts and payments to be filed by, 404.
accounts of, when to be filed, false, 408.
application for directions to, 279.
appointment of, by Court, 111, 273, 275–282.
debenture holders, 273, 280, 281.
trustees for debenture holders, 273, 280, 281.
converts floating charge into a fixed charge, 259, 277, 278.
determines employment of companies' servants, 278, 489.
how obtained, 275.
liquidator as, 278.
when made, 260, 273, 276.
before a winding up at instance of shareholders, 111.
borrowing by, 280.
costs of, 280.
discharge of, 278.
duties of, 279.
filing of accounts by, 400.
interference with, a contempt of Court, 278, 279.
leave of Court necessary to commence action against, 279.
liabilities of, 280, 281.
liberty to act before completing security, 277.
notice, when to be given to registrar of appointment of, 282.
of foreign land, 277.
of undertakings of public companies not appointed, 276.
officer of the Court, 278.
official receiver when appointed, 278.
payment of preferential debts by, 262, 277, 500.
person appointed, 277.
remuneration of, 281.

RECEIVER AND MANAGER—*continued.*
security given by, 277, 278.
undertaking to be answerable for interim receipts of, 277.
when agent of company, 281.

RECONSTRUCTION, 512–524.
by exchange of shares, 523.
new charter, 523.
by special Act, 523.
distinguished from amalgamation, 513.
filing of contracts on, 521.
for what purposes resorted to, 514–524.
how effected, 513, 514, 523.
liquidator cannot carry on business with a view to, 467.
meaning of, 513, 514.
rights of creditor of old company, 524.
to acquire additional powers, 524.
diminish liabilities of shareholders, 524.
issue preference shares, 524.
obtain fresh capital, 523.
"water" the capital of a company, 523.

RECTIFICATION. See *List of Contributories; Register of Members; Register of Mortgages under Companies Act*, 1900.

REDUCTION OF CAPITAL,
by cancellation of unissued capital, 24, 50, 51.
lost capital, 49–54.
reducing liability on shares not fully paid up, 24, 49–54.
return of paid-up capital to shareholders, 24, 40–43, 49–54.
to shareholders of capital in excess of requirements of the company, 49–54.
undivided profits, 42, 53.
writing off shares purchased out of accumulated profits, 40, 53.
creditor's consent to, when necessary, 42, 52.
how effected, 42, 49–54.
memorandum of association cannot authorize, 51.
penalty for not embodying a copy of registered minute in memorandum of association as to, 402.
petition for sanction of Court to special resolution for, 49, 52.
protection of creditors' rights on, 52, 400.
under the Companies Acts, must be authorized by articles of association, 24, 49–51.
by special resolution, 24, 51, 368.
by ordinary resolution, 24.
Companies Clauses Acts, 42, 49.

Register of Companies,
striking name off, 538–540.

Register of Directors and Managers, 290, 403.
penalty for not keeping, 403.
sending to registrar of joint stock companies a copy of, or notification of change in, 403.

Register of Members. See *Registration.*
closing of, 156.
colonial, 156, 157.
contents of, 155.
copies of, right to, 159, 160, 288, 402.
effect of entering person's name on, 41, 129, 132, 136–138, 151, 155, 471.
inspection of, right to, 159, 288, 402.
list and summary as to members and shares to be entered in, 160, 218, 288–290.
particulars to be contained in, 155, 401.
penalty for default in keeping, 401.
refusing inspection of, 402.
to supply copy of, 402.
persons entitled to have their names entered in, 154.
rectification of, by the Court, 41, 137, 140–144, 148, 149, 168, 188, 189, 206, 212–215, 363, 448, 474–476.
by directors, 168.
voluntary liquidator, 474, 507.
creditors' rights protected upon, 168.
in cases of misrepresentation, 140–144, 206, 212, 363, 475.
notice of, to registrar, 290.
right to, how lost, 41, 140–144, 215, 475.
where forged transfer has been registered, 188–190, 213.
where contract has not been filed under Companies Act, 1867, s. 25 .. 168, 215.
where person has been registered as a shareholder without his consent, 137.
rectification of, where shares have been improperly issued at a discount, 41, 138, 213.
winding-up, effect of, on right to, 140, 143, 212, 215, 364.

Register of Mortgages to be kept by Companies,
duty of limited companies to keep, 235–237, 239, 405.
omission to register mortgages in, effect of, 236, 237.
penalty for default in keeping, 404, 405.

REGISTER OF MORTGAGES TO BE KEPT BY COMPANIES—*continued.*
penalty for refusing shareholder inspection of, 405.
creditor inspection of, 405.
rights of creditors and shareholders to inspect, 159, 236, 237, 248, 405.
REGISTER OF MORTGAGES IN JOINT STOCK COMPANIES REGISTRY, 236–249.
index to, 245.
inspection of, 248, 293, 403.
memorandum of satisfaction to be entered on, 248, 399.
rectification of, 248.
REGISTERED OFFICE OF COMPANY. *Office of Company.*
REGISTRAR OF JOINT STOCK COMPANIES,
certificate of alteration of memorandum of association to be made by, 21.
incorporation by, 11, 399.
registration of mortgages and charges, 248, 399, 404.
that company is entitled to commence business, 33, 104, 232, 399.
certified copies of documents under hand of, 11.
change of company's name with consent of, 16.
documents to be delivered to, for registration, 11, 20, 288–292.
penalties for default, 20, 401, 404, 406.
false certificates of, 399.
foreign companies particulars to be delivered to, 8, 406.
list of persons who have consented to be directors to be delivered to, 11.
shareholders to be delivered to, 288–291, 401.
mandamus against, 11, 170.
mortgages and charges to be registered with, 238–249.
notices to be given to, 288–293.
penalties for default, 401–406.
returns to be made to, 288–292.
penalties for default, 401–406.
statement of capital to be delivered to, 402.
statutory declarations to be delivered to. See *Statutory Declarations.*
REGISTRAR IN COMPANIES WINDING-UP,
false certificate of, 399.
copies of mortgages or charges requiring registration with, 399.
particulars delivered for, 399.
examination before, 459.
proceedings before, 505.
taxation of costs by, 511.

REGISTRATION. See *Register of Members.*
of articles of association did not satisfy Companies Act, 1867 s. 25 .. 168.
bills of sale given by companies, 237–245.
charges on foreign land, 246.
charges on uncalled capital, 236–249.
debentures, 236–249.
debenture stock, 236–249.
floating charges, 236–249.
forged transfer of stock, 187–191.
shareholders' rights upon, 187–191.
invalid transfer of debentures, cancellation of, 270.
effect of, 270.
memorandum and articles of association, 5, 10–14.
mortgages and charges with Registrar of Joint Stock Companies, 238–249.
certificate of, 248, 399, 404.
effect of default in, 238, 247, 248.
particulars required for, 245, 246.
time for, 238, 247, 248.
particulars and documents by foreign companies, 8, 406.
person as holder of shares, effect of, 41, 136–138, 155–158, 212.
transfer of debentures, 269, 270.
cancellation of, 270.
precautions to be taken upon, 270.
transfer of shares,
damages only nominal for refusal of, 196.
delay in, 184–186, 188, 213–215, 475.
directors cannot refuse, to pauper or married woman, 191.
directors cannot refuse, to trustee of bankrupt shareholder, 196.
directors' liability for, where shareholder is indebted to company, 196.
power to refuse, where shareholder is indebted to company, 195, 196.
to infant, 191.
exercise of discretionary power as to, 194–196.
duty of transferee to obtain, 185.
effect of, 189.
fee upon, 186.
precautions to be taken before, 187–199.
reasonable time allowed for, 188, 214.
refusal of, 189, 190–198.
right of transferor to obtain, 185, 215.
rescission of contract to take shares prior to, 156.
transfer, lodging of, for, 186, 192, 214, 239.

REGISTRY OF JOINT STOCK COMPANIES,
documents, returns, and notices to be filed in, 287–292.
inspection of file at, 289.
particulars of mortgages and charges to be filed in, 238–249 292.

REGULATIONS OF COMPANY. See *Articles of Association; Memorandum of Association; Chartered Companies; Deeds of Settlement; Special Act.*

RELEASE,
of directors and others from liability for misrepresentation, 387.
liquidator, 534, 535.

REMOVAL,
of directors, 82, 83, 89–93, 95, 111.
liquidators, 421, 422, 510, 534, 535.
person's name from share register. See *Register of Members, rectification of.*

REMUNERATION OF AUDITORS, 95, 305, 399.

REMUNERATION OF DIRECTORS,
agreement for, in regulations of company, 78–80.
amounts due for, may be set off against calls, 79, 493.
annual salary as, 80.
attachment of, 287.
cannot be paid unless provided for by regulations or contract, 78.
contract with company for, 79, 80.
disclosure of, in prospectus, 116, 120.
division of, between directors, 80.
fixed by regulations of company cannot be complained of as excessive, 80.
for extra services, 80.
past services, 78, 328.
increase of, 80.
injunction to restrain payment of, 78.
moneys paid by directors in advance of calls, not applicable to payment of, 175.
payable by percentage on profits, 79, 80.
though company unsuccessful, 79.
payment of, in winding-up, not postponed to creditors, 79, 493.
when a fraudulent preference, 80, 105, 175.
quantum meruit, cannot be claimed upon a, 78.
ratification of payment in excess of amount authorized by article, 79, 80.
resolution of company for, 78, 80, 95, 328.
right of directors to retain, 342, 343.
unauthorized, directors paying commit breach of trust, 79, 343.
repayment of, 79, 343, 355.

Remuneration of Liquidators, 498, 499, 507, 511.

Remuneration of Receivers, 281.

Remuneration of Secretaries, 95.

Remuneration of Treasurers, 95.

Reorganization of Share Capital, 51, 337.

Report,
of auditor, 306, 307, 325, 327, 328.
official receiver, 457–459, 463.
absolutely privileged, 459.

Repudiation,
of shares,
by infant, 130, 213.
person registered as a shareholder without his consent, 136–138.
transferee, 191.
for delay in allotment, 135.
irregularity in allotment, 148.
for misrepresentation, 140–143, 206, 209, 212, 228, 363, 364.
issued at a discount, 40, 137, 213.
of contract to take, 140–143, 363, 398.
right of, how lost, 40, 129, 137, 140–143, 212–215, 364.

Reputed Ownership, 183, 483.

Rescission,
of agreements, 108–110.
by company with promoter, 64, 221, 349–351.
to take shares,
by consent, 144.
for irregularity, 147–149.
for misrepresentation, 108–110, 140–143, 206, 209, 212, 228, 363, 364.
fraud need not be proved in order to obtain, 141.
issued at a discount, 40–42, 137, 213.
right to, when barred, 40, 140–143.
sales by promoters and directors to company, 64, 221, 349–351.

Reserve Fund,
for making good depreciation, 313–316.
investment of, 302.

Reserve Liability, 23, 24, 161, 163, 235.

Reserved Capital. See *Reserve Liability.*

Resignation of Directors, 89, 90.

RESOLUTIONS. See *Extraordinary Resolution; Special Resolution.*
casting vote of chairman upon, 96, 337.
effect of making and signing minutes of, 334.
majority required for, at shareholders' meeting, 336–340.
not proposed and seconded, may be valid, 337.
notice to be given of, 328, 338, 339.
ordinary, 24, 48, 54, 56, 336.
passing of, 336–340.
voting upon, 334, 336, 339.

RESTRAINT OF TRADE,
contracts in, 221, 362.

RETIREMENT OF DIRECTORS, 89, 90, 209.

REVENUE,
accounts, 304, 305, 309–318, 320.
capital charges paid out of revenue may be repaid to, 316.

RIGGING THE MARKET,
payments for, 342.

ROLLING STOCK. See *Surplus Rolling Stock.*
letting of, 254, 326.
purchase of, 304.
sale of, 254, 298.

ROTATION OF DIRECTORS, 89.

ROYAL CHARTER. See *Chartered Companies.*

RULE IN FOSS *v.* HARBOTTLE, 29, 110–112, 176.
applied to making calls on shares, 110, 176.
directors protected by, 29, 110, 176.
exceptions to, 12, 111.
illustrations of, 11, 110.

RULES,
in bankruptcy applicable to winding-up of insolvent companies, 480–497.

SALARY. See *Remuneration.*

SALE. See also *Sale under Companies Act*, 1908, s. 192.
by liquidators under Companies Act, 1908, s. 151 .. 465, 467, 468, 515.
promoters, 59–64, 111, 221, 349, 350.
contracts for, by promoters to intended company, when binding after incorporation, 217, 218.
of goods, 227.
land, 227.
to company, directors' duty as to, 220, 221.
distinguished from amalgamations, 513.
fraudulent, by promoters to company, 111.

SALE—*continued.*
of business, 221.
company's property and undertaking, 299, 300.
foreign land, 221.
forfeited shares, 207.
rolling stock, 254, 298.
shares, 180–184, 448, 474.
superfluous lands, 298.
rescission of, by company, 64, 321, 349, 350.

SALE UNDER COMPANIES ACT, 1908, s. 192.
agreements for, 167, 300, 513–522.
alteration of articles of association in derogation of rights of dissentient members on, 517.
arbitrations under, 514, 515, 518, 519.
assenting members to, 518–520.
bind creditors and shareholders, 515, 520.
commission granted to ascertain value of company's foreign assets upon, 519.
compensation when payable to directors and officers upon, 518.
dissentient members upon, 518–520.
articles cannot take away or qualify rights of, 520.
injunction when obtainable by, 519.
notice of dissent by, 514, 518.
value ascertained by arbitrator of interest of, upon, 519.
distribution among shareholders of selling company of consideration for, 516, 529.
how effected, 515.
liability may be imposed on shareholders of selling companies on, 516.
may be made after supervision order made, 515.
although *ultra vires* of company, 515.
to foreign company, 517.
trustee or agent for intended company, 518.
not be made to an individual, 517.
provide for compensation to director or secretary for loss of office, 518.
non-assenting members to, 518, 519.
notice of dissent to, 514, 518.
contents of, 518.
must be served on liquidator, 518.
time within which to serve, 518.
meeting to pass special resolution approving, 517.
proceeds of future calls included in, 516.
provisions of agreements for, 517–520.

SALE UNDER COMPANIES ACT, 1908, s. 192—*continued.*
purchaser upon, may not be foreign company, 517.
must be a company, 514, 517.
purchasing company must have power to carry out, 521.
reasonable time may be fixed for acceptance of shares in purchasing company on, 520.
return of allotments under, 521.
sanction of Court to, when required, 515, 520.
shareholders of selling company not compellable to accept shares of purchasing company on, 516.
special resolution necessary to approve, 515.
notice of, 517.
when to be sanctioned by Court, 515, 520.
stamp duty payable on, 517.
unregistered company, by registering under Companies Act, 1908, may effect, 514, 522.
validity of, 517, 518.
voluntary winding-up of selling company required for, 515.
whether validity of, can be questioned in winding-up proceedings, 518.

SCHEMES OF ARRANGEMENT. See *Arrangements by Companies.*

SCOTLAND,
application of Companies Acts to, 5, 430.
Clauses Consolidation Acts to, 5.
bills of sale invalid in, 262.
companies registered in, affected by notice of trust, 191.
cannot be wound up in England, 431.
court having jurisdiction to wind up companies registered in, 431.
floating charges on chattels invalid in, 262.
stay of actions and proceedings in, 427.

SCRIP CERTIFICATES,
entitling bearer to allotment of shares, 154, 157.
debentures or debenture stock, 265.
petition for winding-up by holder of, 438.
registration as members, of persons holding, 154, 157.
rights of bearers of, 157, 158.
shares only transferable by deed cannot be transferred by delivery of, 158.
stamp on, 158, 264.
transferable by delivery, 157.

SCRIPHOLDERS,
conversion of, into shareholders, 158.

SEAL OF COMPANY,
contracts to be made under, 226.
debentures usually made under, 258.
mortgages, when to be made under, 234.
not duly affixed to bond, 98.
when necessary, 101, 234.

SECRET PROFITS,
of directors, company entitled to, 347–349.
acting as ship's husband, 347.
receiving discounts, 348.
upon amalgamation of company, 347.
upon "placing" of company's shares, 347.
upon sale of property to company, 348, 349.
upon re-sale of shares of company, 347.
of promoters company entitled to, 348, 355.
out of purchase-money paid by company, 348.
upon sale of property to company, 64–66, 348–351.

SECRETARY OF COMPANY. See *Officers of the Company.*
accounts prepared by, 304, 305.
authority of, 190, 228.
blank in proxy paper filled in by, 336.
compensation to, for loss of office on sale under Companies Act, 1908, s. 192 .. 518.
forgery of share certificate by, 109, 190.
liability to penalties, 401–406.
list and summary to be signed by, 288.
may be manager of company, 401.
servant or clerk, 499.
notice of meetings to be signed by, 329.
"officer of company," 462.
remuneration of, 95.
report to statutory meeting to contain name and address of, 325.
return of proxy papers to, 336.
service of proceedings against company on, 408, 434.
statement of company's affairs to be made by, in winding-up proceedings, 455–457.
statutory declaration by, 11.

SECURED CREDITORS,
proof in winding-up by, 494–497.
rights of, 272–285.

SECURITIES,
depreciation in market price of trust companies', 316.
irregularity in issue of, 232, 233.

SECURITY,
by liquidators, 418, 466, 512, 520.
receivers, 277, 278.
for costs of action by companies, 409, 446, 466.
appeals, 446, 498, 520.
petitions, 445, 446.

SERVANTS,
company's liability for torts of its, 108–110.
gratuity to, 44, 95.
notice of dismissal to company's, by appointment of receiver, 278, 490.
notice of dismissal to company's, by winding-up order, 447.
but not by resolution to wind up voluntarily, 506.
proof for damages by, 490.

SET-OFF,
in winding-up, 161, 452, 482, 488, 489, 492, 493, 549.
not allowed, 81, 462.
payment for shares by, 165, 166.
payment of calls by, 81, 177.

SHARE CERTIFICATES. See *Certificates of Shares.*

SHARE REGISTER. See *Register of Members.*

SHAREHOLDERS,
acquiescence of, in acts *ultra vires* of directors by, 108, 202, 203.
actions to restrain acts *ultra vires* of the company by, 36–39, 46, 313–315, 408–412.
actions to restrain acts *ultra vires* of directors, by, 110–112.
alien, 12.
articles of association, copies of, may be obtained by, 159, 401.
bankrupt, 172, 180, 181, 186, 188, 196, 199, 206, 208, 214, 472, 473, 478, 482, 483, 489, 493, 535.
bound to acquaint themselves with memorandum and articles of association, 67, 77, 80, 141, 212.
calls on shares payable by. *Calls on Shares.*
classes of, 25, 26, 50, 51, 69, 116, 120, 151–154, 304, 322, 323, 330, 332, 502–504.
companies as, 18, 130, 298, 299, 366.
company cannot pay money to, on surrender of shares, 208, 209.
constructive notice of regulations of company, 67, 77, 80, 141, 212.
convening of meetings by or at requisition of, 328, 330.
conversion of scrip holders into, 157.

SHAREHOLDERS—*continued*.
directors' duty as to communicating auditors' report to, 306, 308, 394.
when not necessarily shareholders, 85.
disqualification of, from voting at meetings, 366.
distribution of surplus assets between, 153, 312, 502–504.
dividends. See *Dividends*.
division of profits between, 318–323.
idiot, 187, 366.
infant, 12, 129, 187, 191, 213, 335, 344, 475, 476.
joint, 172, 178, 197, 199, 355, 472.
legal personal representatives of, entitled to shares of deceased, 187, 199.
transfer of shares by, 183, 187, 199.
liability of, 3, 21–23, 160–162, 468–480.
for calls of survivors of joint, 172, 199, 472, 536.
of estate of deceased, for calls, 172, 199, 472, 473, 477–480.
on forfeited shares as past members, 208, 470.
personal representatives of deceased, 171, 172, 199, 472, 473, 476–480.
limited liability of, 3, 21–23, 160–162, 468, 469.
list of, to be supplied to Registrar of Joint Stock Companies, 289, 291, 401.
lunatic, 187, 335.
married women, 130, 188, 191, 471, 475, 478.
meetings of. See *Meetings of Shareholders*.
new capital, when to be offered *pro ratâ* to, 48, 49, 151.
notice of dissent by, to sale, 514, 518.
notice of, to call, 174, 477.
notice to, of forfeiture, 205–207.
meetings. See *Notice; Meetings of Shareholders*.
of selling company not compelled, under Company's Act, 1908, s. 192, to accept shares of purchasing company, 516.
power of, to decide what are net profits, 111, 319.
preferential dividends payable to, 25, 26, 151–154, 313–315, 320–323.
quorum of, 332.
ratification by, of acts *ultra vires* of directors, 29, 107, 108, 202, 203, 255.
register of members, copies of, may be obtained by, 159, 160, 402.
may be inspected by, 159, 402, 450.
mortgages may be inspected by, 159, 236, 237, 248, 405.
repudiation of shares by,
for contravention of statutory requirements, 148.

SHAREHOLDERS—*continued.*
repudiation of shares by,
for delay in allotment, 135.
misrepresentation, 140–144, 206, 209, 212, 228, 363, 364.
infant, 129, 213.
persons registered as, without their consent, 136–138.
right of, how lost, 41, 129, 137, 140, 142, 212–215, 364.
transferee, 191.
where shares are improperly issued at a discount, 40, 137, 213.
reserve liability of, 23, 24, 161, 163, 235.
return of capital to, 24, 26, 35–43, 49–53, 343, 502–504. See *Reduction of Capital.*
rights of, 158–161.
to rescission, how affected by winding-up, 140, 142, 148, 213, 364.
upon reduction of capital, 50, 51.
upon registration of forged transfers, 188–191.
survivorship, right of, in case of joint, 199.
tender of amount due for calls, by, 206.
transfer of shares by, 180–199. See *Transfer of Shares.*
unlimited liability of, 10, 13, 23, 160, 402.
voting by, 26, 35, 111, 150, 153, 194, 197, 199, 334–339. See *Votes of Shareholders.*

SHARES. See *Agreements to take Shares; Allotment of Shares; Calls on Shares; Forfeiture of Shares; Payment for Shares; Surrender of Shares; Transfer of Shares.*
acquisition and holding of, by companies, 18, 130, 298, 299.
agreement to take. See *Agreements to take Shares.*
allotment of. See *Allotment of Shares.*
application for. See *Application for Shares.*
bankrupt's, 90, 91, 172, 180, 181, 186, 188, 196, 206, 208, 214, 472, 473, 478, 482, 489, 493.
bonus, 251, 343–345.
calls on. See *Calls on Shares.*
"call" upon, 139, 140.
cancellation of. See *Cancellation of Shares.*
certificates of. See *Certificates of Shares.*
choses in action, 183.
classes of, 25, 26, 50, 51, 56, 69, 116, 118, 120, 151–154, 322, 323, 332, 502–504.
consideration for issue of, 117, 121, 149, 163–170, 325.
to be stated in prospectus, 117, 121.
return of allotments, 149.
report to statutory meeting, 325.
consolidation of, 24, 47, 55, 56, 290, 402.
classes of, 24, 56.

SHARES—*continued.*
conversion of fully paid-up, into stock, 24, 54, 55.
stock into fully paid shares, 24, 54, 55.
delegation of directors' power to allot, 104, 150.
directors must not receive, from promoters, 352.
disclaimer of, by trustee in bankruptcy of bankrupt's shares, 208, 473, 478.
dividends on. See *Dividends.*
equitable claim to, 181–184, 190, 191.
forfeited, sold at a discount, 42, 207.
holders' liability upon as past members, 208.
forfeiture of, 192–208. See *Forfeiture of Shares.*
founders', 62, 69, 116, 120, 125, 153.
fully or partly paid-up, allotment of, as, 117, 121, 136, 149, 163–170, 289, 291, 325, 550–557.
paid-up, given to directors as bribes, 352.
holders of. See *Shareholders.*
interest on, contract to pay, by persons other than company, 221, 317, 318.
issue of. See *Issue of Shares.*
joint holders of, 172, 178, 187, 199, 335, 472, 479.
liability of directors for shares received as bribes, 352, 353, 476.
lien on, 25, 177–179, 181, 182. See *Lien.*
management shares, 116, 120, 153.
minimum subscription for, 33, 34, 117, 147, 164.
mortgages of, 181–184.
notice of trust to company as to, 190, 191.
directors as to, 190, 191.
option to subscribe for, 139, 140.
payment for, 163–170. See *Payment of Shares.*
in cash, what is, 165, 166.
personal estate, 180, 199.
"placing," 35, 66, 72, 118, 347, 476.
preference. See *Preference Shares.*
purchase by company of its own, 26, 39, 40, 53, 81, 107, 201, 209, 299, 343–345.
out of accumulated profits, 40, 53.
of, 180–182, 185, 448, 474.
qualification. See *Qualification Shares.*
quotation of, rules of Stock Exchange as to, 25, 171, 179, 548–557.
railway and other public companies cannot hold, in another company, 298.
register of. See *Register of Members.*
registration of persons entitled to, 154.
repudiation of, 41, 135, 137, 140–144, 148, 206, 209, 212, 213, 363.

SHARES—*continued.*
reserve liability on, 23, 24, 161, 163, 235.
rescission of agreements to take. See *Rescission.*
rights and liabilities of corporation as a joint holder of, 199.
sale of, 180–182, 185, 448, 474.
bank, 180, 181.
subdivision of, 24, 55, 56, 337.
subscribers for. See *Subscribers for Shares.*
surrender of, 207–211.
title to, passes to personal representatives of deceased holder, 187, 199.
transfer of. See *Transfer of Shares.*
transmission of. See *Transmission of Shares.*
trust disponees of, 191, 473.
trustees of, 81, 161, 178, 182, 190, 191, 212–214, 344, 473, 475, 524.
trusts of, not recognized by companies, 187, 190, 191.
except companies registered in Scotland, 191.
underwriting, 35, 62, 66, 69–74, 118, 121, 122, 125, 349.
unissued may be cancelled, 24, 50.
vendors', 555.
withdrawal of application for, 133.

SHARE WARRANTS,
bearer, rights of, 56.
forged, 399.
holding of, not sufficient for director's qualification, 86.
issue of, 56.
nature of, 56.
negotiable instruments, 57.
penalty for not stamping, 57.
stamp on, 57.
stamp duty on, composition for, 57.
transferable by delivery, 57.

SIGNATORIES. See *Subscribers of Memorandum of Association.*

SINKING FUND,
for making good depreciation, 315.

SOLICITORS,
are not promoters, 61, 62.
articles of association do not constitute contract between company and, 219.
costs of, in winding-up, 467, 511.
employment of, in winding-up, 465, 467, 511.
liability of, 375, 376, 410, 411, 462, 463.
lien of, 261, 455.
"officers of company," when, 237, 462, 463.

SOLICITORS—*continued.*
petitioner's, duties of, 440.
statutory declarations by, 11.

SPECIAL ACT,
amalgamation of companies incorporated by, 513.
companies cannot contract so as to prejudice powers given by, 32.
consolidation and subdivisions of shares of companies governed by, 55.
conversion of shares of companies governed by, 54.
constructive notice of its, persons dealing with company have, 78, 102, 107.
costs of obtaining, 65–68.
extent of powers of companies incorporated by, 30–32.
incorporation of companies under, 5, 218.
increase of capital of companies incorporated by, 48.
issue of bonds, mortgages, debentures and debenture stock of companies incorporated by, must be authorized by, 266.
issue of negotiable instruments by companies incorporated by, 224.
issue of share warrants by companies governed by, 56.
reduction of capital of companies governed by, 49.

SPECIAL MANAGER,
appointment in winding-up of, 419.
remuneration of, 498.

SPECIAL RESOLUTION,
confirmation of resolution as, 338.
declaration of chairman conclusive as to passing of, 338.
interval between passing and confirming, 338.
majority necessary for passing, 338.
may be passed at ordinary or extraordinary general meeting, 339.
notice of meeting to pass, 338–340.
penalty for not annexing to or embodying in, articles and memorandum of association, 402.
sending copies of, to Registrar of Joint Stock Companies, 402.
requisites of, 338, 339.
to alter articles of association, 25, 26, 48, 51, 337.
name of company, 16, 337.
objects of company, 19, 20, 337.
appoint inspectors of the affairs of a company, 337.
increase capital, 48.
make liability of directors and managers unlimited, 23, 337.
prohibit capital being called up except in winding-up, 23, 24, 163, 235.

SPECIAL RESOLUTION—*continued.*
to reduce capital, 24, 51, 368.
reorganize capital, 51, 337.
sell under Companies Act, 1908, s. 192 .. 515.
subdivide shares, 24, 337.
wind-up voluntarily, 338, 414, 506.
voting for, how taken, 339.
when required, 337, 338.

SPECIAL SETTLEMENTS, 547, 549, 550.

SPECIALTY DEBTS,
moneys owing on shares, 13, 477.

SPECIFIC PERFORMANCE,
of agreements between directors and company, 92, 222.
to grant a legal mortgage, 249.
lend money, 249.
purchase shares, 182, 448.
subscribe for debentures, 249, 265.
debenture stock, 249, 265.
shares, 144, 155, 438.
ultra vires of the company refused, 32.

STAMP DUTY,
adjudication of, 149, 170.
agreements, 169, 517.
allotment of shares, notice of, 134.
articles of association, 13.
bearer debentures, 258, 264.
particulars of verbal contracts, 149.
penalties, 57, 169, 197.
power of attorney, 336.
proxies, 336, 532.
registered debentures, 264.
scrip certificates, 158, 264.
share warrants, 57.
composition for duty on, 57.
sale, 417.
statement as to issue of loan, 263.
stock certificates, 263.
substituted security, 264.
transfers, 197.
trust deed securing debentures or debenture stock, 263.

STATEMENT IN FORM OF BALANCE SHEET, 8, 289, 399.

STATEMENT IN LIEU OF PROSPECTUS, 7, 33, 147, 292, 399, 541.

Statement of Affairs of Company in Winding-up Proceedings,
affidavit verifying, 455.
by director, 455.
officer of company, 455.
promoter, 455.
secretary, 455.
contents of, 456.
costs and expenses of making, 455, 456, 498.
information to be given to official receiver by person making, 456.
inspection of, 295.
penalty for default in making, 405.
powers of official receiver as to, 455, 457.
time limited for making, 456.
upon request of official receiver, 455.

Statement of Capital,
to be delivered to Inland Revenue Commissioners, 263.
Registrar of Joint Stock Companies, 402.

Statute of Frauds. See *Frauds, Statute of.*

Statute of Limitations. See *Limitations, Statute of.*

Statutes. See *Table of Statutes*, p. cix.

Statutory Declarations,
false, 399.
to be delivered to London Stock Exchange, 533–557.
Registrar of Joint Stock Companies, 11, 33, 292.

Statutory Meeting. See *First Meeting of Company.*
report to, 325–327.
false, 399.
repudiation of shares within two months of, 148.

Staying Actions and Proceedings,
after commencement of winding-up, 421, 426, 509, 511.
in Ireland, 427.
in Scotland, 427.

Staying Proceedings,
in action for misrepresentation, 373.

Staying Winding-up, 427, 530.

Stock. See also *Debenture Stock.*
conversion of fully paid shares into, 24, 48, 54, 55.
re-conversion of, into fully paid shares, 24, 48, 54, 55.
rights of holders of, 54.
transfer and transmission of, 180–199.

Stock Exchange,
extracts from rules of, 549–557.
requirements for quotation of shares on, 25, 171, 179, 548–557.
special settlements, 547–550.
transfer of shares to be in form required by, 192.

Strike Fund,
Industrial Society cannot subscribe to, 35.

Sub-Agents,
directors not liable for acts of company's, 395.

Subdivision of Shares,
how effected, 24, 55, 56, 337.
penalty for issuing any copy of memorandum of association not agreeing with special resolution subdividing capital, 402.
special resolution necessary for, 56, 337.
what is, 55.

Subrogation,
rights of companies under Forged Transfer Acts to, 189.
directors to, 81.

Subscribers for Debentures and Debenture Stock,
not affected with notice of any contract document or matter not specifically referred to in prospectus, 391.
rights of, in cases of misrepresentation, at common law, 363–368.
by statute, 368–381.

Subscribers for Shares,
meaning of, 373.
not affected with notice of any contract document or matter not specifically referred to in prospectus, 391.
rebate allowed to, 43.
rights of, in cases of misrepresentation, at common law, 363–368.
by statute, 368–391.
in equity, 109, 140–144, 206, 212.

Subscribers of Memorandum of Association,
agree to take shares subscribed for, 135.
allotment of shares as fully paid to, 136.
appointment of directors by, 86–88.
paid manager of company by, 96.
contracts for sale made with, 219.
directors cannot agree to refuse to allot shares to, 136.
when to be, 86, 87, 116.
liability of, for shares subscribed for, how discharged, 136.
may subscribe by agents, 136.
names, descriptions and addresses to be stated in prospectus, 117.
number of shares to be taken by, 136.
powers of, 86–88, 95, 96, 103, 218.

SUBSCRIBERS OF MEMORANDUM OF ASSOCIATION—*continued.*
powers of, how exercised, 86–88.
signatures of, 10–13.
when deemed to be directors, 86.
whether promoters, 62.
who may be, 12.

SUBSCRIBERS TO UNDERTAKINGS INCORPORATED BY SPECIAL ACT,
liabilities of, 67, 155, 157.

SUBSCRIPTION CONTRACT, 67.

SUMMARY OF CAPITAL,
false particulars in, 399.
to be furnished to registrar, 160, 288–290, 401.

SUPERFLUOUS LAND. See *Surplus Lands.*

SURETIES FOR COMPANIES,
proof in winding-up by, 497.
rights against, not prejudiced by schemes of arrangement, 529.
rights of directors as, 81.
set-off by, against debt from company, 493.

SURETYSHIP,
contract of, must be in writing, 227.

SURPLUS ASSETS,
distribution of, 41, 137, 153, 160, 312.
in winding-up, 502–504.
priority in, 152, 153.

SURPLUS FUNDS,
investment of, 301, 302.

SURPLUS LANDS,
mortgage of, by railway company, 236.
mortgage of proceeds of sale of, by railway company, 236, 267, 275.
sale of, 297.
vesting of, in adjoining owners, 297.

SURPLUS ROLLING STOCK,
letting of, 298.
sale of, 254, 298.

SURRENDER OF SHARES, 207–211.
by director, 210.
by way of compromise, 209.
cancellation upon, 209–211.
company cannot pay shareholder any money on, 208, 209.
liable to forfeiture, 210.
must be for company's benefit, 211.

SURRENDER OF SHARES—*continued.*
not fully paid up, 210.
ultra vires of company, 210, 211.
under Companies Clauses Act, 1863 .. 208.
validity of, 208–211.

SURVIVORSHIP,
between joint shareholders, 199.

SYNDICATE,
agreement, 60, 63.
company, 63.
letter, 63.
liability of directors and promoters of syndicate company, 63.

TABLE A. See *Table of Statutes*, p. cix.

TENDER,
by shareholder of amount due for calls, 206.

TERMINATING BENEFIT BUILDING SOCIETIES. See *Building Societies.*

TRADE NAME, 15.

TRADE UNION, 4, 10.

TRADING COMPANIES,
borrowing and mortgaging by directors of, 230–232.
classification and creation of, 5.
clergymen cannot be directors of, 84.
implied authority of, to mortgage, 230–232.
issue of debentures by, 266.

TRAMWAY COMPANY,
allowance for depreciation in lines of, 314.
manager of, not appointed by the Court, 272.
payment of dividends out of capital by, 314, 315.
receiver of, appointed by the Court, 272.
winding-up of, 272, 417.

TRANSFER OF ACTIONS,
in winding-up, 460.

TRANSFER OF DEBENTURES, 268–271. See *Debentures.*
equitable, 233, 269.
legal, 233, 268, 269.
precautions to be taken by director before registering, 270.

TRANSFER OF SHARES, 180–198.
acceptance of, by transferee, 191.
blank, 182, 183, 192.
bonâ fide, when registration of, can be refused, 197.
by deed, 182, 186, 192.

TRANSFER OF SHARES—*continued.*
by delivery of scrip certificate, 158.
directors. See *infra, Qualification of Shares.*
executors or administrators of deceased shareholders, 183, 187, 199.
infants, 187.
joint holders, 187, 199.
lunatics, 187.
married women, 188, 471.
trustees in bankruptcy, 188.
calls to escape liability for, 175, 197, 198.
cancellation of, 196.
cannot be made by delivery, of share certificate, 193.
" certification " of, by secretary, effect of, 190.
completed by registration, 185.
conditions precedent to, 193, 194, 196, 197.
consent of directors to, 193, 196, 197.
transferee to, 191.
damages for refusal of registration of, 189, 196.
date in, effect of omission of, 193.
delay in registration of, 184–186, 214, 215, 475.
directors' duty to inquire as to validity of, 186–194.
liability for registration of, by shareholder indebted to company, 196.
power to refuse, 194–197.
conditional, 196.
to be strictly followed, 195, 196.
power to refuse registration of, because transferor indebted to company, 195, 196.
power to refuse registration of, to infant, 191.
power to refuse registration of, until acceptance by transferee, 191.
power to transfer their own shares, 108.
distringas, notice in lieu of, staying, 184.
effect of execution of, in blank, 182, 183, 192, 193.
registration of forged, 188–191.
estoppel by registration of, 189, 190.
execution of, 102.
execution of deed of settlement, condition precedent to registration of, 193.
exercise of discretionary powers of directors as to registration of, 194, 195.
fee payable upon registration of, 186.
forged, 186, 188–190.
precautions to be taken against registering, 186, 188–190.

TRANSFER OF SHARES—*continued.*
forged, registration of, 188–191, 213.
transferee's rights upon registration of, 212, 214.
true owner's rights upon, registration of, 212–216.
form of instrument of, 185, 186, 192.
fraudulent, 475.
how and by whom executed, 182–187.
in winding-up, 447, 448, 470, 474–476, 506.
in writing, 186, 193.
lodging of, for registration, 185, 188, 190, 192, 214.
must comply with regulations of company, 186, 192–194.
bonâ fide, refusal of registration of, 197, 198.
notice in lieu of *distringas* staying, 184.
of trust to company as to, 187, 190, 191.
directors, as to, 190.
to director of, when implied, 191.
of insolvent company, 214.
omission to register, 212–216.
out and out, 195, 197, 198, 475.
power to refuse registration of, to be strictly followed, 195.
conditional, 197.
precautions to be taken by directors before registering, 187–199.
procured by misrepresentation, effect of, 476.
qualification shares, 87, 91, 92, 181, 198.
reasonable time allowed for registration of, 188, 214.
rectification of register upon, 189, 191, 195, 212–215, 474–476.
refusal of registration of, 190–199.
registration of, 171, 184–199, 214, 475.
repudiation of, by transferee, 191.
restrictions upon, 7, 181.
rights of shareholder as to, 180, 181, 184–199.
trustee in bankruptcy of shareholder as to, 187, 196.
rule against perpetuities does not apply to, 181.
share certificate, evidence of title of transferor, 151, 188.
stamp on, 197.
to escape liability, 175, 195, 197, 475.
increase voting power of transferor, 194, 197.
infants, 191, 475.
married women, 191.
nominee of rival company, 194.
pauper, 191.
trustee in bankruptcy, registration cannot be refused, 196.
under Companies Clauses Act, 1845 .. 185, 187, 188, 192, 195, 199.
power of attorney, 188.
validity of, 102, 186, 189, 191, 196, 198.

TRANSFER OF SHARES—*continued.*
vesting declaration (Conveyancing Act, 1881, s. 34) does not apply to, 187.
when void, 186, 189, 191, 196, 198.
voidable, 186.
winding-up, effect of, upon right to make, 447, 448, 470, 474, 506.

TRANSFER OF STOCK, 54. See *Transfer of Shares.*

TRANSFEREE OF SHARES,
acceptance of transfer of shares by, 191.
duty to obtain registration of transfer, 185.
liability of, for shares issued as fully paid up under contract not duly filed, 168.
rectification of share register at instance of, 213.
repudiation of transfer of shares by, 191.
rights of, under forged transfer of shares or stock, 188–190.
when entitled to sue for misrepresentation in prospectus, 367, 376.

TRANSFEROR OF SHARES,
evidence of title of, 187–191.
increase of voting power of, by transfer of shares, 194, 197.
order and disposition of, 183, 215.
proper person to be, 187–191.
right of, to obtain registration of transfer of shares, 185, 215.

TRANSMISSION OF SHARES,
transfer is not, 180, 199.
upon bankruptcy of shareholders, 199.
death of one of joint shareholders, 199.
shareholder, 199.
what it includes, 180, 199.

TRESPASS,
liability of company to action for, 109.

TROVER,
liability of company to action of, 109.

TRUST,
as to notice to company of, 187, 190, 191.
directors of, 190.
companies not affected by notice of, 187, 190, 191.
companies registered in Scotland affected by notice of, 191.

TRUST COMPANIES,
depreciation in market price of securities of, 316.

TRUST DEED,
penalty for refusal to supply copy of, 405.
stock exchange requirements as to, 552.
to secure debentures or debenture stock, 237–239, 246, 257–259, 263, 272–275, 280–282, 284. See *Brewery Companies.*

TRUST DISPONEES,
of shares, 191, 473.

TRUSTEE IN BANKRUPTCY. See *Bankrupt; Bankruptcy.*

TRUSTEES,
contract between trustee of company and promoter of company, 60, 61, 124, 217.
directors are not, 75, 76.
as trustees for company, rights of, 81, 344.
meaning of, in Trustee Act, 1888 .. 356.
of shares, 81, 161, 178, 182, 190, 191, 213, 344, 473, 475, 524.
retaining shares, etc., allotted to them in a reconstruction, 524.
sale may be made to trustees for intended company under s. 192, Companies Act, 1908 .. 518.

ULTRA VIRES OF COMPANY, 28–46.
acts, are void, 29, 31, 32, 46.
are incapable of ratification, 4, 29, 46, 108, 254, 355, 356.
agreement by directors, 224.
agreement cannot be specifically enforced, 32.
as to companies governed by Companies Acts, 30.
deed of settlement, 30.
incorporated by special Act, 30.
borrowing, is void, 254.
contracts, are void, 32, 45, 224.
for payment of calls in goods not, 176.
directors' act not binding on company, 107.
dispositions, are void, 29, 31, 45.
distinction between acts *ultra vires* and *intra vires*, 29, 202.
doctrine of, must be applied reasonably, 43–45.
funds of company applied, 34–43, 342–347.
injunction against acts. See *Injunction.*
issue of shares at a discount, 40–42, 53, 138, 213, 343.
payment of dividends out of capital is, 36–39, 46, 322, 342.
interest on unproductive capital charged to capital account is, 317.
debentures out of capital is not, 317.
purchase by company of its own shares is, 39, 40, 81, 107, 209, 299, 343, 344.

ULTRA VIRES OF COMPANY—*continued.*
surrender of shares when, 207–211.
underwriting shares when, 35, 66, 69, 70, 118.

ULTRA VIRES OF DIRECTORS,
action by shareholders to restrain acts, 110–112.
borrowing, cannot bind company, 253, 254.
contracts, 46, 224.
forfeiture, 200–203.
ratification of acts, 29, 107, 108, 202, 203, 255, 356.
borrowing, 254–256.

UNCALLED SHARE CAPITAL,
mortgage of,
how authorized, 234.
enforced, 235, 478.
not a breach of trust, 176.
power to, 234.
registration of, 238.
when invalid, 234.

UNDERTAKING OF COMPANY,
appointment of receiver of, 111, 259, 260, 275–282.
receiver and manager of, 111, 259, 260, 275–282.
lease of, 299.
meaning of, 259.
mortgages of, 234, 235, 259–262.
sale of. See *Sales under Companies Act*, 1908, s. 192.

UNDERWRITERS, 69–74. See *Underwriting Shares.*
whether promoters, 62.
whether responsible for issue of prospectus, 375.

UNDERWRITING SHARES,
commission for, 66, 69–74, 118, 121, 349.
contracts for, 69–74, 118, 122.
does not *per se* constitute a promoter, 62.
option to subscribe for shares as consideration for, 139.

UNDUE PREFERENCE OF CREDITORS, 80, 105, 175, 252, 294, 448–450, 493.

UNLIMITED LIABILITY,
of directors, 10, 13, 23, 286, 337, 402.
of shareholders, 10, 13, 23, 160, 161, 402.

UNREGISTERED COMPANY,
by registering may effect sale under s. 192, Companies Act, 1908 .. 514, 522.
inability of, to pay debts, 433.
may register as limited, 14.
winding-up of, 416, 417.

UNTRUE STATEMENTS. See *Misrepresentation; Prospectus.*

VACANCY. See *Casual Vacancy.*

VALUATION,
of assets in calculation of profits, 307–313.
dissentient member's interest, 519.
policies, 480.
securities by secured creditors in winding-up, 495, 496.

VENDOR,
definition of,
guarantees of dividends by, 221, 318.
payment for underwriting by, 70.

VERIFICATION,
of accounts by directors, 304.
statements in prospectus by directors, 369, 384.

VOID,
acts and contracts *ultra vires* of company are, 29, 31, 32, 45, 224, 254.

VOIDABLE,
contracts induced by misrepresentation are, 108–110, 140–144, 228, 229, 363, 364.
irregular allotment of shares is, 148.

VOLUNTARY WINDING-UP, 496–502. See *Winding-up.*
advertisement of final meeting in, 293, 537.
resolution for, 293, 506.
applications to Court in, 509.
appointment of liquidators in, 418–422.
arrangements with creditors in, 414, 524–533.
calls made in, 508.
cancellation of forfeiture of shares in, 205, 507.
commencement of, 415, 506.
companies cannot contract themselves out of their right to a, 506.
companies liable to a, 505.
Companies (Winding-up) Rules, 1909, how far applicable to, 505.
contributories' applications in, 509.
creditors' applications in, 505, 509.
delegation of powers to creditors in, 338, 505.
differences between compulsory and, 505.
dissolution of company in, 537.
distribution of assets in, 510.
extraordinary resolution for, 338, 340, 413, 414, 506, 507.
final meeting of company in, 293, 537.

VOLUNTARY WINDING-UP—*continued.*
general meetings of company in, 509, 537.
grounds for, 505.
liquidators' applications in, 509.
duties in, 508, 537.
liquidators' powers in, 507. See *Liquidators.*
to sanction transfer of shares in, 470, 474, 506.
notice of, to registrar, 507.
right to, company cannot contract itself out of, 506.
sales in, 414.
settlement of list of contributories in, 507, 508.
special resolution for, 338, 414, 415, 506.
stay of actions, suits and proceedings in, 509.
transfer of shares in, 470, 474, 506.
when resorted to, 414, 515.

VOTES. See *Votes of Shareholders.*
casting vote of chairman at meetings, 96, 337.
of creditors and contributories as to arrangements with companies, 524–533.
directors, upon contracts in which they have a personal interest, 90–92, 222–224, 335.

VOTES OF SHAREHOLDERS. See *Poll; Proxies.*
alteration of articles of association relating to, 26.
by committees of lunatics, 335.
corporations, 336.
curators, 335.
executors and administrators, 199.
guardians of infants, 335.
joint holders, 335.
poll, 334, 338.
persons entitled, 334.
proxy, 33, 335, 336, 338.
show of hands, 334, 338.
casting vote of chairman, 96, 337.
how taken, 334.
issue of shares to increase number of, 111, 150.
number of, 334, 335.
rejection of, 111.
transfer of shares to increase number of, 194, 197.

WAIVER CLAUSE,
effect of, in prospectus, 119, 148, 391.

WARRANTS. See *Share Warrants.*

WINDING-UP GENERALLY. See *Voluntary Winding-up; Winding-up by the Court; Winding-up under Supervision.*
adjustment of rights of contributories in, 68, 428, 476, 479, 502, 503, 534.
agreements to purchase shares made in, 448.
amalgamations effected in, 512–523.
ancillary, 414.
arrangements with creditors made in, 524–533.
bankruptcy rules applicable to insolvent companies in, 480–497.
books, accounts and documents, disposal of in, 538.
inspection of in, 450.
production of in, 450–452, 468.
building societies, 417.
calls on contributories in, 476–480, 508.
set-off against, 452, 488, 489.
capital not to be called up except in a, 23, 24, 161, 163, 235.
collection of assets in, 451–480.
commencement of, 415, 506, 511.
committee of inspection in, 418, 501, 537.
companies liquidation account, 535–537.
compromise with contributories in, 464, 467, 469, 479, 520.
creditors in, 464, 467, 508, 520, 524–533.
compulsory. See *Winding-up by the Court.*
conclusion of, 535–537.
contributories' liability in, 468–473, 476–480, 488, 502.
applications by, in, 421, 509.
set-off by, 452, 488.
costs of, 452, 453, 476, 497, 499, 511.
creditors, payment of, 499–501, 536, 537.
depositions of witnesses examined in, 454, 458.
determination of directors' powers by, 113, 450, 507.
disposition of property after commencement of, 447.
dissolution of companies, 4, 357, 413, 428, 429, 534–540.
distresses for rent, rates and taxes in, 422–426, 486–488.
distribution of assets in, 497–504.
dividends to creditors in, 499–501, 536, 537.
effect of on shareholder's right to rescission, 140, 142, 213, 365.
effect of, on transferor's right to rectification of share register, 215.
order for, 113, 446, 450, 489.
resolution for, 506, 507.
examinations of directors officers and promoters, 457–459.
examinations of witnesses in, 452–455.
execution creditors' rights in, 422–427, 483, 509.
fees payable in, 537.

WINDING-UP GENERALLY—*continued.*
fraudulent preference, 80, 105, 175, 176, 252, 294, 448–450, 493.
grounds for, 432–435, 505, 506.
half-yearly statements by liquidators in, 535.
in different countries, 414.
insolvency a ground for, 432, 444.
inspection of company's books and documents in a, 450.
interest, when payable in a, 491, 492.
Ireland, companies registered in, cannot be wound up in England, 431.
joint holders as contributories in, 172, 199, 200, 472, 479.
judgment, setting aside in, 42.
"just and equitable" ground for, 432, 434, 435.
landlord's rights in a, 422–426, 487.
life assurance company, 417, 434.
limitations, statute of, ceases to run, 497.
liquidators appointed in. See *Liquidators.*
married woman, liability of in a, 471, 475, 478.
meetings of contributories in a, 418, 419, 421, 441, 465, 509, 525–533, 537.
creditors in a, 418, 419, 421, 444, 465, 525–533.
mutual credits in a, 482, 492–494.
of companies incorporated by charter, 413, 417.
special Act, 267, 272, 413, 416, 417.
Building Societies Acts, 417.
Companies Acts, 415.
Industrial and Provident Societies Acts, 1893 .. 417.
Joint Stock Companies Acts, 415.
of assurance companies, 417, 434, 438.
foreign companies, 417.
limited partnerships, 416.
unregistered companies, 416, 417.
Palatine Courts, jurisdiction of, 430.
petitions. See *Winding-up by the Court; Winding-up under Supervision.*
powers of directors after presentation of petition for, 113, 447.
liquidators in, 464–468, 507.
the Court in, 451, 464.
preferential debts in, 277, 499, 500.
principal, 414.
proof by assignee of debt, 489.
directors for fees, 79, 80, 493.
of debts by contributories, 488, 489.

WINDING-UP GENERALLY—*continued.*
proof of debts by secured creditors, 494–497.
sureties, 497.
double, 490.
for annuities, 485.
contingent debts and liabilities, 480, 481, 486–488.
damages, 489, 490.
future debts, 491.
interest, 491, 492.
periodical payments, 494.
in, 480–497, 501.
rules relating to, 482.
upon negotiable instruments, 493.
prosecution of directors and others in, 400, 401.
provisional liquidator appointed in, 415, 418, 511.
public examination in, 457–459.
reconstruction effected in, 522–524.
rectification of list of contributories in, 214, 215, 474–476.
repayment of loans after commencement of, 343.
reports by liquidators in, 463, 511.
schemes of arrangement in, 528–533.
Scotland, companies registered in, cannot be wound up in England, 431.
set off in, 161, 452, 482, 488–489, 492–493, 549.
settlement of list of contributories in, 465, 468–474, 507–509.
special manager in, 419, 498.
stay of, 427, 428, 530.
stay of actions and proceedings in, 422–427, 509.
surplus assets divided amongst contributories in, 502–504.
transfers of shares in, 447, 448, 470, 474, 506.
voluntary. See *Voluntary Winding-up.*
when desirable, 413, 414.

WINDING-UP BY THE COURT, 430–450. See *Winding-up.*
adoption of voluntary winding-up proceedings in, 415.
advertisement of petitions for, 439, 440.
appeals against order for, 446.
commencement of, 415.
costs of petition for, 442–446.
dissolution on completion of, 534.
effect of order for, 113, 446–450.
grounds for, 432–435.
default in filing statutory report or in holding statutory meeting, 432.
insolvency, 432–444.
"just and equitable," 432, 434, 435.

WINDING-UP BY THE COURT—*continued.*
grounds for, not commencing or suspending business for a year, 432, 433.
how obtained, 413, 414.
injunction restraining advertisements of petitions for, 442.
presentation of petitions for, 442.
jurisdiction, 430–432.
not ordered if voluntary winding-up pending, unless prejudicial to creditors, 437.
orders for, 439–496.
notwithstanding supervision order, 438.
petitioners for, 435–439.
petitions for, 414, 436, 439–446.
costs of, 442–446.
service of, 441.
verification of, 441.
public examination in, 457–459.
registrar in, powers of, 459.
second petitioner, rights of, 443.
statement of affairs required in, 445–447.
substitution of another creditor for petitioner, 443.
transfer of, 431.
withdrawal of petition for, 442.

WINDING-UP UNDER SUPERVISION. See *Winding-up.*
advantages of, 512.
commencement of, 415, 511.
costs in, 511.
Court has regard to wishes of creditors and contributories in making order for, 444.
how obtained, 414.
jurisdiction of Court in, 430, 509.
liquidators appointed in, 420, 421, 510.
powers of, in, 510.
removal of in, 421.
misfeasance proceedings in, 461.
order for, 442 443–446, 510–512.
on petition for compulsory order, 442, 445, 446.
petition for, 510.
sale under Companies Act, 1908, s. 192, not prevented by, 515.
sanctioned after making of order for, 515, 520.
stay of proceedings in, 422, 510, 511.
taxation of costs in, 511.
who can petition for, 414, 510.

WRITS,
of elegit, 287, 288, 294.

WRITS—*continued.*
execution, when put in force, 424.
fi. fa., 287, 288, 294.
mandamus, 9, 11, 82, 88, 170, 331.
scire facias, 162, 287, 413, 526.
sequestration, 294, 396, 422–424.

THE END

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED, LONDON AND BECCLES.