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SECRETARIAL PRACTICE

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SECRETARIAL PRACTICE

THE MANUAL OF
THE CHARTERED INSTITUTE OF SECRETARIES

Prepared by the Council of the Institute in conjunction with
His Honour Judge Shewell Cooper
(A Judge of the Mayor's and City of London Court)

SECOND EDITION.

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Preface to Second Edition

SINCE 1912, when this Manual was first issued, there have been several alterations in the law relating to Companies, and these have been incorporated in the present edition, together with new chapters on Accounts, Income Tax and Corporation Profits Tax, Share Warrants, and Company Reconstruction and Liquidation, and with some notes on Receiverships. There are also added chapters on Agenda and Minutes, Office Filing and Stamp Duties. The chapter in the earlier edition on Share Transfers has been amplified. The current Stock Exchange regulations as to official quotations and dealings are set out in full with notes thereon, and a statement has been added of the requirements in regard to securities in France. The Appendices include a set of model forms, together with a new form of Power of Attorney which has been carefully framed with a view to its general adoption. The full text of the Companies (Consolidation) Act, 1908, the Companies Act, 1913, the Registration of Business Names Act, 1916, and the Companies (Particulars as to Directors) Act, 1917, is also given.

In the preparation of this edition the Special Committee of the Council has been ably assisted by his Honour Judge Shewell Cooper, who undertook the revision of all the legal matter, except the chapter on Powers of Attorney (which was brought up to date and revised by Mr. H. M. Cohen, of Messrs. Linklaters and Paines, the Solicitors for the Institute). To these gentlemen, to Sir Nathaniel Highmore, G.B.E., K.C.B. (late Solicitor for H.M. Customs and Excise) for his chapter on Stamp Duties, and to those Members of Council who contributed chapters on other special subjects, the Committee tender their best thanks.

W. N. BANCROFT,
President.

WILLIAM WATKINS,
Past President.
Chairman of "Secretarial Practice" Committee.

THE CHARTERED INSTITUTE OF SECRETARIES,
LONDON WALL, LONDON, E.C. 2
May, 1923.

Preface to First Edition

THE present volume has been prepared by the Council of The Chartered Institute of Secretaries with the object of providing a practical working treatise covering the general routine of a Secretary's duties. Though intended primarily for Secretaries of Companies incorporated under the Companies Acts, special chapters are devoted to Statutory Companies and Secretarial Work in relation to Local Government Administration.

The Council desire to express their indebtedness to Mr. F. Shewell Cooper, M.A., Barrister-at-Law, who has not only written a large portion of the book, but has given them very valuable assistance and advice. Their thanks are also due to Mr. V. St. Clair Mackenzie, B.A., Barrister-at-Law, for the valuable chapter on Powers of Attorney; to the Glasgow and West of Scotland Branch for the article on Scottish Companies; and to the Special Committee of the Council who have been associated with Mr. Shewell Cooper in the arrangement and preparation of the work.

Owing to considerations of space the present volume does not deal with an important branch of the Company Secretary's work, viz., Liquidation and Reconstruction.

WILLIAM WATKINS,
President, 1911–12.

THE CHARTERED INSTITUTE OF SECRETARIES,
LONDON WALL, E.C.
November, 1912.

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SECRETARIAL PRACTICE

CHAPTER I

COMPANIES IN GENERAL

THE word 'Company' throughout this book generally means a body incorporated under some one or more of the Acts of Parliament which relate exclusively to companies in general.

This phraseology of daily life happens to accord, with substantial accuracy, with the definitions in the Companies (Consolidation) Act, 1908. S. 285 of that Act defines a company as a company formed and registered under that Act, or an existing company; whilst an 'existing company' means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862. The Joint Stock Companies Acts are defined to mean the Joint Stock Companies Act, 1856, and certain other Acts before 1862; but the expression does not include the Joint Stock Companies Act, 1844, under which Act companies were first empowered to become incorporated, although without limited liability. The right to register with limited liability was first conferred by an Act of 1855, which was replaced by the codifying Act of 1856, mentioned above.

It must not be overlooked, however, that there are two important classes of companies or corporations to which neither the Joint Stock Companies Acts, nor the Companies (Consolidation) Act, 1908, have any direct relation.

The first of these are associations incorporated by royal charter, of which the British South Africa Company and the Trust and Loan Company of Canada may be taken as examples.

The other class comprises that large body of companies incorporated under special Acts of Parliament, generally for the purpose of working some undertaking of a public nature, *e.g.* railway companies, gas companies, dock companies, and the like. Companies of this class are commonly described as Statutory Companies. They are dealt with specially in Chapter XXII.

The vast majority of companies are, however, companies to which the provisions of the Companies (Consolidation) Act, 1908, apply.

Companies (Consolidation) Act, 1908.

The passing of the Companies (Consolidation) Act, 1908, which came into force on April 1st, 1909, marked an important step in the direction of simplifying Company Law. It consolidated into one Act the law contained in the various statutes known as the Companies Acts, 1862 to 1908, all of which, together with the Preferential Payments in Bankruptcy Amendment Act, 1897, it repealed and re-enacted, and it also repealed portions of ten other relevant statutes.

The Companies Acts, 1862 to 1908, comprised the following:

The Companies Act, 1862.
The Companies Seals Act, 1864.
The Companies Act, 1867.
The Joint Stock Companies Arrangement Act, 1870.
The Companies Act, 1877.
,, ,, ,, 1879.
,, ,, ,, 1880.
The Companies (Colonial Registers) Act, 1883.
The Companies Act, 1886.
The Companies (Memorandum of Association) Act, 1890.
The Companies (Winding Up) Act, 1890.
The Directors' Liability Act, 1890.
The Companies (Winding Up) Act, 1893.
The Companies Act, 1898.
,, ,, ,, 1900.
,, ,, ,, 1907.
,, ,, ,, 1908.

Among the ten other Acts affected were the Preferential Payments in Bankruptcy Act, 1888, of which ss. 1, 2, and 3 were repealed so far as they affected companies; and the Limited Partnerships Act, 1907, s. 6, sub-s. (4) of which was repealed: the Preferential Payments in Bankruptcy Amendment Act, 1897, was, as stated above, wholly repealed.

In framing the Companies (Consolidation) Act, 1908, the opportunity was taken of introducing considerable changes of language, which, while in most cases not substantially altering the law, cleared up some ambiguities and effected many minor improvements.

It must not be forgotten, however, that the Act is a consolidation Act, and not a codifying Act (such as the Bills of Exchange Act, 1882, the Partnership Act, 1890, and the Sale

of Goods Act, 1893). Large and important branches of existing Company Law are practically untouched by it, whilst the law as to debentures, apart from the matter of registration, is only dealt with in a few isolated particulars.

Accordingly, useful though the Act is—and there can be no question that the difficult work of the draftsmen was admirably performed—it requires to be supplemented, for all who are connected with the practical working of companies, by a considerable quantity of additional law, for the most part the result of decisions of the Courts. Company Law, then, is in part Statute Law, and in part Case Law; the Case Law comprising not only decisions upon the present statute and its predecessors, but also on matters in which the statutes play no directly material part.

The Companies (Consolidation) Act, 1908, has been supplemented by three later Acts. These are:—

The Companies Act, 1913 (amending the provisions of the Consolidation Act as regards private companies);

The Companies (Foreign Interests) Act, 1917; and

The Companies (Particulars as to Directors) Act, 1917.

These three Acts (each of which will be noticed in its place) with the Companies (Consolidation) Act, 1908, are now, cited together as the Companies Acts, 1908 to 1917. Apart from these Acts, a few small alterations have been made in the Consolidation Act, chiefly by the repeal of certain penal provisions, which are re-enacted in codifying Criminal Acts.

The Companies Acts, whilst conferring the boon of limited liability, at the same time restricted freedom of action to the extent of prohibiting unregistered partnerships of more than a certain number. S. 1 of the Consolidation Act, reproducing the older law, in effect makes ten the maximum number of persons who may carry on banking business together, and twenty the maximum number who may carry on any other business together, without registration under the Act, or without the sanction of a special Act of Parliament or a charter. Mining companies within the stannaries are, however, excepted.

Under the Act, as under the earlier Acts, various descriptions of companies may be registered (see ss. 2, 3, 4, and 5). These are:

(*a*) Companies limited by shares;

(*b*) Companies limited by guarantee, which may either
  (i) have a share capital; or
  (ii) not have a share capital;

(*c*) Unlimited companies, which may either
(i) have a share capital; or
(ii) not have a share capital.

Limited by Guarantee.

As regards companies limited by guarantee not having a share capital, the companies that adopt this method of formation are chiefly associations for mutual insurance, law and other societies, social clubs supported by the subscriptions of their members and not formed for purposes of profit, and other companies of a like nature, which, while not requiring a trading capital, desire to have the advantages conferred by incorporation. These companies sometimes obtain the licence of the Board of Trade to dispense with the word 'limited' (s. 20).

The amounts guaranteed are in the nature of reserve liability (see s. 59) and cannot be charged [re *Irish Club Co.* (1906), W.N. 127].

Companies limited by guarantee and having a share capital are not common, since they offer no advantages over a company limited by shares in the usual way.

Unlimited companies are also far from common, since they furnish small attraction either to the ordinary trader or to the ordinary investor.

The vast majority of registered companies being companies limited by shares, it is not thought necessary in the following pages to refer specially to the other classes of companies. But it must be borne in mind that, unless the provisions of any particular section of the Act are expressly limited to any particular class or classes of companies, they are of general application. Thus s. 7 of the Act (as to alteration of memorandum) and s. 64 of the Act (as to the annual general meeting) apply to all the descriptions of companies which are authorised to register; whilst s. 65 (as to the statutory meeting) applies only to companies limited by shares, and s. 34 (as to keeping a colonial register) applies only to companies having a share capital, *i.e.* to companies limited by shares and also to guarantee companies and unlimited companies if they have a share capital.

Companies under the Act also fall into two classes, according as they are, or are not, private companies. The special position and privileges of a private company are dealt with in Chapter XXI.

Foreign Companies.

Companies incorporated outside the United Kingdom, which establish a place of business within the United Kingdom, are, though foreign companies, made subject to certain statutory requirements. These are contained in s. 274 of

the Act, as amended by the Companies (Particulars of Directors) Act, 1917.

Every such company must, within one month of the establishment of a place of business in the United Kingdom, file with the Registrar of Companies:—

(*a*) A certified copy of its charter, statutes, memorandum and articles, or other instrument constituting it or defining its constitution, and, if the instrument is not in English, a certified translation of it. ('Certified' means certified in the manner prescribed by the Board of Trade.)

(*b*) A list of its directors, with the particulars required by the Companies (Particulars as to Directors) Act, 1917 (see p. 122).

(*c*) The names and addresses of some one or more persons, resident in the United Kingdom, authorised to accept service of process, or of notices.

Notice of any alteration in any of the above must also be filed with the Registrar.

Such companies are also required to file annually with the Registrar such a statement in the form of a balance sheet as a company limited by shares must include in its annual summary, filed with the Registrar under s. 26 of the Act (see p. 85).

If the foreign company uses the word 'limited' as part of its name, it must (1) in every prospectus, inviting subscriptions in the United Kingdom for its shares or debentures, state the country in which it is incorporated; (2) conspicuously exhibit in every place where it carries on business in the United Kingdom its name and the country in which it is incorporated; (3) have its name and the country of its incorporation legibly mentioned on all bill-heads, letter paper, notices, advertisements, and other official publications of the company.

Failure to comply with any of the above requirements renders the company, its officers and agents, liable to penalties.

CHAPTER II

THE REGISTRATION OF COMPANIES

THE Registrar of Companies exercises in the matter of registration functions not purely ministerial. He is entitled to exercise his discretion in refusing to register a company by a name so nearly resembling the name of an existing company as to be calculated to deceive (s. 8; see also p. 12); he is entitled to refuse to register as a private company a company, the articles of which do not contain the provisions required by s. 121 as amended by the Companies Act, 1913. He also assumes the right to refuse to register in other cases, *e.g.* if the articles of a private company contain provisions as to share-warrants. His duty is to determine whether an association applying for registration is authorised to be registered under the Act. If all of its objects were obviously illegal, he would be bound to refuse registration; and if in such circumstances registration were obtained, the certificate could be cancelled [*Bowman* v. *Secular Society* (1917), A.C. at p. 349]. But he may be compelled by mandamus to register, if he improperly refuses registration [*R.* v. *Registrar of Companies*; ex p. *Bowen* (1914), 3 K.B. 1161].

Requirements.

It will be convenient to enumerate at once the essential requirements for the registration of a new company, which are as follows:

1. A memorandum of association must be prepared which must contain the particulars required by law (ss. 3–5).
2. The memorandum must be stamped as if it were a deed, and must be subscribed by at least seven persons, except in the case of private companies (see Chapter XXI), when two will suffice, each of whom must sign in the presence of, and have his signature attested by, at least one witness (ss. 2, 6).
3. Each subscriber of the memorandum must take at least one share and write opposite to his name the number of shares he takes (ss. 3–5).

4. If the memorandum is accompanied by articles, the articles must be printed and stamped as if they were contained in a deed, and signed by the subscribers to the memorandum, and be expressed in separate paragraphs numbered consecutively, and the signature of each subscriber must be in the presence of, and attested by, at least one witness. If there are no articles accompanying the memorandum, the new Table A, which is the model set of articles scheduled to the Companies (Consolidation) Act, 1908, will constitute the articles of the company (ss. 10–12). In the case of a private company, the articles must contain provisions (*a*) restricting the right to transfer its shares; (*b*) limiting the number of its members (exclusive of employees and ex-employees) to 50; (*c*) prohibiting any public issue of shares or debentures (s. 121 and Companies Act, 1913, s. 1).
5. The memorandum and the articles (if any) must be delivered to the Registrar (s. 15).
6. A statutory declaration by a solicitor engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the requirements of the Act, in respect of registration and of matters precedent and incidental thereto, must be produced to the Registrar (s. 17).
7. Except in the case of a private company, every person appointed a director by the articles, or named in the prospectus or statement in lieu of prospectus as a director or proposed director, must by himself or his agent, authorised in writing, sign and file a consent to act; and unless he has already signed the memorandum for a number of shares not less than the qualification (if any), sign and file a contract in writing to take from the company and pay for his qualification shares (if any); and a list of the persons who have consented to be directors of the company must be delivered to the Registrar by the applicant for registration (s. 72).
8. The prescribed fees must be paid to the Registrar of Companies (s. 244 and Table B, First Schedule). These will be found at p. 313.

As regards the above requirements, the particulars required by law to be contained in the memorandum of a company

limited by shares will be found on p. 10. The deed stamp which the memorandum and the articles are required to bear is in each case an impressed stamp of 10*s*. (see Appendix A).

Signatories. The names, addresses, and descriptions of the subscribers, or signatories, and of the witnesses to their signatures, must be fully and clearly set out.

Women, whether married or single, may be subscribers. Foreigners may sign, even though they be resident abroad [*Princess of Reuss* v. *Bos* (1871), L.R. 5 H.L. 176], and a subscriber may sign by an agent [re *Whitley Partners* (1886), 32 Ch. D. 337], though the Registrar may require evidence of the latter's authority to do so.

A signatory induced to sign by the misrepresentation of a promoter has no right to rescission against the company, seeing that the company did not then exist [*Metal Constituents, Lord Lurgan's Case* (1902), 1 Ch. 707].

Since the repeal of the Companies Act, 1867, s. 25, it would appear that the subscribers' shares need not necessarily be paid for in cash; for the general liability of a shareholder is to pay for his shares in money, or, with the company's consent, in money's worth [*Baglan Hall Colliery Co.* (1870), 5 Ch. App. 346].

No limit is imposed by the Act to the number of shares in a company which may be held by a single member, and nothing in the Act requires that the subscribers to the memorandum shall take a substantial interest in the undertaking; a company may therefore consist of one person holding all the shares except six, which may be held for him by his nominees [*Salomon* v. *Salomon & Co.* (1896), A.C. 22]. It follows that in the case of a private company (see Chapter XXI), all the shares except one may be held by one person, and that the one share may be held by his nominee.

No formal allotment of shares to a signatory is necessary [*London & Provincial Coal Co.* (1877), 5 Ch. D. 525].

Certificate of Incorporation. 'On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited' [s. 16, subs. (1)].

'From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part

of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act' [s. 16, subs. (2)].

The duty of the Registrar, then, is to register the memorandum (with the accompanying articles, if any) and to issue a certificate of incorporation. The date of the certificate marks the beginning of the existence of the new corporate body, thenceforth a legal entity distinct from the members composing it. A common seal is, it will be observed, an essential part of its equipment. The express power to hold lands is effective to exclude the operation of the Mortmain Acts. Associations not for profit may not, however, hold more than two acres of land without the licence of the Board of Trade (s. 19).

The Registrar's certificate of incorporation 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 authorised to be registered and duly registered' under the Act [s. 17, subs. (1)] [see *Hammond* v. *Prentice*, (1920), 1 Ch. 201].

CHAPTER III

THE MEMORANDUM OF ASSOCIATION

THE memorandum of association, in the case of a company limited by shares, must state the following:

'(i) The name of the company, with "Limited" as the last word in its name;

'(ii) The part of the United Kingdom, whether England, Scotland or Ireland in which the registered office of the company is to be situate;

'(iii) The objects of the company;

'(iv) That the liability of the members is limited;

'(v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount' (s. 3).

In the case of a company limited by guarantee, clauses (i) to (iv) are identical with those of a company limited by shares, whilst clause (v) must state 'that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount,' *e.g.* £1. If a company limited by guarantee has a share capital, there will be a sixth clause identical in form with clause (v) of a company limited by shares (s. 4).

In the case of an unlimited company, whether or not it has a share capital, the memorandum need only have three clauses, which are the same as clauses (i) without the word 'Limited,' (ii) and (iii) of the memorandum of a company limited by shares (s. 5).

Nature of Memorandum.

The memorandum of association is the charter of the company and defines its powers, whilst the articles of association form a code of regulations for the internal management of the company. The following extracts from the

judgments of the House of Lords in *Ashbury Railway Carriage Company* v. *Riche* (1875, L.R., 7 H.L. 653), show clearly the functions of the memorandum.

Lord Cairns, L.C., says: 'I will ask your Lordships to observe . . . the marked and entire difference there is between the two documents which form the title-deeds of companies of this description—I mean the memorandum of association on the one hand and the articles of association on the other hand. With regard to the memorandum of association, your Lordships will find, as has often already been pointed out, . . . that that is, as it were, the charter, and defines the limitation of the powers of a company to be established under the Act. With regard to the articles of association, those articles play a part subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation 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. With regard, therefore, to the memorandum of association, if you find anything which goes beyond that memorandum or is not warranted by it, the question will arise whether that which is so done is *ultra vires*, not only of the directors of the company, but of the company itself. With regard to the articles of association, if you find anything which, still keeping within the memorandum of association, is a violation of the articles of association, or in excess of them, the question will arise whether that is anything more than an act *extra vires* the directors but *intra vires* the company.'

Lord Selborne, in the same case, says: 'I only repeat what Lord Cranworth' [in *Hawkes* v. *Eastern Counties Railway* (1855), 5 H.L.C. 331], 'stated to be settled law, when I say that a statutory corporation, created by Act of Parliament for a particular purpose, is limited, as to all its powers, by the purposes of its incorporation as defined in that Act. The present and all other companies incorporated by virtue of the Companies Act of 1862 appear to me to be statutory corporations within this principle. The memorandum of association is under that Act their fundamental, and (except in certain specified cases) their unalterable law; and they are incorporated only for the objects and purposes expressed in that memorandum. The object and policy of those

provisions of the statute, which prescribe the conditions to be expressed in the memorandum, and make these conditions (except in certain points) unalterable, would be liable to be defeated, if a contract under the common seal, which on the face of it transgresses the fundamental law, were not held to be void, and *ultra vires* of the company, as well as beyond the powers delegated to its directors or administrators. It was so held in the case of the East Anglian Railway Co.' [see *East Anglian Railway* v. *Eastern Counties Railway* (1852), 11 C.B. 775], 'and in the other cases upon Railway Acts, which cases were approved in this House in Hawkes' case' [see above], 'and I am unable to see any distinction for this purpose between statutory corporations under Railway Acts, and statutory corporations under the Joint Stock Companies Act of 1862.'

There is a distinction therefore between a common law corporation constituted by royal charter, and a statutory corporation, such as a railway company created by its special Act or a company incorporated under the Companies Acts. The former 'has *primâ facie* . . . the power to do with its property all such acts as an ordinary person can do, and to bind itself to such contracts as an ordinary person can bind himself to'; the latter 'is made up of persons who can act within certain limits, but in order to ascertain what are the limits, we must look to the statute. The corporation cannot go beyond the statute, for the best of all reasons, that it is a simple statutory creature' [see per Bowen, L.J., in *Baroness Wenlock* v. *River Dee Co.* (1883), 36 Ch. D., at p. 675 (*n*)].

Name of Company.

As regards the name of a company, s. 8 (i) of the Act provides that 'a company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in course of being dissolved and signifies its consent in such manner as the Registrar requires.'

In deciding upon the name of a company, it must not be forgotten that the written consent of the Home Secretary must be obtained to the use of such words as 'Royal,' 'Imperial,' 'King,' 'Crown,' &c., as part of the name.

The Registrar is bound to exercise a judicial discretion in determining whether or not a name is calculated to deceive, and, unless his discretion has been wrongly exercised, the Court will not interfere [*R.* v. *Registrar of Companies* (1912), 3 K.B. 23]. The registration of the name may be prevented by injunction [*Hendricks* v. *Montagu* (1881), 17 Ch. D. 638],

or the use of the name after registration may be restricted by injunction [*Huntley & Palmer* v. *Reading Biscuit Co.* (1893), 9 Times L.R. 462]. And the Court will grant relief to a foreign company for a colourable imitation of its name in this country, even where the foreign company has no agency in England [*Panhard et Levassor* v. *Panhard Levassor Motor Co.* (1901), 2 Ch. 513. See also *Tussaud* v. *Tussaud* (1890), 44 Ch. D. 678; *Brinsmead & Sons* v. *Brinsmead*, 12 Times L.R. 631, referred to in *re T. E. Brinsmead & Sons* (1897), 1 Ch., at p. 413; *Fine Cotton Spinners* v. *Cash* (1907), 2 Ch. 184; *Kingston Miller & Co.* v. *Thomas Kingston & Co.* (1912), 1 Ch. 575].

A limited company must also have its name (which, of course, includes the word 'limited') (i) painted or affixed conspicuously, in letters easily legible, on the outside of every office or place in which its business is carried on; (ii) engraven in legible characters on its seal; (iii) mentioned in legible characters in all the company's notices, advertisements, and other official publications; in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company; and in all bills of parcels, invoices, receipts, and letters of credit of the company [s. 63 (1)]. There are penalties for default; and further, as regards any bill of exchange, promissory note, cheque, or order for money or goods, 'any director, manager, or officer of a limited company, or any person on its behalf,' who signs or authorises the signing of any such document in which the company's name is not mentioned, will, if the company fails duly to pay the same, be personally liable to the holder [s. 63 (2) (3)]. The holder of an order for goods means the person to whom the order is given, whether he be in physical possession of it or not [*Civil Service Co-operative Society* v. *Chapman* (1914), W. N. 369].

The painting or affixing of the company's name on any vehicles probably amounts to a notice or advertisement within the meaning of s. 63.

The provision that the name of the company must be mentioned in all bills of exchange, &c., has been strictly construed, so that, if the name is incorrectly given, the person signing will be personally liable [*Atkins & Co.* v. *Wardle* (1889), 58 L. J. Q.B. 377; *Nassau Steam Press* v. *Tyler* (1894), 70 L. T. 376]. But it has been held that the use of the abbreviation 'Ltd.' for 'Limited' is sufficient [*Stacey* v. *Wallis* (1912), 28 T. L. R. 209]; and the acceptors of a bill of exchange will not be liable, although there is no correct

statement of the company's name by them, but only by the drawers (same case).

A director signing must state on the face of the document that he is acting for the company [see *W. & T. Avery* v. *Charlesworth* (1914), 31 T. L. R. 52]. Otherwise he will be personally liable, though the company's seal is affixed [*Dutton* v. *Marsh* (1871), L.R. 6 Q.B. 361; but see *Chapman* v. *Smethurst* (1909), 1 K.B. 927]. Some such form of signature as 'For the X. Company, Limited, John Smith, Director,' should be used.

Registered Office. As regards the registered office, notice of its situation, and of any change therein, must be given to the Registrar (s. 62). But the company cannot remove its registered office from England to Scotland or Ireland, or *vice versâ*, although it may remove it from one part of the country specified in the memorandum to another part. Wales is included in England for the purposes of clause 2 of the memorandum; thus, the case of a company whose registered office is at Swansea, it should be described in the memorandum as situate in England.

The registered office is the place at which documents must be served on the company, and they may be so served either by leaving them at, or sending them by post to, the registered office (s. 116). The word 'document' includes summons, notice, order and other legal process (s. 285). A summons in criminal proceedings, as well as writs in civil proceedings, must be served at the registered office, as required by the section, and not at a branch establishment [*Pearks* v. *Richardson* (1902), 1 K.B. 91].

A verbal notice to the company, *e.g.* of the withdrawal of an application for shares, is good [*Wilson's case* (1869), 20 L.T. 962]. In the absence of the secretary, such notice may be given at the registered office to a clerk in charge, and is then a communication to the company [*Truman's case* (1894), 3 Ch. 272].

Objects. As regards clause (iii), the objects clause, the objects of the company must not include any that offend either against particular statutes or against the general law, *e.g.* a company cannot give itself power to purchase its own shares, for by so doing it reduces its capital without leave of the Court contrary to the provisions of the Act.

It is now the practice to state very fully and clearly the objects of the company. It must be remembered that the powers of a company to transact business are limited to the objects and purposes specified in the memorandum. Everything which is at variance with, or goes beyond the scope of,

the memorandum, is *ultra vires* the company, and absolutely void and incapable of ratification, although all the shareholders may assent to it [*Ashbury Railway Carriage Co.* v. *Riche* (1875), L.R. 7 H.L. 653].

It is better therefore to err on the side of saying too much rather than too little. A company whose powers are too limited will experience great inconvenience in extending them by means of reconstruction, or by alteration of the memorandum under s. 9 (see p. 17).

General words in the memorandum are held to be auxiliary only to the primary objects of the company. It must be remembered that the Court will, in interpreting the memorandum, endeavour to find out what is the primary object of the company, and will verify its conclusion by reference to the prospectus [*re German Date Coffee Co.* (1882), 20 Ch. D. 169; *re Amalgamated Syndicate* (1897), 2 Ch. 600].

A company may have several objects, but they must be clearly defined, and not implied by stringing together a series of vague powers. Notwithstanding a paragraph in the objects clause to the effect that each paragraph is to be in no way restricted by other paragraphs, yet, where the main object is clearly set out in one paragraph, the others must be taken to be ancillary, giving wide powers to carry out that object, but not enabling the company to carry on any kind of business it likes [*Stephens* v. *Mysore Reefs* (1902), 1 Ch. 745; see also *Pedlar* v. *Road Block Gold Mines* (1905), 2 Ch. 427, distinguishing the former case]. A paragraph, to the effect that each of the detailed objects is to be deemed an independent substantive object, must be given effect to; but there is grave doubt whether a memorandum so drawn is a compliance with the Act, and whether the Registrar ought not to refuse to register it [*Cotman* v. *Brougham* (1918), A.C. 514].

The objects clause usually includes the following words: 'To do all such other things as are incidental or conducive to the attainment of the above objects, or any of them.' Such words have been considered of importance [*Simpson* v. *Westminster Palace Hotel* (1860), 8 H.L.C. 712; *Johns* v. *Balfour* (1889), 1 Meg. 191]. But generally speaking they are used to exclude all doubt as to whether a company has power to do such things, and are not 'meant to authorise a company to do any other things than those which have been previously declared to be the "objects" for which the company is established, but to prevent failure in accomplishing those objects by reason of any merely verbal or accidental error or uncertainty in the expressions applicable to those objects'

[per Bacon, V.C., *London Financial Association* v. *Kelk* (1884), 26 Ch. D. 107, at p. 138]. In *Evans* v. *Brunner, Mond & Co.* [(1921), 1 Ch. 359] these words were held to justify a grant out of the funds of a chemical manufacturing company to universities and other scientific institutions, for the furtherance of scientific education and research.

Although, as has been said above, it is wiser to state fully the objects of the company, and to leave as little as possible to implication, yet a company has undoubtedly an implied power to do anything that may be reasonably necessary to attain those objects. In other words, a commercial corporation has such powers as are expressly or impliedly warranted by its constitution [*Kingsbury Collieries* (1907), 2 Ch. 259]. What may be 'reasonably necessary' depends on the particular objects of the company, *e.g.* the directors of an ordinary trading company have an implied power to borrow for the purposes of the business of the company [*General Auction Co.* v. *Smith* (1891), 3 Ch. 432]. This implied power is strengthened by the inclusion of general words such as those quoted above, but any words which attempt to give a company power to do anything 'that may appear advantageous' are useless and misleading, and should never be employed.

As regards the limitation of liability clause, s. 61 of the Act provides that a company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing directors.

As regards the share capital, this is dealt with in Chapter V, together with the various methods by which the capital clause can be altered.

Alterations to Memorandum.

Although the memorandum of association is *primâ facie* unalterable, a considerable number of alterations are permitted by the Act.

A company may change its name by passing a special resolution, and obtaining the written approval of the Board of Trade, whereupon the new name is substituted in the register at Somerset House for the old name and an altered certificate of incorporation issued (s. 8). This approval will not usually be granted unless the new name affords some indication of the business carried on. It is therefore desirable to submit the proposed name to the Board of Trade before passing the special resolution. The change of name does not in any way affect any rights or obligations of the company, or render defective any legal proceedings by or against the company.

A company may also in certain circumstances alter its objects clause by passing a special resolution, and presenting a petition to the Court for confirmation of the alteration, when the Court may confirm the alteration, on such terms and conditions as it thinks fit, after being satisfied that sufficient notice has been given to debenture-holders and to persons whose interests will, in the opinion of the Court, be affected by the alteration, and that creditors entitled to object have either consented, or been paid, or that their debts have been secured. The matter is dealt with in s. 9 of the Act.

These alterations in the objects clause may only be made so far as they are required to enable the company:

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum.

The alteration contemplated by (*a*) is one which will leave the business of the company substantially what it was before [re *Cyclists' Touring Club* (1907), 1 Ch. 269].

As a condition of confirming alterations in the objects of a company, the Court has, whilst sanctioning additional objects, required the insertion of a clause to the effect that no such additional objects shall be undertaken, except as a subsidiary object, without the sanction of a special resolution of the company [*John Brown & Co.* (1914), 84 L.J. Ch. 245]

Assuming that the Court has jurisdiction, all that it has to decide is whether the alteration is fair and equitable as between the members of the company; it is not concerned to consider the wisdom or desirability of the proposed alteration [*Jewish Colonial Trust* (1908), 2 Ch. 287].

CHAPTER IV

ARTICLES OF ASSOCIATION

WITH the memorandum, there may, in the case of a company limited by shares, and there must in the case of a company limited by guarantee or unlimited, be registered articles of association, signed by the subscribers and prescribing regulations for the company (s. 10).

Table A. In the case of a company limited by shares, registered on or after April 1, 1909, if no articles are registered, the regulations contained in Table A, in the first schedule to the Companies (Consolidation) Act, 1908, are, so far as they are applicable, the regulations of the company. Many existing companies still have as articles some modified form of the original Table A of 1862. Others, registered on or after October 1, 1906, but before April 1, 1909, have some modified form of the Revised Table A of 1906. This latter Table A is for the most part the same as the current Table A, contained in the first schedule to the Consolidation Act.

Table A is a model set of articles, which can be adopted, modified or rejected, as the company or its promoters may please. It has been held that, the original Table A being part of the Companies Act, 1862, placed there by the legislature, no transaction which conforms to its provisions can be *ultra vires* [see *Lock* v. *Queensland Mortgage Co.* (1896), A.C. 461]. And the same principle must apply to the revised Table A of 1906, and the present Table A. The regulations contained in Table A (as well as any other articles) can be altered by a special resolution passed by the company (see p. 24). Table A may be altered by the Board of Trade from time to time, but the last mentioned alterations shall not affect any company registered before the date of such alteration (s. 118).

Table A, however, does not suit the requirements of all companies. Large companies continue to have special articles of their own, and exclude Table A entirely; small companies may adopt Table A with or without modification;

but generally speaking it is more convenient for a company to have articles of its own, and the additional expense is small. The danger of hybrid articles, *i.e.* Table A with modifications, is well illustrated by the cases of *Fisher* v. *Black & White Publishing Company* (1901, 1 Ch. 174), and *R. Paterson and Sons* v. *Paterson* (1916, W.N. 352).

Contents of Articles.

Articles of association contain for the most part the same provisions, but it may be found useful to notice some of the chief points which require special attention.

The articles should provide for the purchase by the company of the business it is formed to acquire, whether by entering into an agreement already prepared but not executed, or by adopting an agreement already made between the vendors and certain persons as trustees for the proposed company. If any of the vendors are also directors, they should be protected.

Provision should be made for a minimum subscription and for the payment of commissions for underwriting.

A limit should be placed on the borrowing powers of the company, *e.g.* that the amount borrowed must not exceed the amount of the nominal capital, except with the sanction of a general meeting.

The length of notice required for a general meeting, the quorum, and the conditions under which a poll may be demanded, should be specified; and the voting powers of members, whether on a sliding scale or otherwise, must be carefully arranged, so as to prevent the control of the company falling into the wrong hands. Regulations as to proxy voting should be made.

It is convenient to provide for class meetings of shareholders, giving power for a special majority of a class to bind the class, so that variations may, if necessary, be made in the respective rights of the different classes.

Full provisions as to the number, appointment, qualification, remuneration, disqualification, retirement, and removal of directors should be made, and, if necessary, regulations as to the appointment, &c., of one or more managing directors. Where a director is to be appointed by a general meeting, it should be provided that due notice of intention to propose any candidate other than one recommended by the board must be given to the company. The powers of the directors should be specified, and, in most cases, ample powers of delegation given. Proceedings at board meetings may be fully regulated.

It is usual to insert a provision empowering a director to contract with the company, subject to the restrictions that he

must disclose his interest and may not vote in respect of such contract. A directors' indemnity clause against liabilities incurred in the conduct of the company's business, other than liabilities due to the directors' wilful act or default, is often useful.

Provisions as to accounts and audit are, in practice, usually inserted as a reminder of the provisions of the statutory law (ss. 112, 113). Express provision should be made for sending a copy of the report and balance sheet to each shareholder.

It is desirable to give the board power to form a reserve fund, subject to whatever special conditions may be advisable in each case.

Amongst the regulations as to payment of dividends, it should be provided that interim dividends may be paid, that no larger dividend may be declared than is recommended by the board, and that no dividend shall bear interest against the company.

Articles of association commonly contain many clauses which simply reproduce statute law. Such clauses are of course surplusage, although, for the sake of completeness, it is desirable to insert them.

For the Stock Exchange requirements as to articles of association, see p. 332.

Nature of Articles.

It may be pointed out that the word 'regulations,' where it occurs in the articles of a company, may or may not be equivalent to 'articles' [*Quin & Axtens* v. *Salmon* (1909), A.C. 442]. In other words, a company may have 'regulations' other than its articles; these may be constituted by minutes of the board, or by resolutions carried in general meeting. The articles form a code of regulations for the internal management of the company, whilst the memorandum is the charter of the company and defines its powers. The respective functions of the two documents are clearly described in the extract from the judgment of Lord Cairns, in *Ashbury Railway Carriage Company* v. *Riche* (1875, L.R. 7 H.L. 653), cited on p. 11.

The provisions of the articles cannot, therefore, extend the powers of the company. It is useless, for example, for an article defining the powers of directors to clothe them with a power which the company itself does not possess. Thus, to take a simple instance, if a company, which, not being a trading company, has no implied power to borrow money, has not in its memorandum taken a power to borrow, it is clear that an article giving the directors power to borrow will be wholly inoperative. Again, if the memorandum of a company defines the rights attaching to different classes

of shares, and itself contains no provisions for the alteration of those rights, whether by reference to the articles of association or otherwise, it is useless for the articles to provide that those rights can be altered by special resolution, or by any specified majority of the shareholders.

Neither can the articles deprive members of rights given to them by statute, and therefore a provision in the articles that, in case of a reconstruction, dissenting shareholders shall not have the rights given them by s. 192 is invalid [*Payne* v. *Cork Co.* (1900), 1 Ch. 308]. Similarly, shareholders having in certain circumstances a statutory right to present a winding-up petition, an article purporting to deprive them of that right is invalid [*Peveril Gold Mines* (1898), 1 Ch. 122]. In the same way an article seeking to take away the right of shareholders to requisition a meeting, or to inspect the company's books, would be wholly inoperative.

Legal Effect of Articles.

The legal effect of articles of association, as a whole, requires to be clearly understood. S. 14 (1) of the Act provides that 'the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act,' and this section as judicially interpreted is the chief source of information on the point. The questions which require to be considered may be stated as follows: (1) What is the effect as between the company and the members? (2) What is the effect as between the members themselves? (3) What is the effect as between the company and outsiders?

Company and its Members.

(1) As between the company and its members, it is clear that the members are bound to the company, and a series of decisions has firmly established the proposition that the company is similarly bound to the members. It is to be observed that the relationship of the member to the company is more than a simple contractual relation. He is bound as though he had covenanted with the company under seal. The practical result is that the company can sue a member to enforce the obligations of the member to the company under the articles. Thus the company can sue a member for calls, or to enforce a lien, or for many other purposes. Similarly, a member can sue the company if the company acts in contravention of the articles, *e.g.* in forfeiting shares without

complying strictly with the relevant terms of the articles. The rights, however, in respect of which a member can sue the company are the rights merely with which he is endowed as a member of the company. When, although a member, he acquires rights in another capacity, even as a director, other principles apply (see 3, below).

Members and Members. (2) As between the members themselves the position appears to be different. It is true that in *Wood* v. *Odessa Waterworks Company* (1888, 42 Ch. D. 636), Stirling, J., said that the articles of association of a company constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other. But the words of the section hardly bear the construction that each shareholder has contracted with every other shareholder, and Lord Herschell, in *Welton* v. *Saffery* (1897, A.C. at p. 315), after stating the words of the section, went on to say: 'The articles thus become in effect a contract under seal by each member of the company and regulate his rights. They cannot, of course, diminish or affect any liability created by the express terms of the statute; but, as I have said, the statute does not purport to settle the rights of the members *inter se*; it leaves these to be determined by the articles (or the articles and memorandum together), which are the social contract regulating those rights. I think it was intended to permit perfect freedom in this respect. It is quite true that the articles constitute a contract between each member and the company, and that there is no contract in terms between the individual members of the company; but the articles do not any the less, in my opinion, regulate their rights *inter se*. Such rights can only be enforced by or against a member through the company, or through the liquidator representing the company; but I think that no member has, as between himself and another member, any right beyond that which the contract with the company gives.' The point, then, is that, there being no contract constituted by the articles between one member and another, although their mutual rights are regulated by the articles, one member cannot in general sue another in respect of a violation of those rights, but the company must do it for him.

Company and Outsiders. (3) As between the company and outsiders the articles do not constitute any contract whatever. And this seems to be true, even in the case of a member in relationships with the company arising otherwise than purely through membership. It was long ago held that where the articles of a company provided that the preliminary expenses should be paid by

the company, this gave the promoter no right whatever to recover them from the company [*Melhado* v. *Porto Alegre Railway Company* (1874), L.R. 9 C.P. 503]. The effect of the article was merely an agreement by the company with each individual shareholder, that the company would pay the preliminary expenses; and if the company failed to do so there was no breach of contract with the promoter, but only with the shareholders, who were not damnified. Similarly, in *Eley* v. *Positive Life Assurance Company* (1876, 1 Ex. D. 88), there was an article providing that the plaintiff should be employed for life as solicitor to the company and should only be removable for misconduct. He acted for some time, and then the company discontinued the employment. It was held that he could not sue the company. Lord Cairns, in the Court of Appeal, stated the effect of the article as being that, the articles being an agreement *inter socios*, it amounted to an agreement between the parties to it to employ the plaintiff. This being an agreement to which the plaintiff was in no way a party, he had no right of action upon it. 'This article,' he says, 'is either a stipulation which is binding on the members or else a mandate to the directors; in either case it is a matter between the directors and shareholders and not them and the plaintiff.' Lord Cairns meant, apparently, that the contract was between the company and each individual member, and also between each individual member and each of his fellow members; but, in view of Lord Herschell's words in *Welton* v. *Saffrey* (mentioned on p. 22), it appears that the latter of these two elements must strictly be excluded. The principle of the decision is not, however, affected by the exclusion.

Appointment under the Articles.

The hardship of this decision is more apparent than real. If a man is appointed by the articles secretary or solicitor of a company, there is, it is true, no binding contract by the company or the members to employ him as such. The prudent and the usual course is for a contract to be entered into between the company and the individual it is desired to employ, wholly apart from the articles, and then his position is clear. Even if no contract has in fact been entered into, and a person appointed by the articles has in fact been employed as, say, secretary, the view taken by the Courts is that, although the articles do not constitute a contract, it can be ascertained from them upon what terms he is serving. Or, to put the matter in another way, if the company and the secretary act as contemplated by the clause, the Courts will treat them as though they had

entered into a contract in terms of the clause. There have been many cases in which this principle has been acted on, and in some of them the individual was a director.

Articles of association are public documents, and a person dealing with a company will be deemed to know and understand the contents of the articles [*Griffith* v. *Paget* (1877), 6 Ch. D. 511]; but he is not bound to do more than make sure that the proposed dealing is not inconsistent with the company's regulations. 'If the directors have power and authority to bind the company but certain preliminaries are required to be gone through on the part of the company before that power can be duly exercised, then the person contracting with the directors is not bound to see that all these preliminaries have been observed. He is entitled to presume that the directors are acting lawfully in what they do' [per Selwyn, L.J. *Land Credit Co. of Ireland* (1869), 4 Ch. App. at p. 469].

Interpretation. The interpretation of articles is a matter which involves the most careful attention. To discover the true meaning of an article, it is frequently necessary to look, not only at the other articles of the same group, but also at the whole set. A striking instance of this is to be found in the case of *Moseley* v. *Koffyfontein Mines* (1910, 2 Ch. 382, and, on appeal, 1911, 1 Ch. 73), where the decision of the Court of first instance as to the construction of an article, was reversed by the Court of Appeal, on consideration in connection with the article in question of another article which does not appear to have been brought to the notice of the Court below. See also *Adair* v. *Old Bushmills Distillery Co.* (1908, W.N. 24).

In respect of matters which the Act requires to be stated in the memorandum, when there is an inconsistency between the memorandum and the articles, the memorandum must prevail [*Wedgwood Coal and Iron Co., Anderson's Case* (1878), 7 Ch. D. 75]. In respect of matters which the Act does not require to be stated in the memorandum, if there is an ambiguity, the articles may be permitted to explain the memorandum [*Capital Fire Insurance Association* (1882), 21 Ch. D. 209].

Alterations. Reference has been made above to the power of alteration by a company of its articles. This power, which is of the widest description, is conferred by s. 13 (1) of the Act, which provides that: 'Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if

originally contained in the articles, and be subject in like manner to alteration by special resolution.'

The liability to alteration is a statutory incident annexed to the articles of a company, and a person who becomes a member of a company must be taken to know that the continued existence of any articles upon which he relies upon taking up membership is dependent upon the will of the statutory majority required to effect an alteration. Accordingly no shareholder can be absolutely safe unless by some means or other he has secured the control of three-fourths of the voting power. Hence the provisions as to voting powers, which sometimes find their way into the articles of companies, *e.g.* that the holders of certain shares shall have four votes for each share held by them, and the holders of the remaining shares one vote for each share.

It was held as long ago as 1879 that a company cannot contract itself out of this power. In *Walker* v. *London Tramways Company* (12 Ch. D. 705), a particular article dealing with the reserve fund was, by its own provisions, declared to be unalterable, but the Court held that the article was to that extent invalid.

As illustrating the extent of the power of alteration, reference may be made to *Andrews* v. *Gas Meter Company* (1897, 1 Ch. 361), where it was held that a company, having no authority under its memorandum or articles to create any preference between different classes of shares, may alter its articles so as to authorise the issue of preference shares by way of increase of capital; to *James Colmer* (1897, 1 Ch. 524), which shows that voting rights conferred by the articles can be altered without restriction; to *Allen* v. *Gold Reefs* (1900, 1 Ch. 656), where it was held that an alteration made *bonâ fide* in the interests of the company as a whole was valid, even though it retrospectively affected existing rights; and to *British Equitable Assurance Company* v. *Baily* (1906, A.C. 35), where a policyholder in the participating branch of an assurance company having power to alter its by-laws, who had taken his policy on the faith of a prospectus which stated the practice of the company as to the distribution of profits, was held to be validly compelled, by an alteration in the by-laws, to submit to a distribution of profits on a reduced basis. None the less, a company cannot by altering its articles justify a breach of contract [same case; *British Murac Syndicate* v. *Alperton Rubber Co.* (1915), 2 Ch. 186].

It has been pointed out above that alterations of the articles purporting to enlarge the powers of a company, or to deprive the members of a statutory right, are invalid. There

is another limitation on the power of alteration of articles. Bearing in mind that any alteration of articles involves the binding of a minority by a majority, it must not be forgotten that the power must be exercised *bonâ fide* for the benefit of the company as a whole, and no fraud on, or oppression of, the minority, or want of good faith on the part of the majority, will be permitted. A fictitious case, put by Buckley, L. J., in his well-known book, well illustrates this. 'Say,' he says, 'that there are one thousand shares of £10 each ranking equally for dividend, a special resolution that shares 1 to 900 shall for the future have twice as much dividend as shares 901 to 1000 must be impossible as against shares 901 to 1000.' It is obvious that it is theoretically possible for the statutory majority of shareholders to pass such a resolution, but it is equally clear that any Court would restrain the company from acting upon the resolution, inasmuch as it would result in grossly unfair and oppressive treatment of a helpless minority. Such a resolution would not be passed *bonâ fide* for the benefit of the company as a whole. In *Brown* v. *British Abrasive Wheel Co.* (1919, 1 Ch. 290) a proposed alteration was restrained by the Court as oppressive to the minority; in *Sidebottom* v. *Kershaw Leese & Co.* (1920, 1 Ch. 254) an alteration introducing the principle of compulsory transfer, in the case of a shareholder competing with the company, was held to be made *bonâ fide* and was permitted. In *Dafen Tinplate Co.* v. *Llanelly Steel Co.* (1920, 2 Ch. 124) an alteration introducing a general power to buy out any member, with one specified exception, at pleasure, was held invalid, as not being genuinely for the benefit of the company as a whole.

A statutory restriction on the power of a company to alter its articles was imposed by the Companies (Foreign Interests) Act, 1917, s. 1 of which in effect prohibits the alteration of any article, or regulation, designed to limit the interest of, or power of control by, aliens, without the written consent of the Board of Trade.

A secretary should always make careful note of matters in which the articles of his company appear to be defective; and the opportunity should be taken, when meetings of the company are required for other purposes, to improve the articles and bring them up-to-date.

A company is bound, under penalty, to send to any member, on his request and on payment by him of a sum not exceeding one shilling, a copy of the memorandum and of the articles, if any (s. 18).

CHAPTER V

CAPITAL AND SHARES

As has been seen in Chapter III, a clause (commonly the fifth) in the memorandum of association of a company limited by shares, must state 'the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount' (s. 3).

The amount of capital with which a company is registered, or to which that amount is subsequently increased, is generally called the nominal capital, or the authorised capital, of the company. The phrases 'issued capital' and 'paid up capital' must be distinguished, since neither of these is necessarily identical in amount with the nominal capital, or with the other. Thus a company may have a nominal capital of £100,000, divided into 100,000 shares of £1 each. If 60,000 shares have been issued and 15*s*. per share has been paid on them, the issued capital is £60,000 and the capital paid up £45,000.

The capital clause, being one of the conditions of the memorandum, can only be altered in the mode and to the extent for which express provision is made in the Act (s. 7). The alterations so provided for are increase of capital, consolidation of shares, conversion into stock and re-conversion into shares, subdivision of shares, cancellation of shares (s. 41), reorganisation of capital (s. 45), and reduction of capital (s. 46).

Increase of Capital.

As regards increase of capital, a company may, if authorised by its articles, increase its capital by the issue of new shares of such amount as it thinks expedient, Such increase need not be authorised by the memorandum, nor is a power therein effective [re *Dexine Co.* (1903), W.N. 82], but it must be authorised by the articles, and if the articles as originally framed do not sanction such increase they must be altered by special resolution before it can be effected. 'The statute does not prescribe any particular form in which this' (*i.e.* the increase of capital) 'is to be done' [per Lord Selborne, L.C., *Campbell's Case* (1873), 9 Ch. App. 1, at p. 21]. The articles may require a special or extraordinary resolution,

or may give the directors the power of increasing the capital [see *Mosely* v. *Koffyfontein Mines* (1911), 1 Ch. 73; 1911 A.C. 409] with or without the sanction of a general meeting. If the articles do not require a special or extraordinary resolution, an ordinary resolution is all that is necessary. The Stock Exchange require the power to be vested in the company in general meeting. Where a resolution was passed giving the directors power to increase the capital by £5,000,000, and they resolved to exercise the power to the extent of £2,800,000, it was held that duty was payable on the whole £5,000,000 [*Attorney-General* v. *Anglo-Argentine Tramways* (1909), 1 K.B. 677].

A form of resolution will be found on p. 131.

Every copy of the memorandum of association issued after the date of the alteration must be altered accordingly.

Notice of any increase in the capital beyond the registered capital must be given to the Registrar within fifteen days from the date of the passing of the resolution by which such increase has been authorised. Duty must be paid on the additional capital (Sched. I, Table B). See p. 315.

Preference shares may be issued by way of increase of capital unless forbidden by the memorandum [*Andrews* v. *Gas Meter Co.* (1897), 1 Ch. 361].

The shares in the increased capital must not be created to prejudice the rights fixed by the memorandum attaching to the different classes of shares into which the original capital of the company is divided [*Ashbury* v. *Watson* (1885), 30 Ch. D. 376]. The memoranda, however, of most modern companies give powers which permit of this being done.

Consolidation. As to consolidation, a company may, if authorised by its articles, consolidate and divide all or any of its share capital into shares of larger amount than its existing shares. If the regulations of the company do not authorise consolidation, a special resolution is necessary, but two special resolutions, one to alter the articles and the other to authorise the consolidation, need not be passed; one will suffice [*Campbell's Case* (1873), 9 Ch. App. 1]. Notice of the consolidation must be given to the Registrar (s. 42). Consolidation of shares, followed by subdivision of the same shares, may be effected by one and the same resolution [*North Cheshire Brewery Co.* (1920), W.N. 149].

Conversion and re-conversion. A company can only convert all or any of its paid-up shares into stock, and reconvert that stock into shares of any denomination, if it is authorised by its articles to do so. Where the power is not so given, it is not necessary to have

the articles varied at two meetings, and the conversion authorised by two other meetings. A special resolution passed and confirmed in the usual way will suffice [*Campbell's Case* (1873), 9 Ch. App. 1]. Notice of the conversion of shares into stock must be given to the Registrar, as must also notice of reconversions (s. 42). After conversion and notice to the Registrar, all the provisions of the Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member instead of the number of shares (s. 43).

Stock. Stock differs from shares in this respect, 'that shares are not necessarily paid up.' 'Shares are not necessarily converted into stock as soon as they are paid up; they may exist either as paid up, or as not paid up shares. But as regards stock, that can only exist in the paid up state.' 'Shares in a company, as shares, cannot be bought in small fractions of any amount, fractions of less than a pound, but the consolidated stock of a company can be bought just in the same way as the stock of the public debt can be bought, split up into as many portions as you like, and subdivided into as small fractions as you please. . . . Independently of that, however, it possesses all the qualities of shares. It is, in fact, simply a set of shares put together in a bundle' [per Lord Hatherley, in *Morrice* v. *Aylmer* (1875), L.R. 7 H.L. 717, at pp. 724, 725].

Stock is ordinarily transferable in the same manner, as shares, but sometimes a minimum amount of stock is fixed, and fractions of £1 are not generally allowed to be dealt with. Stockholders have the same rights as regards dividends and voting as shareholders. Preference and other rights in respect of shares are not affected by their conversion into stock. Warrants to bearer may be issued in respect of stock (see p. 87).

Stock cannot be issued direct; shares must first be issued and then, when fully paid, may be converted into stock. But the direct issue of stock is an irregularity which after the lapse of a long time may be waived [*Home and Foreign Investment Corporation* (1902), 1 Ch. 72].

Subdivision. As regards subdivision, this power can only be exercised if the company is so authorised by its articles. The power must be exercised by special resolution [s. 41 (2)]. The shares of the company, or any of them, may be subdivided into shares of smaller amount, but the proportion between the amount paid and the amount, if any, unpaid on each

reduced share must be the same as in the case of the original share.

But the necessity of preserving, in the undivided shares, the due proportion of unpaid liability existing in the original shares may be avoided on a reorganisation of capital under s. 45 (see below) involving subdivision [*Vine & General Rubber Trust* (1913), 108 L.T. 709], or on a scheme of arrangement under s. 120 (see p. 180) involving subdivision [*Guardian Assurance Co.* (1917), 1 Ch. 431], or on a reduction of capital (see p. 31) involving subdivision [*Doloswella Rubber Estates* (1917), 1 Ch. 213], in all which cases some of the subdivided shares became fully paid, the whole of the previously existing unpaid liability falling on the remaining subdivided shares.

Cancellation. The power of cancellation of shares, which can only be exercised if the company is so authorised by its articles, applies only to shares which have not been taken or agreed to be taken. It is really a method of reducing the nominal capital without the sanction of the Court; but only unissued shares can be cancelled.

In the case of any of the alterations in the memorandum dealt with above, copies of the memorandum issued afterwards must contain the alteration [s. 41 (3)].

Reorganisation. The power of a company to reorganise its capital under s. 45 of the Act is limited to two methods of reorganisation, namely (*a*) the consolidation into one class of shares of different classes; and (*b*) the division of shares of one class into shares of different classes [*Palace Hotel* (1912), 2 Ch. 438; *Schweppes* (1914), 1 Ch. 322; *J. A. Nordberg* (1915), 2 Ch. 439]. No provision in the articles authorising reorganisation is necessary, but it is effected by the company passing a special resolution which is followed by a petition to the Court for confirmation.

Where, however, any preference or special privilege attached to any class of shares is to be interfered with, *e.g.* if preference and ordinary shares are to be consolidated into one class, there must, in order to bind the class, be a resolution 'passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed.' These words have been held to mean that a majority in number of the holders of the class, holding three-fourths in value of the class, must be present or represented at the meeting and approve the resolution [*Foucar & Co.* (1913), 29 T.L.R. 350]. A meeting must be

held to pass the resolution, as well as a meeting to confirm it; and proxies are permissible, where allowed by the articles at a general meeting (same case). It has also been held that this procedure is only applicable where preferential rights are determined by the memorandum, and not where they are determined by the articles [*Australian Estates* (1910), 1 Ch. 414].

Reorganisation under s. 45 is commonly resorted to in connection with reconstructions and schemes of arrangement (see Chapter XVIII).

Reduction. Reduction of capital is effected by the company, provided it is so authorised by its articles, passing a special resolution for the reduction, and then applying to the Court by petition for an order confirming the reduction (ss. 46, 47). The power to reduce may be exercised in any way whatever, although the Act particularises three ways, namely (*a*) by extinguishing or reducing the liability on any of its shares in respect of share capital not paid up; (*b*) either with or without extinguishing or reducing liability on any of its shares by cancelling paid-up capital which has been lost or is unrepresented by available assets; and (*c*) either with or without extinguishing or reducing liability on any of its shares, by paying off any paid-up share capital which is in excess of the wants of the company (s. 46).

In certain instances there is a practical reduction which can be effected without the sanction of the Court, *e.g.* by forfeiture of shares or by surrender (see pp. 77–79). Further, s. 40 provides for paying off paid-up capital out of accumulated profits, the paid-up capital being thereby decreased and the unpaid capital increased; such capital is, however, liable to be called up again. And where the articles of a company, as originally framed, or as altered by special resolution, authorise it, shares not taken or agreed to be taken may be cancelled, and the nominal capital thus reduced without application to the Court (s. 41; and see p. 30).

If the original articles do not give the power they must first be altered in the usual way by special resolution, and the special resolution for reduction subsequently passed [*Patent Invert Sugar Co.* (1886), 31 Ch. D. 166]. A power to reduce contained only in the memorandum is ineffective (re *Dexine Co.* (1903), W.N. 82]. The precise procedure to be adopted to effect a reduction depends upon whether or not the reduction involves either the diminution of liability in respect of unpaid capital, or the return to shareholders of paid-up capital. If either of these is involved, creditors are clearly affected and may object. But in the more

common case where paid-up capital has been lost, or is unrepresented by available assets, creditors are not prejudiced, and can only object if the Court so directs.

The petition is supported by affidavit evidence. An affidavit by the chairman of directors commonly sets out the history of the company, and the circumstances leading to the present position; whilst the secretary should depose to the due calling of the meetings of the company. In the case of capital lost or unrepresented by available assets, evidence of the loss should always be adduced [*Caldwell* v. *Caldwell* (1916), W.N. 70].

On confirmation by the Court of the reduction, a copy of the order of the Court, and an approved minute showing the amount of the reduced capital with its division into shares, must be produced to the Registrar for registration and the reduction only takes effect from registration (s. 51). Copies of the memorandum issued after the registration must embody the minute (s. 52).

In practice the company must, from the date of the presentation of the petition, or, in the cases where, as shown above, creditors are entitled to object, from the date of the confirmation of the special resolution, add to its name the words 'and reduced,' and use those words as part of its name until such date as the Court may fix (s. 48). One month from the date of the order confirming the reduction is the date commonly fixed.

Shares. We have seen that the memorandum must state the amount of share capital and the division thereof into shares of a fixed amount. S. 22 of the Act provides that 'the shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate,' and also that 'each share in a company having a share capital shall be distinguished by its appropriate number.'

Shares, being personal property, pass on death to the executor or administrator of the deceased in trust for the legatees or next of kin.

They are choses in action, and are therefore not within the order or disposition clause of Bankruptcy Act, 1883, s. 44 (now s. 38 of the Act of 1914) [*Colonial Bank* v. *Whinney* (1886), 11 A.C. 462]. For a discussion as to the precise nature of a share, and the interest which its possession gives to the shareholder in a company, see *Borland's Trustee* v. *Steel Brothers* (1901, 1 Ch. 279).

Classes of Shares. Shares may be divided into different classes, and the rights of each class may be defined by the memorandum or articles.

If defined by the memorandum, the rights conferred are unalterable [*Ashbury* v. *Watson* (1885), 30 Ch. D. 376]; except in the case of a scheme of arrangement under s. 120 [*Schweppes* (1914), 1 Ch. 322; *J. A. Nordberg* (1915), 2 Ch. 439], or reorganisation of capital under s. 45, or where the memorandum itself also authorises alterations [re *Welsbach Incandescent Co.* (1904), 1 Ch. 87].

If defined by the articles, or if the memorandum and articles are both silent on the subject, the rights are subject to alteration, effected in accordance with the articles, or by special resolution [*Andrews* v. *Gas Meter Co.* (1897), 1 Ch. 361.] And where the articles provide that the rights of a class of shareholders may be modified with the sanction of an extraordinary resolution passed at a meeting of the class, the Court will not interfere at the instance of a dissatisfied minority to prevent a proposed alteration of their rights, on the ground of oppression [*Last* v. *Buller & Co.* (1919), 36 T.L.R. 35; see also p. 26].

Shares may be divided into any number of classes, *e.g.* Preferred, Ordinary, 'A' Preference, 'B' Preference, and so forth.

The preferential right is generally in respect of capital and of dividend, but the right may be of any kind, *e.g.* in respect of voting power. These rights are entirely separate, and the possession, *e.g.* of preferential rights as to dividend, gives no similar right in the distribution of capital [*Simpson* v. *Palace Theatre* (1893), 69 L.T. 70].

Primâ facie where a preferential dividend is provided for it is cumulative [*Webb* v. *Earle* (1875), 20 Eq. 556]; *i.e.* a deficiency in one year can be paid out of the profits of a subsequent year before the ordinary shareholders receive anything; but if it is provided by the memorandum that the holders of preference shares shall be entitled out of the net profits of each year to a preferential dividend at a certain rate, then such dividend is not cumulative [*Staples* v. *Eastman Photographic Materials Co.* (1896), 2 Ch. 303; see also *Adair* v. *Old Bushmills* (1908), W.N. 24].

Where capital is reduced, the presumption is that the loss is to be borne as between classes of shareholders in the same way as loss of capital, but the Court can sanction any reduction it thinks fair. Special voting rights can be attached to different classes of shares, and it has been held that these are alterable, when given by the articles [re *James Colmer* (1897), 1 Ch. 524].

Restrictions as to Issue.

Shares must not be issued at a discount [*Ooregum Gold Co.* v. *Roper* (1892), A.C. 125]; but whether shares are, or are not,

offered for public subscription, a commission may be paid subject to the conditions mentioned in s. 89 of the Act (see p. 79).

If shares are issued at a discount, the allottee cannot get rescission when once his name has been registered; he has become a member of the company, and remains so with a liability to pay the amount unpaid on his shares [*Railway Time-Table Publishing Co.*, ex parte *Sandys* (1889), 42 Ch. D. 98].

Shares may be issued at a premium without any special authority, and there is nothing to prevent the premium being treated as profits; usually, however, it is employed as capital, or used to create a reserve fund.

A company may not purchase its own shares [*Trevor* v. *Whitworth* (1887), 12 A.C. 409]. A power in that behalf reserved by the articles would be void, and so, it would appear, would such a power in the memorandum (same case). If a company purchases its own shares, it reduces its capital in a manner not authorised by the Act.

Membership. The general nature of shares and some of their characteristics having thus been briefly noticed, it becomes material to consider how membership of a company is constituted and who may be a member. S. 24 of the Act defines a member thus: '(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members; (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.'

As to subscribers, see p. 8. No one can become a member until his name is entered on the register. The register, however, may be rectified, if names are on it which ought not to be on it, or if names are not on it which ought to be on it (see p. 83).

The agreement to take shares is therefore the true test whether a person is a member of the company, with the consequent liabilities of membership. He may apply for shares either personally, or by agent; either in writing, or by word of mouth; he may contract to take shares, *e.g.* as a vendor or an underwriter; he may be estopped from denying the agreement, either by taking no steps to have his name removed from the register, or by his conduct in attending meetings and so forth, although he may have originally made no agreement to take shares; and he may become a shareholder by transfer.

A shareholder ceases to be a member (1) on death or bankruptcy, although his estate still remains liable; (2) on transferring his shares to another person, though in this case he retains for one year a contingent liability in respect of shares not fully paid; (3) by a surrender or forfeiture of his shares.

Who may hold Shares.

Subject to the regulations of the company, anybody may hold shares. Some companies, however, provide that only persons of a certain profession shall be eligible as shareholders, and such a provision is valid. A corporation may hold shares if authorised to do so by its own memorandum and articles, and sometimes even if not so authorised, *e.g.* where shares are taken in payment of a debt [*Lands Allotment Co.* (1894), 1 Ch. 616]. A company is not bound to accept a partnership as the holder of shares in the firm's name, and the transfer of shares in a firm's name is not accepted by the Stock Exchange as good delivery. But shares may be allotted to, and registered in the names of, two or more persons jointly, and the articles usually provide that the certificate shall be delivered to the person first named in the register.

Under the Bodies Corporate (Joint Tenancy) Act, 1899, s. 1, a body corporate is placed in the same position as an individual as regards joint tenancy. Dividends are usually paid to the person first named in the register, and under most articles any one of joint holders may give effectual receipts for such dividends. Upon the death of a joint holder his interest passes to the survivors. Under Table A, cl. 112, and most articles, notices directed to be given to the members are given to the person named first in the register. That person also usually has the right of voting given to him by the articles (see Table A, cl. 61). One joint holder cannot transfer shares registered in the names of all the joint holders [*Barton* v. *North Staffordshire Railway* (1888), 38 Ch. D. 458]. It is sometimes provided that the joint holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share; otherwise the liability is joint only.

Share Certificates.

Section 23 of the Act provides that 'a certificate under the common seal of the company specifying any shares or stock held by any member shall be *primâ facie* evidence of the title of the member to the shares or stock.'

It estops the company from denying that the person to whom a certificate is granted is the registered shareholder entitled to the specific shares included in the certificate [re *Bahia Railway* (1868), 3 Q.B. 584; *Balkis Company* v.

Tomkinson (1893), A.C. 396]. It is not a negotiable instrument, nor a warranty of title on the part of the company issuing it [*Longman* v. *Bath Electric Tramways* (1905), 1 Ch. 646].

If the certificate describes the shares as fully paid, the company cannot, as against a *bonâ fide* holder without notice, deny that the shares are so paid up [*Burkinshaw* v. *Nichols* (1878), 3 A.C. 1004; and see *Bloomenthal* v. *Ford* (1897), A.C. 156; *Coasters* (1911), 1 Ch. 86].

To raise a case of estoppel against the company, the holder of the shares must show that he acted on the certificate [*Dixon* v. *Kennaway* (1900), 1 Ch. 833]. If the company refuse to do something which, assuming the certificate to be correct, it ought to have done, it can be sued and the measure of damages will be the value of the shares at the date of the breach of duty [*Ottos Kopje Mines* (1893), 1 Ch. 618].

The rule does not of course give the holder of a certificate who has got it from a bare legal owner any right against those equitably entitled [*Shropshire Union Railways* v. *The Queen* (1876), L.R. 7 H.L. 496].

Forms of Share Certificate will be found on pp. 351 and 353 (Forms 1 and 2), and a form of Fractional Certificate on p. 358 (Form 5).

No charge is usually made for the original share certificate issued to a shareholder, and the Stock Exchange forbid any charge, but if worn out or lost it is usually renewed on payment of a shilling (see Table A, cl. 7). Before the issue of a new certificate to replace one lost, an adequate indemnity should be obtained. In general a statutory declaration verifying the loss, and a guarantee by a person of standing should be insisted upon; but, if the account is a small one, a letter of indemnity should be sufficient. A suitable form of Declaration and Indemnity will be found on p. 360 (Form 6). The certificate should be marked 'Duplicate' on its face.

Reserve Liability.

By section 59 of the Act a limited company may, by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up. The effect of this is that the capital referred to is only available in winding up, and cannot be mortgaged or charged in any way.

The important subject of the transfer and transmission of shares is dealt with in Chapter VII. Other incidents connected with shares are treated in Chapter VIII, and the capitalisation of profits in Chapter XVI.

CHAPTER VI

PROSPECTUS AND ALLOTMENT

BEFORE a newly incorporated company (other than a private company, as to which see Chapter XXI) can commence business or exercise its borrowing powers, certain formalities must be complied with. For this purpose, companies may be divided into two classes: companies which issue a prospectus on or with reference to their formation, and companies which do not.

Commencement of Business, where Public Issue.

A company which issues a prospectus on or with reference to its formation, or, in other words, a company of which the first active step is to make a public issue of shares, must comply with the relevant requirements of ss. 80, 81, 85, and 87 of the Act before commencing business. These requirements are as follows:

Prospectus.

1. A prospectus must be prepared, containing the particulars required by law. A prospectus is defined by s. 285 as 'any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.' The word is accordingly not limited to the formal document known as a prospectus, but includes any document, however informal, which offers to the public shares or debentures of the company. Whether or not a particular document amounts to an invitation to the public to subscribe is often a difficult question of fact. S. 81 (7), however, provides that a circular or notice to existing members or debenture holders, inviting them to subscribe, is not an offer to the public, even though the members or debenture holders may have the right to renounce in favour of other persons.

The prospectus, if 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 [s. 81 (1)]:

(*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; and the number of founders' or management

or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(*b*) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions, and addresses of the directors or proposed directors; 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 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 of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and

(*g*) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good-will; and

(*h*) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or

agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*j*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or 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 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 connexion with the promotion or formation of the company; and

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.'

2. The prospectus must be dated, the date being *primâ facie* the date of publication, and a copy of it, signed by every director or proposed director named therein, or by his agent authorised in writing, must be filed for registration with the Registrar. It may then be issued. It must state on the face of it that a copy has been filed for registration with the Registrar (s. 80).

Minimum Subscription.

3. Before any allotment is made of any share capital (not debentures) offered to the public for subscription, it must be ascertained that the 'minimum subscription' has been subscribed and the sum payable on application therefor has been paid to and received by the company. The minimum subscription is either (*a*) the amount fixed by the memorandum or articles and named in the prospectus as the minimum subscription on which the directors may proceed to allotment; or (*b*) if no amount is so fixed and named, the whole amount offered for subscription. It must not include any amount payable otherwise than in cash. The application money per share must not be less than 5 per cent. of the nominal amount of the share; but where it is greater, then the amount, whatever it is, must have been 'paid to and received by' the company [s. 85 (1) (2) (3)]. It is now well established that allotment must not be made until the cheques for the application money have been cleared [see *Mears* v. *Western of Canada Pulp Company* (1905), 2 Ch. 353; *National Motor Mail Coach Company* (1908), 2 Ch. 228; *Burton* v. *Bevan* (1908), 2 Ch. 240]. When it has been ascertained that the minimum subscription has been subscribed and the cheques have been cleared, the allotment may be made.

4. The allotment having been made, every director must, unless he has already done so, pay 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, an amount equal to the amount per share payable by the public on application and allotment (s. 87 (1)].

5. A statutory declaration by the secretary or one of the directors in the prescribed form must be filed with the Registrar [s. 87 (1)]. This declaration vouches the following facts: (*a*) the amount offered for public subscription; (*b*) the amount of the minimum subscription; (*c*) the allotment of a number of shares not less than the minimum subscription; (*d*) the payment by every director of application and allotment money.

Registrar's Certificate.

Thereupon the Registrar is to issue his certificate entitling the company to commence business, the certificate being conclusive evidence that the company is so entitled [s. 87 (2)]. It is important to remember that contracts made by a company before the date at which it is entitled to commence business are provisional only, but become binding on that date [s. 87 (3)]. Consequently, if a company is wound up before it becomes entitled to commence business, it is not liable on any of its contracts [*Otto Electrical Manufacturing*

Co. (1906), 2 Ch. 390]. Although the company, before obtaining a certificate entitling it to commence business, may not exercise its borrowing powers, it may nevertheless offer to the public debentures, simultaneously with the offer of shares, may receive application money on debentures, and may allot both shares and debentures [s. 87 (4)].

Commencement of Business, where no Public Issue.

If a company does not issue a prospectus on or with reference to its formation, but desires to be in a position to commence business and exercise its borrowing powers without making a public issue of shares, the necessary formalities are as follows:

Statement in lieu of Prospectus.

1. A statement in lieu of prospectus must be filled up, and signed by every person named therein as a director or proposed director of the company, or by his agent authorised in writing, and filed with the Registrar. The form of the statement in lieu of prospectus, showing the particulars it must contain, is to be found in the second schedule to the Act [s. 82 (1)].

The particulars are to a great extent identical with those which a prospectus is required to contain by s. 81 of the Act. There are, however, the following differences: The statement must give the nominal amount of the company's capital, showing the shares into which it is divided, and must show whether the articles contain any provisions precluding holders of shares or debentures from receiving and inspecting balance-sheets or reports of the auditors or other reports, giving the nature of the provisions; these matters need not be inserted in a prospectus. On the other hand, the matters required to be disclosed in a prospectus, namely (*a*) contents of memorandum, and founders' or deferred shares; (*b*) qualification and remuneration of directors; and (*c*) voting rights of classes of shares, need not be contained in the statement in lieu; although, of course, the memorandum and articles will be on the file, and the intending investor can ascertain these details therefrom.

The statement in lieu must be filed before any allotment of shares or debentures can be made [s. 82 (1)], or the allotment is wholly void [*Jubillee Cotton Mills* (1922), W.N. 266]. But if the statement is incorrect, a subsequent allotment is not invalid [*Blair Open Hearth Furnace Co.* (1914), 1 Ch. 390].

2. Before any allotment of shares can be made, even although there may have been a public issue and allotment of debentures, it must be ascertained that the minimum subscription (*i.e.* the amount fixed by the memorandum or articles and named in the statement in lieu as the minimum subscription of shares upon which the directors may proceed

to allotment, or if no amount is so fixed and named, the whole of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash) has been subscribed, and an amount not less than 5 per cent. of the nominal amount of each share payable in cash has been paid to and received by the company [s. 85 (7)], and that the cheques have been cleared. These points having been established, the allotment may proceed.

3. Every director must, unless he has already done so, pay 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, an amount equal to the amount per share payable on application and allotment on the shares payable in cash (s. 87 (1)].

4. A statutory declaration, similar in most respects to that which must be filed by a company making a public issue (see p. 40), but with the necessary differences, must be filed with the Registrar, who will then issue his certificate entitling the company to commence business.

In this case also contracts made by the company before the date at which it becomes entitled to commence business are provisional only, but become binding on that date (see p. 40).

Restrictions as to Allotment.

There are very stringent provisions of the Act as to first allotments. S. 85 (4) provides that, in the case of a company making an initial public issue of shares, if the minimum subscription has not been subscribed, and the application money received, within forty days from the first issue of the prospectus (*i.e. primâ facie* the date of the prospectus) all the money subscribed is returnable to the subscribers without interest, and if any of the money has not been returned within forty-eight days from the issue, the directors are liable to return it with interest at 5 per cent. from the forty-eighth day. A director, however, is not liable, if he proves that the loss of the money was not due to any misconduct or negligence on his part.

This provision as to the return of the money does not appear to apply to companies not issuing a prospectus, which may therefore wait indefinitely until the minimum subscription is reached. But it is obviously the proper course to return any money subscribed when it becomes apparent that the minimum subscription will not be forthcoming. S. 85 (4) only applies before allotment has taken place; after allotment the only remedies available are under s. 86 [*Burton* v. *Bevan* (1908), 2 Ch. 240].

Minimum Subscriptions

S. 86 (1) provides that an allotment made, whether in the case of a company making a public issue of shares or of a company not making a public issue of shares, without the

minimum subscription being subscribed, or the necessary application money received, may be avoided by the applicant at any time up to one month from the holding of the statutory meeting (see p. 106), notwithstanding that the company may be in liquidation.

Notice of avoidance within the month, followed by prompt legal proceedings, is sufficient; the proceedings need not be actually commenced within the month [*National Motor Mail Coach* (1908), 2 Ch. 228].

But it appears that this limit of one month does not apply to companies registered before the Act of 1900, and making a public issue after the Act, since such companies cannot hold a statutory meeting; consequently in such cases an irregular allotment may be avoided at any time [*Finance and Issue* v. *Canadian Produce Corporation* (1905), 1 Ch. 37].

By s. 86 (2) a director who knowingly contravenes, or permits or authorises the contravention of, any of the provisions which require that no first allotment is to be made without the minimum subscription being subscribed, or the application money being received, is liable to compensate both the company and the allottee for any loss, damages or costs sustained or incurred thereby. Proceedings to recover any such loss, damages or costs must be commenced within two years from the date of the allotment. It would appear that the amount of damages to which an allottee is entitled is the difference between the price paid for the shares and their real value at the time of allotment, such value being ascertained in the light of subsequent events. The loss to the company would appear to be the total nominal value of the shares.

The meaning of 'knowingly' should not be overlooked. It means 'with knowledge of the facts.' 'Ignorance or mistake of law cannot be admitted as an excuse for disobeying an Act of Parliament' [see *Twycross* v. *Grant* (1877), 2 C.P.D. 469]. It would seem, then, that when once it has been proved that a director or other official of a company knows the facts, *i.e.* that shares have been allotted in a particular manner, it must be assumed that he knows whether the particular manner adopted is the right method, and if it contravenes the law he will be liable.

This chapter has thus far dealt with first allotments. It now remains to deal with other provisions of the Act, which relate to all allotments.

In the case of a company making an offer of shares to the public, *i.e.* issuing a prospectus, or its equivalent, the provision that the amount payable on application is not to

be less than 5 per cent. of the nominal amount of the share [s. 85 (3)] applies to subsequent public issues as well as to the first [s. 85 (6)]. And the important requirements of s. 88 apply to all allotments by all public companies. Sub-sections (1) and (2) of that section run as follows:

Return as to Allotments.

(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the Registrar of Companies—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

It will be noticed that not only has the contract with the company under which the shares are allotted, fully or partly paid up, to be filed, but also the contract constituting the title of each allottee. As regards the statement of the consideration, it appears that it will suffice if it is stated generally, the nature of the consideration being disclosed, as was required to be done under section 25 of the Companies Act, 1867, repealed in 1900 [*Frost & Co.* (1899), 2 Ch. 207].

The Court is enabled to grant relief in certain cases of omission to file any document required by this section to be filed. The relief may apparently be granted in three cases, *i.e.* when the Court is satisfied (1) that the omission to file

was accidental, (2) that it was due to inadvertence, (3) that it is just and equitable to grant relief [s. 88 (3)].

It must be remembered that the omission to file the contract or particulars does not render the allottee liable to pay for the shares in cash, as was the case under s. 25 of the Companies Act 1867 (repealed by s. 33 of the Act of 1900), but only exposes the officers of the company to penalties, so that the relief is merely against the penalties.

Application for Shares.

A formal prospectus is always accompanied by appropriate application forms. A form of application requires to be carefully prepared, and may have attached to it a form of receipt for the application money, if it is desired to issue a receipt.

In Appendix F will be found the following application forms:

No. 7. Application for bonds or stock (p. 361).

No. 8. Application for shares, where no receipt for application money is issued (p. 362).

No. 9. Application for shares, with receipt for application money attached (p. 363).

All the above forms refer to the prospectus and embody its terms and conditions as part of the contract. Nos. 6 and 7 also refer to the memorandum and articles, the terms and conditions of which are also expressly embodied in the contract. The applicant, however, when registered as a member, would necessarily become bound by them. No. 5 does not refer to the memorandum and articles. The bond-holder, or debenture stock holder, will be a creditor and not a member of the company. None the less the memorandum and articles are public documents, and he is fixed with knowledge of their contents.

On receipt of the applications, the secretary will have a series of application and allotment sheets prepared by his staff. It need hardly be pointed out that there is need for the greatest accuracy in this work. A Form of Application and Allotment Sheet will be found on p. 364 (Form 10).

Allotment.

The board will meet in due course, and, if the minimum subscription has been reached, and cheques for application money have been cleared, will proceed to allot. A form of resolution to allot will be found on p. 130.

The secretary's business will then be to dispatch the allotment letters and letters of regret.

Form No. 11 (p. 365) is a form of Allotment Letter with receipt for allotment money only attached. Form No. 12 (p. 366) is a form of Allotment Letter, with receipts attached

both for allotment money and for payment in full. Form No. 13 (p. 367) is an Allotment Letter, constituting an interim certificate, with receipt forms for all subsequent instalments attached.

In the absence of any provision to the contrary in the conditions of issue of any shares, debentures, or debenture stock, a company must within two months after allotment complete and have ready for delivery the certificates for shares or debenture stock, or the debentures, as the case may be (s. 92). It is sometimes more convenient to postpone the issue of certificates until the shares or stock are fully paid, and it is therefore desirable to make provision accordingly. Without any such provision, interim or provisional certificates must be issued, with receipt forms upon them, which are signed by the company's bank, upon production of the certificate and payment of the instalments as they become due. Form 13 may be used for the purpose.

New Issue. Where a company makes an issue of new shares or debentures and desires to give existing shareholders or debenture holders a preferential right to apply for them in proportion to their existing holdings, a circular letter is commonly sent out accompanied by a specific offer to each individual holder, on which is a form of acceptance of the offer, with receipt for the first instalment attached. If it is desired that the shareholder or debenture holder should be able to renounce his right and nominate another person to exercise it, the form may include a letter of renunciation. Form 14 (p 368) may be used for this purpose, either wholly or in part, according to the circumstances of the case.

An allotment letter requires a penny stamp if the value of the shares allotted is less than £5, and a sixpenny stamp (impressed) if the value is £5 or over. The same scale of duty applies to letters of renunciation, but the stamp may be adhesive even if the value is over £5 (Finance Act, 1899, 62 & 63 Vict. c. 9, s. 9). The fractional part of a share must be stamped on the same basis, both in the case of letters of allotment and letters of renunciation (Revenue Act, 1909, 9 Ed. VII, c. 43, s. 9). The Bankers' receipt, if attached to the allotment letter, does not require a separate stamp [*London & Westminster Bank* v. *Inland Revenue Commissioners* (1900), 1 Q.B. 166].

Inasmuch as the agreement to become a member is often constituted by application and allotment, and agreement to become a member followed by entry on the register constitutes membership of a company (s. 24), with all its attendant rights and liabilities, it is important to appreciate

the effect of a number of legal decisions on the subjects of application and allotment.

Decisions as to Application.

The following are amongst the chief points to be observed with regard to an application for shares:

It need not be in writing [*Levita's Case* (1867), 3 Ch. App. 36]. It may be withdrawn before acceptance, but the offer remains open until the letter of revocation is actually received [*Byrne* v. *Van Tienhoven* (1880), 5 C.P.D. 344]. The withdrawal need not be in writing; and may be communicated to the secretary, or, in his absence, even to a clerk [*Truman's Case* (1894), 3 Ch. 272]. The doing of some act inconsistent with the continuance of the offer, done to the knowledge of the company, may be an effective withdrawal [*Dickinson* v. *Dodds* (1876), 1 Ch. D. 463]. The application may be made by an agent [*Hannan's Empress Co.* (1896), 2 Ch. 643]; but unless the agent informs the company that he takes the shares as agent and not as principal he may be personally liable in respect of them [*Southampton Steamboat Company* (1864), 4 De G.J. & S. 200]. Application in a fictitious name, followed by allotment, renders the applicant liable, and his real name may be entered on the register [*Hercules Insurance Co., Pugh & Sharman's Cases* (1872), 13 Eq. 566]. Application by a father in the name of his infant son renders the father liable [*Imperial Mercantile Association, Richardson's Case* (1875), 19 Eq. 588]. Application subject to a condition precedent will not give rise to a contract unless the condition is performed [*Aldborough Hotel Co.* (1870), 4 Ch. App. 184; where a builder applied on condition that he should have the building contract]. But if the condition is subsequent—in other words, if it can be construed as a separate agreement, collateral to the agreement to take shares—the applicant will be liable on the shares notwithstanding breach of the collateral agreement [*Richmond Hill Hotel Co., Elkington's Case* (1867), 2 Ch. App. 511].

Allotment 'is generally neither more or less than the acceptance by the company of the offer to take shares' [per Chitty, J. *Nicol's Case* (1885), 29 Ch. D. 421].

Decisions as to Allotment.

Below are some of the more important decisions on allotment:

An improperly constituted board of directors has no power to act for the company, and therefore an allotment by such a board will be invalid [re *Homer District Gold Mines* (1889), 39 Ch. D. 546]. But an allotment by an irregularly constituted board may be subsequently ratified by a regular board [*Portuguese Copper Mines, Badman's and Bosanquet's Cases* (1890), 45 Ch. D. 16]. Directors cannot delegate their power

to allot [*Leeds Banking Co., Howard's Case* (1866), 1 Ch. App. 561], unless by the articles they are authorised to do so [*Harris's Case* (1871), 7 Ch. App. 587]. The power of directors to allot is a fiduciary power, which must be exercised *bonâ fide* for the benefit of the company as a whole, and not for their own ends, *e.g.* to maintain their control, or to defeat the wishes of the majority of the shareholders [*Piercy* v. *S. Mills & Co.* (1920), 1 Ch. 77].

Allotment must be made within a reasonable time after application; otherwise the allottee may refuse to accept the shares [*Ramsgate Hotel* v. *Montefiore* (1865), 4 H. & C. 164]. It must be communicated, though the communication need not necessarily be in writing [*Gunn's Case* (1867), 3 Ch. App. 40; *Levita's Case* (1867), 3 Ch. App. 36]. Generally the contract is complete as soon as the letter of allotment is posted, even though it is never received [*Household Insurance Co.* v. *Grant* (1879), 4 Ex. D. 216]. Posting means putting the letter under the control of a postal official authorised to receive it [*London and Northern Bank*, ex parte *Jones* (1900), 1 Ch. 220]. But to make a complete contract the allotment must correspond with the application; *e.g.* if A applies for 100 shares, and 50 only are allotted to him, he is not bound to take them, unless the application contained such words as 'or such less number as may be allotted to me' [ex parte *Roberts* (1852), 1 *Drew*, 204]. No fresh condition can be imposed by the allotment. If it is complicated by the addition of a new term or condition there will be no contract [*Jackson* v. *Turquand* (1869), L.R. 4 H.L. 305].

Shares should never be allotted to an infant, for he can afterwards repudiate the contract, and obtain repayment of the money paid for them [*Hamilton* v. *Vaughan-Sherrin Electrical Co.* (1894), 3 Ch. 589]. But if he is registered and acts as holder of the shares after attaining his majority [*Lumsden's Case* (1868), 4 Ch. App. 31], or does not repudiate within a reasonable time [*Yeoland Consols* (1888), 58 L. T. 922], he will be liable. Knowingly to allot to an infant is a misfeasance [ex parte *Wilson* (1873), 8 Ch. App. 45]. In any form of application for shares, the words 'being of full age' should be inserted.

CHAPTER VII

TRANSFER AND TRANSMISSION OF SHARES

THE duties of a secretary in the matters of the transfer and transmission of shares are amongst the most difficult and responsible that he has to perform. There is very little statute law on the subject, but a great deal of case law, and a great deal of somewhat complicated practice. It is proposed to deal first with transfers and then with transmission, with special reference to companies under the Companies Acts.

Share Register:

Inasmuch, however, as a company's register of members plays an important part in connection with both transfers and transmission, it may be as well to clear the ground by a few words as to the register and the proper method of keeping it. The register of members is one of the books which a company under the Companies Acts is required to keep, provision for that purpose being made by s. 25 of the Companies (Consolidation) Act, 1908.

The register of members, which may be kept in one or more books, must contain:—

(*a*) The names, addresses, and occupations (if any) of the members;

(*b*) A statement of the shares held by each member, distinguishing each share by its number;

(*c*) A statement of the amount paid or agreed to be considered as paid on the shares of each member;

(*d*) The date at which each person was entered on the register as a member;

(*e*) The date at which any person ceased to be a member.

In practice the register, to be of real value, must necessarily shew a good deal more than the matters stated above. The transfer of part of a holding must be provided for and the resulting balance shewn, and there should be references, both in the case of shares acquired by a member by transfer and in the case of shares transferred by him, to the transfer numbers. A form of Share Register will be found at p. 384 (Form 31).

Share Warrants. In the case of the issue of share warrants, the name of the holder must be struck out of the register, as if he had ceased to be a member, and there must be entered in the register (i) the fact of the issue of the warrant; (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and (iii) the date of the issue of the warrant. Until the warrant is surrendered, these particulars are to be deemed to be the particulars required by the Act to be entered in the register. On the surrender of the warrant the date of the surrender must be entered as if it were the date at which a person ceased to be a member [s. 37 (5) (6)]. This will complete the entries at this part of the register; but on surrendering the warrant for cancellation the bearer is entitled to be registered as a member in the ordinary way [s. 37 (3)].

In the case of joint accounts, it is undesirable for the number of holders to exceed four; but to enable a company to insist on this limitation its articles should contain an appropriate provision, failing which the names of all joint holders, however many, must be entered on the register. Within reasonable limits more than one account should be allowed in the same name or names. Joint holders may, in order that their voting rights may be fully exerciseable, have their holdings split, a different name appearing first in each entry in the register [*Burns* v. *Siemens Brothers* (1919), 1 Ch. 225].

As regards alterations of names in the register, in the case of the marriage of a female shareholder, the marriage certi ficate should be produced before the necessary alteration is made. A Form of Request is useful as giving a specimen of the new signature. In other cases of change of surname the deed-poll, or copy of the *London Gazette* containing the notification, should be produced. Any other documentary evidence should be verified by a statutory declaration. On acquisition of title, no official documentary evidence need be insisted upon. In all the above cases no new share certificate need be issued, but the existing certificate should be produced for marking.

Trusts. There is a prohibition against the entry of trusts on the register. 'No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in England or Ireland' (s. 27). 'The object of the section, says Lord Justice Buckley, 'is (1) to relieve the company from taking notice of equitable interests in shares, and (2) to preclude persons claiming under equitable titles from

converting the company into a trustee for them' *Buckley on the Companies Acts*, 9th edition, p. 75).

More commonly, companies have in their articles a provision which goes further than s. 27, and is to the effect that the company shall be entitled to treat the registered holder of a share as the absolute owner, and shall not be bound to recognise any equitable or other claim to, or interest in, such share on the part of any other person. Such an article appears to be ineffectual, at all events, so far as non-members of the company are concerned; for notice of the interest in shares by a person, other than the registered holder, will affect the company in its capacity as a trader, although it does not affect it in its duty of keeping the register [*Mackereth* v. *Wigan Coal Co.* (1916), 2 Ch. 293].

A company receiving notice of any lien or equitable interest should accordingly decline to recognise it. A suitable form of letter by the company, in reply to a notice of lien or equitable interest, will be found on p. 385 (Form 32).

But the holder of an equitable interest in shares may get the Court to interfere in his behalf [*Binney* v. *Ince Hall Coal Co.* (1866), 35 L. J. Ch. 363], and he can restrain the company from allowing the shares to be transferred by taking proceedings under the Rules of the Supreme Court, Order 46, Rule 4, if he so desire (see p. 65). Otherwise the company is not bound by any notice of equitable interests which it may receive, so that successive mortgagees will date entirely according to priority of charges [*Société Générale* v. *Walker* (1886), 11 A.C. 20]. If, however, a company, having a lien over its shares for all debts due from the holder thereof, receives notice that another person holds the shares as security for a debt due, the company cannot claim priority for a debt which became due to the company from the holder after such notice has been received [*Bradford Banking Co.* v. *Briggs* (1887), 12 A.C. 29].

As between the registered shareholder and his *cestui que trust* in their relation to the company, the former is the person who is liable for all payments which have to be made in respect of the shares, and this liability is not limited to the amount of the trust estate [see *Muir* v. *City of Glasgow Bank* (1879), 4 A.C. 337]. The beneficial holder is, however, bound to indemnify the registered holder, and his personal obligation is not confined to the extent of the trust property [*Hardoon* v. *Belilios* (1901), A.C. 118]. This right to an indemnity cannot be enforced while it is uncertain whether calls will be made [*Hughes-Hallett* v. *Indian Mammoth Mines* (1882), 22 Ch. D. 561], but can be enforced if there is evidence

that calls will be made [*Hobbs* v. *Wayet* (1887), 36 Ch. D. 256].

Index to Share Register.

Reference has to be made to the share register more often probably than to any other statutory book of the company, and it is often a source of trouble to the secretary to find a simple and reliable method of index to the register, and at the same time, especially in companies having a big register, a method whereby reference to the register itself is minimised by the recording of the various notes relative to any particular account in such index.

Probably the most usual form is for the register to contain all the necessary particulars, including not only the address of the stockholder as originally registered, but also the various changes of his address from time to time, together with a note as to payment of dividend, and special instructions as to the sending of reports and statements, notes with regard to orders of Court, notice in lieu of distringas, powers of attorney, &c., with a simple index of the name with the folio in the share register.

This method is doubtless sufficient in a small company where the clerk handling the books readily acquires an intimate knowledge of the accounts, and can turn up any particular account without delay; but on a big register it is very cumbersome, and does not lend itself to ready handling when there is work in hand requiring a considerable staff or urgent completion.

Another method, possessing greater advantages, is to have an index-book to the share register containing such particulars of the proprietors and their holdings as to minimise the necessity for reference to the register itself. A form of Index to Share Register, showing the particulars it may contain, will be found on p. 386 (Form 33].

Various attempts have been made to improve this system, and among the more recent is a very useful card-index which has been introduced by some of the larger companies, a form of which appears on p. 387 (Form 34).

Card Index.

The card index illustrated, though containing very full particulars, must not be allowed to take the place of the share register, as it would be obviously improper to rely solely on loose cards for so important a purpose, so that while all particulars are entered in the register for safety, most of them are reproduced on the cards for easy reference and handling.

It will be observed that the card comprises at a glance full particulars of the proprietor's holding in the several classes of stock, together with his full name, original and altered

addresses (if any), instructions with regard to dividend, and any other matters of a like nature, with a file number, if the filing system is numerical, where any correspondence relating to his account may be found, and the number of the folio where his account may be found on the share register.

In the ordinary course the alteration to the card in regard to the proprietor's holding is not done in the same detail as in the share register. Supposing, for example, that several transfers are dealt with on one date, while they are, of course, posted severally into the register, the card will show simply the date and the total value of the several transfers either into or out of the account as the case may be. It is useful to provide a third column under each heading, when the balance of the account may be thrown out after every operation.

An important point to note is the facility with which any particular work can be accomplished with the cards; for example, in the event of the directors requiring the urgent dispatch of a circular to the stockholders, the cards may be divided into small quantities among several members of the staff for the purpose of addressing the necessary envelopes, and the dispatch of the circular consequently achieved in a few hours.

Similarly, the dividend sheets may be spread over a larger staff than is possible when reference has to be made to the books for the purpose, while, as stated above, the old-time objection to the use of the card is met by the retention of the full particulars in the share register for reference when necessary.

Other points of advantage in the card system are (*a*) the facility for keeping the index of names in strict alphabetical order, and (*b*) after the annual return has been made to Somerset House, the 'dead' cards may be taken out and kept separately, thus starting each year with a clean index.

Right of Transfer.

We may now proceed to the subject of the transfer of shares. There are only three provisions of the Act, dealing with transfers, which need be mentioned here. These are set out below:—

S. 22 (1). The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

S. 28. On the application of the transferor of any share or interest in a company the company shall enter in its register of members the name of the transferee in the

same manner and subject to the same conditions as if the application for the entry were made by the transferee.

S. 29. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Shares, then, may be transferred in manner provided by the articles of the company. The right to transfer was given by s. 22 of the Companies Act, 1862 (which s. 22 of the Consolidation Act follows) [*Weston's Case* (1868), 4 Ch. App. 20], and unless restricted by the articles it is an absolute right. The mode of transfer and the restrictions on the right to transfer may vary in different companies to almost any extent. As regards shares not fully paid there are usually restrictions on their transfer, but in the case of fully paid shares the Stock Exchange regulations require that there shall be no restrictions if an official quotation is to be obtained.

If there are no restrictions in the regulations, a member may transfer to anyone, even though the company be *in extremis* and the transferee a man of no substance, so long as the transfer is *bonâ fide* and the transferor retains no interest in the shares, and whether such is the case is a question of fact [*Mexican and South American Co., De Pass's Case* (1859), 4 De G. & J. 544; *Discoverers' Finance Corporation, Lindlar's Case* (1910), 1 Ch. 312]. But a transfer, which directors have registered, may be set aside, if registration was obtained by the transferor by actively misrepresenting or by passively concealing the truth; and, whether or not the articles contain a clause authorising the directors to refuse registration, a transferor cannot escape liability where the opportunity for registration has been obtained fraudulently, or in breach of some duty owed to the company [*Discoverers' Finance Corporation, Lindlar's Case* (1910), 1 Ch. 312]. Where articles provide that shares may not be transferred without the consent of the directors, there is no obligation to obtain their consent before executing transfers; but a director cannot, by wilfully refusing to attend board meetings, prevent the registration of a transfer [*Copal Varnish Co.* (1917), 2 Ch. 349].

The procedure on the transfer of shares, in its simplest form, is for the seller to execute a transfer, and to hand it with the relevant certificate to the purchaser, who, after

executing the transfer, lodges it with the certificate at the company's office with a request for registration. The transfer, if in order, is then passed by the directors and the purchaser's name entered on the register in place of the seller's. The decision in *Birkett* v. *Cowper-Cotes* (35 T.L.R. 298) to the effect that, on a sale of shares, the obligation to prepare a transfer is, as a general rule, on the purchaser, was based on a decision in 1843 dealing with the transfer of shares in a railway company, and appears to be in conflict with the recognised practice, which practice has received the sanction of the Courts in the case both of sales effected personally and sales effected through brokers [see *Skinner* v. *City of London Marine Insurance* (1885), 14 Q.B.D. at p. 887, and *London Founders' Association* v. *Clarke* (1888), 20 Q.B.D. 576].

But, shares being generally bought and sold through brokers, the exigencies of business and the practice of the Stock Exchange have amplified the procedure. When a seller is only disposing of part of his holding, his broker, having effected a sale, presents the transfer with the relative certificate at the company's office, whereupon the secretary or other proper official, certifies on the transfer that the certificate has been lodged (see p. 56). The transfer, so 'certified,' is handed by the seller's broker to the purchaser's broker, who accepts it as evidence of the seller's title to the shares sold. It thus becomes good delivery under the rules of the Stock Exchange, and transactions take place in this way every day.

Form of Transfer.

The form of transfer, which it is the duty of the seller's broker to prepare, is usually prescribed by the articles, and in that case the directors may refuse to register a transfer not in such form. But, where a transfer is required to be 'in the usual common form,' directors cannot refuse to register it because it omits immaterial particulars—*e.g.* the address of the transferor and the denoting numbers of the shares, if both are known to the directors and there can be no ambiguity [re *Letheby & Christopher* (1904), 1 Ch. 815]. The importance of uniformity in the form of transfers can hardly be overestimated, and fortunately there is a common form which is generally used. This will be found at p. 370 (Form 15).

It has been suggested that an addition should be made to the common form of the words 'being of full age,' after the words 'and I, the said transferee,' in order to avoid the possibility of the shares being registered in the name of a minor. Directors should not sanction a transfer to an infant, for he cannot be placed on the list of contributories in the

event of a winding-up, unless a fresh promise, and not merely a ratification of his old promise, has been made by him after attaining twenty-one (*see* Infants' Relief Act, 1874, 37 & 38 Vict, c. 62, s. 2). In view of the difficulties in the way of ascertaining in every case that the transferee is of full age, it is reasonable to assume that it is the case; if, however, there is reason to believe that he is not of full age, he should not be entered on the register.

It is usual for the articles to provide that transfers shall be signed both by the transferor and the transferee; but even in the absence of such a provision, where it has been the practice to require the execution of the transferee, the directors may decline to register a transfer not so executed [*Marino's Case* (1867), 2 Ch. App. 596]. It should also be mentioned that the company may waive the transferee's signature.

The regulations may or may not require a transfer to be by deed. This variation is especially important in the case of blank transfers (see p. 67). Where a transfer without seal is sufficient, the addition of a seal does not render the instrument less effectual [*Ortigosa* v. *Brown, Janson & Co.* (1878), 47 L.J. Ch. 168].

Certification on Transfers. All companies ought to certify on transfers, for while there is no statutory obligation to certify, it may reasonably be argued that certification is part of the business and incidental to the act of registering transfers. Transfers should be certified although unstamped,[1] or undated, but not if the transferee's name is not stated. A transfer should be certified although a call has been made which is not yet payable, but the call must be paid before the transfer is accepted for registration. If the seller is the transferee on a transfer which has not yet been registered, it is the usual practice not to certify the transfer until after the lapse of a sufficient time to enable the transferor of the first transfer to communicate with the company if necessary. (See Form 23, p. 377).

A rubber stamp should be used to certify on transfers, the secretary's signature being added in a space left for the purpose. The date should also be inserted. The following form should be adopted:—

Certificate for shares [or stock] has been lodged at the Company's office.
Date
For the Company, Limited.
, *Secretary.*
(Address.)

[1] A secretary so certifying is not enrolling, registering, or entering the transfer within the meaning of s. 17 of the Stamp Act, 1891.

The address of the company should, for the convenience of stockbrokers and others, be included on the certification stamp.

The record of certified transfers should be kept by indorsement on the back of the certificate. The certificate should immediately be cancelled. The cancelled certificates, on which will be indorsed the record of certification, should be preserved.

It will be found convenient, upon a transfer being presented for certification, to send notice to the transferor at once instead of waiting until the transfer is lodged for registration. This method has the advantage of giving the earliest possible notification to the holder of the shares, and effects a great saving of time and trouble both to the company and the transferor where there are many certifications against one certificate. A form of notice will be found on p. 372 (Form 17).

The legal effect of certification has been several times considered in the Courts, and the effect of some of the decisions is here summarised.

By such words as 'certificate lodged at the company's office,' stamped upon a transfer of shares, no more is meant than that certain documents apparently in order, and showing *primâ facie* that the transferor is entitled to the shares, have been deposited with the company. They do not amount to a warranty either of the transferor's title or of the validity of the documents. In the absence of fraud, even if no certificate has in fact been lodged, the company is not liable for the careless representation that one has been deposited [*Bishop* v. *Balkis Co.* (1890), 25 Q.B. D. 512]. And where the secretary has fraudulently certified upon a transfer that certificates have been lodged at the company's office, the company is not estopped from setting up the true facts [*George Whitechurch* v. *Cavanagh* (1902), A.C. 117]. But certification by the proper officer of the company on a transfer of shares, which purports to be a transfer of fully paid shares, has been held to imply that certificates have been produced showing the ownership of fully paid shares, and to estop the company from denying that the shares are fully paid [re *Concessions Trust, McKay's Case* (1896), 2 Ch. 757].

Balance Receipt.

If the certificate of shares lodged with the transfer for certification includes a larger number of shares than is intended to be transferred, the secretary will issue to the seller or his broker a balance receipt. This will entitle the seller in due course to receive a certificate for the unsold balance

of his shares. These balance receipts should be in a book with counterfoils. A form is given on p. 371 (Form 16). It frequently happens that where only a portion of a holding is sold the transferors or their agents require balance certificates to be prepared; but unless notice to this effect is given, the balances remaining on the certificate are retained in the office pending the delivery of further transfers or application for a balance certificate. No further transfers in respect of unappropriated balances should be certified or accepted for registration, or balance certificates be issued, without the surrender of the balance receipt.

Powers of Attorney.

As regards Powers of Attorney the general law is discussed in Chapter XX, but the practice in connection with transfers may here be conveniently dealt with. The signature on a transfer, whether that of the transferor or the transferee, may be affixed by an attorney, or agent. In such cases it becomes the duty of the secretary to satisfy himself that the authority of the attorney is properly constituted. Where the transferor has executed the transfer by attorney, the matter should be dealt with upon presentation of the transfer for certification. If the transferee has done so, it is upon lodgment of the transfer for registration that the matter will arise. If the power of attorney has already been lodged for registration at the company's office, particulars of it will appear in the company's register of powers of attorney, *i.e.* the date of registration, the names of the donor and donee of the power, and some particulars of its scope and duration. These can then be referred to, and unless there is any doubt as to whether the power is still in force, the transfer may be accepted. If the power is presented for the first time upon a transfer being lodged for certification or registration, it must be carefully inspected in order to see that it is under seal, that it is properly stamped, executed and attested, that it authorises the transaction sought to be effected, whether the sale or purchase of shares, and whether of the particular shares in question, and that it is still effective.

As regards attestation, one witness is in the majority of cases sufficient. But in some of the Colonies, attestation by two witnesses is necessary to the validity of a power of attorney.

As to the signature, although it is verified by the attestation, it is desirable to inquire further as to its genuineness wherever possible. If the donor of the power is the transferor, the company may already have his signature in its

possession and can compare it. Otherwise it may be impossible to obtain further evidence, although a form (see Form 41, p. 396) may be given to the donor, on presentation of the power for registration, which, when filled in, will furnish a specimen of the signature of the donor, as well as of that of the attorney, and an assurance that the power is still in force. The company, however, cannot insist upon this form, although merely to ask for it would probably be some protection.

As to the scope of the power, the secretary must peruse the document carefully in order to see that what is sought to be done is authorised. Powers of attorney are often far from explicit and are frequently complicated by a great deal of unnecessary verbiage; but each must be dealt with as it is. The whole of the power should be read and especial care should be taken to peruse the recitals, which may have the effect of modifying the operative part of the power. A simple general form of power is given on pp. 398-9 (Form 43), and this could easily be adapted, by omissions, or additions, or both, to practically every case. A glance at it will shew the secretary the kind of authority to be looked for as regards transfers.

The question often arises as to whether a power is still in force. For instance, if it only empowers the attorney to act while the principal is abroad, the secretary will desire to be satisfied that he is still abroad. Or the attorney may only be empowered to act when the principal is prevented from acting, and the secretary may be unable to communicate with the principal. In such cases, an assurance may properly be asked from the attorney that the power is still in force. For this purpose Form 42 (see p. 397) may be used. It will be noticed that it includes a verification of the attorney's signature.

Whenever a power of attorney is lodged for registration, particulars of it will be entered in the register of powers of attorney. As to the fee usually chargeable, see p. 74.

It should be seen that a power of attorney, wherever executed, is properly stamped for use in this country. The stamp is 10s.

Registration of Transfer

On the execution of the transfer by the transferee, it is then lodged with the company for registration. The depositing broker or agent should be asked to write or stamp his name and address on the back of the transfer, and the secretary should give a printed form of receipt to the effect that the transfer has been lodged for registration subject to the approval of the board. Forms of receipt to be used

(1) when the transfer is handed in over the counter, and (2) when it is sent by post, will be found on pp. 373 and 374 (Forms 18 and 19). Both these forms are, it will be observed, from books with counterfoils. Another Form of Receipt (Form 20) will be found on p. 375. The requirements of his particular company will guide a secretary in determining how many and which of the Forms 18, 19, and 20 he will adopt. He may prefer to adapt one of them to meet his requirements for every class of shares.

A rubber stamp should be used to stamp each transfer for the purpose of recording the various operations connected with it, and the records should be duly made from time to time until they are complete. A Form of Stamp is given on p. 376 (Form 21).

Upon receipt of a transfer for registration, the signature of the transferor should be carefully compared with the record in the office and a notice should be sent to the transferor stating that the transfer has been lodged, and that, unless objection is received, it will be assumed to be in order. A Form of Notice is given on p. 377 (Form 23). This will be unnecessary where a notice was sent on certification. If the transferor is a corporate body, the notice should be sent to the corporation, or in accordance with its articles. In the case of joint holders, it should be sent to every holder.

The registration of transfers is, subject to the articles, a matter for the board, for whose approval they must be submitted. But before the transfers are submitted to the board for approval they should be carefully scrutinised by the secretary, with a view to seeing—

That the transferor's name and description is in exact accord with the register;

That the consideration money bears its proper relation to the fair and reasonable market value of the stock or shares transferred;

That the transferee's full name, address, and description is clearly entered therein;

That the number of shares or amount of stock is written in correctly in words;

That in the case of shares the distinctive numbers are clearly entered and agree with the numbers appearing on the certificate and with the number of shares to be transferred;

That the name of the company is correctly given;

That the signature of the transferor not only agrees with the description entered at the head of the deed, but also,

if possible, with his signature when previously accepting the shares;

That it is properly witnessed and dated;

That there is no notice in lieu of distringas, or other charge upon the stock or shares therein referred to, or anything which would otherwise invalidate the transfer;

And, finally, that the deed is properly stamped. Where Form 15 (p. 370) is employed by a company, the signature of the transferor can readily be checked.

Unless the occupations of transferees are known, the annual summary cannot be fully made out. A transfer may be accepted, although material parts of it are typewritten. If the name of the transferee has been altered, or another name substituted, the transfer should be refused, unless it is accompanied by a satisfactory written explanation and statement that there has been no sub-sale.

In the case of transfers to a corporate body, the secretary should require that the memorandum and articles be lodged to show that the corporate body is duly empowered to hold shares, and also to show how the seal is to be affixed. Transfers to a partnership firm as such should not be registered [*Vagliano Anthracite Collieries* (1910), W. N. 187].

Public Trustee.

The Public Trustee, if separate accounts are necessary, should be registered with a number, or a letter and number, *e.g.* 'The Public Trustee, Account No. 3,' or 'The Public Trustee % A 40.' Any introduction of a name, *e.g.* 'The Public Trustee, *re* John Jones,' would appear to be contrary to the provisions of s. 27 of the Act, which forbids notice of any trust being entered on the register.

If a transfer signed by the registered holder is presented after the death of the transferor, and the company has not received formal notice of his death, *i.e.* by the registration of probate or letters of administration, the transfer should be accepted for registration. But if probate or letters of administration have been registered, then the secretary should decline to receive the transfer, unless it is accompanied by a letter of authority and request signed by the executors or administrators. Naturally, if the shares have already been transferred to the executors or administrators in their personal capacity, the transfer should not be accepted.

Attestation

As regards attestation, a transfer executed out of the United Kingdom should not be accepted if it is attested by anyone other than H.M. consul, a clergyman, justice of the peace, or notary public, unless the signature is guaranteed

by a bank or a firm of standing. When one of the parties to a transfer is illiterate or infirm, the attestation should state that the document has been read over and explained to the party, and that it appeared to have been understood by him (see Form 22, p. 376); in a case of the kind there should be two witnesses, one of whom should be a doctor, a justice of the peace, a clergyman, a solicitor, or some other person of standing. The wife or husband of a transferor or transferee should not be accepted as a witness. Neither should the attestation by one of the parties to the transfer to the signature of the other be allowed. The address and occupation of a witness should be specified. The description of a witness, 'clerk,' or 'married woman,' may be accepted, although the correct form should be 'clerk to ,' 'wife of .' If a witness has signed in the wrong place, it may be accepted if the intention is clear.

Surviving holders in a joint account should not be so described on transfers. When shares are being sold by executors in their capacity of executors they should be so described in the transfer. But if they have been registered in their personal capacity, a transfer should not be accepted if they, as transferors, are described as 'executors of , deceased.'

More than one account (*i.e.* two or more sellers to the same buyer) should not be allowed on the same transfer form; nor is it desirable to accept transfers of more than one class of shares or stock on the same transfer form.

Stamps. As regards the proper stamps on transfers, these will be found in the Inland Revenue Circular, dated August 1922, set out at p. 323. It must be remembered that, by s. 17 of the Stamp Act, 1891, 'if any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records, any instrument chargeable with duty, enrols, registers, or enters any such instrument not being duly stamped, he shall incur a fine of ten pounds.' This makes it incumbent upon the secretary to satisfy himself that transfers are properly stamped. If the consideration accords with the market price, and the stamp with both, there is no difficulty. If the stamp accords with the consideration, but the consideration is less than the market value, but near it, the secretary cannot be expected to do anything further. If the difference is considerable, the transfer should be refused in the absence of a satisfactory explanation and the adjudication mark of the Revenue Stamp office should be required.

With regard to transfers for nominal consideration, the

Inland Revenue Circular, dated August 1922, should be followed (see p. 323). A Form of Notice to be issued on presentation of a transfer with nominal consideration, unless adjudicated or properly indorsed, will be found on p. 414 (Form 58).

It has been held that directors may refuse to register a transfer not duly stamped, and in determining whether it is duly stamped they may go behind that which appears on the face of the document [*Maynard* v. *Consolidated Kent Collieries* (1903), 2 K.B. 121].

Certificates attached to transfers lodged for registration, as in the case of certificates in respect of transfers left for certification, should be cancelled immediately they are delivered to the company, so as to prevent any chance of their being subsequently made use of for an improper purpose.

The deed of transfer as lodged for registration having been found in order, and being accompanied by a certificate, or bearing on its face the company's certification, is stamped with the date of lodgment, given its consecutive number, and entered in the Register of Transfers for Board Meeting (Form No. 24, p. 378).

On transfers coming before the board for registration, it must not be forgotten that, where directors are given a discretion as to registering transfers, they must not exercise that discretion capriciously. The Court, in the absence of evidence to the contrary, will presume that the directors have done right [re *Coalport China Co.* (1895), 2 Ch. 404], and the onus of proof is on those who say the directors have not acted *bonâ fide* [ex parte *Penney* (1873), 8 Ch. App. 446]. If they have *bonâ fide* considered the matter, the directors need not give their reasons for refusing to register a transfer, but if they do give reasons the Court will inquire into the sufficiency of such reasons [re *Bell Brothers*, ex parte *Hodgson* (1892), 65 L. T. 245]. A person in whose favour shares are renounced is not a transferee, so that directors with power to refuse to register transfers are not thereby entitled to refuse to register his name as the holder of the shares [*Pool Shipping Co.* (1920), 1 Ch. 251]. It therefore appears that to entitle directors to refuse to register such persons, there must be special provision in a company's articles.

Before the closing of the transfer books for dividend purposes, care should be taken that every transfer lodged for registration be passed and registered. Whilst the books are closed, the certification of transfers should proceed as usual, and transfers presented for registration should be

accepted and carefully preserved, and there seems no objection to the usual notice as to lodgment of transfer (see p. 60) being immediately sent to the transferor; but apart from this the secretary will not deal with any transfers lodged for registration until the books are once more open.

The procedure usually followed by the transfer committee or board in checking the transfers and issuing certificates is as follows:—

Procedure of Transfer Committee.

The secretary, having satisfied himself that all the transfers and certificates have been properly and regularly put through the books, and are in order, reads them over to one of the directors for comparison with the new certificates, while at the same time another director or one of the clerks sees that the names of the transferor and transferee, the number of shares or amount of stock transferred, and the number of the new certificates issued, with distinctive numbers in the case of shares, agree with the particulars as read out by the secretary and as entered on the certificate, and that a certificate corresponding thereto has been cancelled. The new certificates are then dated, signed, and sealed, and checked with the entry in the seal book and agenda. They are then ready for issue in exchange for transfer receipts, &c. As soon as the directors have passed the transfers they should be posted into the Share Register. As the deeds represent the titles of the transferees they must be kept in a place of absolute safety, and retained by the company in perpetuity.

In the event of a duplicate certificate having been issued in exchange for an indemnity in respect of a lost, mislaid, or destroyed original certificate, it will be necessary to see that the duplicate certificate is the one lodged with the transfer and not the original; and should the latter be lodged, to communicate with the transferor to ascertain the reason why he is dealing with the original and not the duplicate.

Should a certified transfer be lost, the company should, before certifying a duplicate transfer, require an indemnity from the transferor. This should, in general, be accompanied by a statutory declaration verifying the loss, and a guarantee by a person of standing, unless the number of shares proposed to be transferred is small. A suitable form of declaration and indemnity will be found on p. 360 (Form 6).

Care must be taken in writing up the Register of Certificates Cancelled and Issued (if such is kept), to put the number of the new certificate against the name of the

transferee as entered upon the back of the cancelled certificate.

Certificates. Great care should be exercised in the preparation of the certificates to see that the number of shares or amount of stock (and in the case of the former, the distinctive numbers) are correctly stated. The address of the holder should be inserted, but not the description, with the exception of courtesy designations, *e.g.* 'Reverend,' 'Mrs.,' 'Miss,' &c. In joint accounts it is usual to give the address of the first-named holder only, unless otherwise provided for in the articles of association; but there is generally a clause in the articles to the effect that in the case of joint accounts all notices will be addressed to the first-named holder, so that the addresses of the second, third, or other holders in joint accounts are, excepting for purposes of identification, not required to be set out in the Index to Share Register, although it is convenient that they should always be fully detailed in the register itself.

By s. 92 of the Act, companies are required to complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock transferred, within two months after the registration of the transfers, unless the conditions of issue otherwise provide.

Notice in lieu of Distringas. The registration of transfers may be prevented by any person interested giving to the company a notice, in the prescribed form, requiring it to refrain from registering them, accompanied by an affidavit describing the nature of his interest. Payment of dividends may be restrained likewise by the same procedure. This procedure is in accordance with the Rules of the Supreme Court, and its effect is to prevent the company from registering a transfer without giving the person claiming to be interested an opportunity of applying to the Court to restrain the transfer. Upon the transfer being presented for registration, the company must notify the person who has given the notice, and unless that person then proceeds to obtain within eight days an order of the Court restraining the transfer, the company may proceed to register the transfer in spite of the notice. Forms of notice by the company to the person on whose behalf the notice and affidavit were lodged, and to the person actually lodging them, will be found on p. 379 (Forms 25 and 26).

Fees. The matter of the fees to be charged on the registration of transfers and other documents, and the issue of certificates in certain cases, is dealt with on p. 74.

Legal Effe of Transf One or two other matters connected with transfers remain to be noticed. The legal effect of a transfer, duly completed

by registration, is important. A transferee does not get a full title until the transfer is registered [*Société Générale* v. *Walker* (1886), 11 A.C. 20]. The entry of the name of a transferee on the register by a secretary, without authority, before the directors have approved the transfer, gives the transferee no title, and the transferor still remains liable on the shares (*Chida Mines* v. *Anderson* (1905), 22 T.L.R. 27]. Till registration the transferee has only an equitable right, which he may lose by the appearance of some person with a superior equity, or by the registration of a later transfer [*Moore* v. *N.W. Bank* (1891), 2 Ch. 599; *Ireland* v. *Hart* (1902), 1 Ch. 522]. Meanwhile the transferor remains liable to pay calls, but there is an implied contract by the transferee to indemnify him [*Loring* v. *Davis* (1886), 32 Ch. D. 625], and, subject to the articles of association, the transferor can enforce the registration. If a shareholder neglects to have the name of the transferee substituted for his own upon the register of shareholders and a winding-up supervenes, his name must remain there, and he is therefore liable to pay up the amount due upon his shares [*Walker's Case* (1868), 6 Eq. 30], although he would be entitled to indemnity by the transferee. The transferor after registration is not primarily liable as a contributory [*Hoylake Railway Co.* (1874), 9 Ch. App. 257], but remains liable for one year to be placed on the 'B' List of contributories (see s. 163 of the Act). But even after registration the transferor will remain liable if the transfer was fraudulent, or made without the authority of the transferee, or to a nominee of the company to the knowledge of the transferor; but in the case last mentioned the transferee may be liable [*Cree* v. *Somervail* (1879), 4 A.C. 648].

If the non-payment of calls in arrear involves any penalties (*e.g.* loss of the right of voting), it has been held that, where the calls can be recovered from the original holder, even after forfeiture, the person, to whom the shares have been re-sold by the company, takes subject to such penalties [*Randt Gold Mining Co.* v. *Wainwright* (1901), 1 Ch. 184].

The company is not bound to register a transfer at once, but is allowed time for inquiry; if, however, registration is improperly refused, the company will be liable in damages [*Ottos Kopje Diamond Mines* (1893), 1 Ch. 618].

The only duty of the transferor of shares is to execute a valid transfer and hand it to the transferee; it is for the transferee to insist on his right to registration [*Skinner* v. *City of London Insurance Corporation* (1885), 14 Q.B.D. 882.] But the transferor is under an implied obligation, arising from the relation of grantor and grantee, not to prevent or delay the

registration [*Hooper* v. *Herts* (1906), 1 Ch. 549]. See also s. 28, p. 53.

Blank Transfers.

The effect of blank transfers, *i.e.* transfers in which the name of the transferee is omitted, should be noticed. Blank transfers are usually given in cases where the transferor is desirous of raising money on the shares; and here there is a difference in the legal position according as the regulations of the company do or do not require a transfer to be made by deed.

1. *Where the regulations do not require a transfer by deed.* A form of transfer signed by a vendor of shares, but with the name of the transferee omitted, is equivalent, when delivered to a purchaser, to an authority to him to fill in the blank with any name he likes [*Walker* v. *Bartlett* (1856), 18 C. B. 845]. And when the name is filled in, the transferee is entitled to be registered as holder of the shares [*Tahiti Cotton Co.*, ex parte *Sargent* (1874), 17 Eq. 273].

2. *Where the regulations require a transfer by deed.* The name of the transferee must be inserted before the deed is executed [*Tayler* v. *Great Indian Peninsula Railway Co.* (1859), 4 De G. and J. 559]; otherwise the document is inoperative as a deed [*Hibblewhite* v. *McMorine* (1840), 6 M. & W. 200], and gives the purchaser no right to call upon the company to place his name upon the register. The purchaser however, has, in consequence of the contract of sale, an equitable title to the shares, and he can force the vendor to aid him to acquire a legal title by executing a proper transfer [*Morris* v. *Cannon* (1862), 31 L. J. Ch. 425].

If a mortgagee of shares, holding a transfer in blank, purports to sell them, and hands over to his purchaser the transfer still in blank, the fact that it is in blank affects the purchaser with notice, and he gets no better interest than his vendor (the mortgagee) had [*France* v. *Clarke* (1884), 26 Ch. D. 257]. But if the mortgagee himself fills in the transfer, his transferee, provided he be a *bonâ fide* purchaser for value without notice, will get a complete title to the shares [*Easton* v. *London Joint Stock Bank* (1887), 34 Ch. D. 95].

Forged Transfers.

A forged transfer gives no rights to the shares to the alleged transferee [*Barton* v. *London & North-Western Railway* (1889), 24 Q.B.D. 77]; but where a company has parted with the share certificate on a forged transfer and this has been passed on to a *bonâ fide* holder for value, the company is estopped by its certificate from denying that he is the proprietor of the shares, and he is entitled to damages against it [*Balkis Co.* v. *Tomkinson* (1893), A. C. 396]. The Court will rectify the

been registered, the production of probate of his will by his executor entitles that executor to deal with the shares of the deceased shareholder. But the administrator of a deceased executor must not be recognised. The person entitled to the unadministered estate of the deceased shareholder (who will generally be the residuary legatee or one of the next of kin) must take out letters of administration *de bonis non* and the secretary can then recognise that person. Similarly neither the executor of an administrator nor the administrator of an administrator can be recognised.

Colonial Probates, etc.

Colonial probates or letters of administration must be re-sealed in this country before the personal representative can be recognised. Similarly Scottish and Irish probates and letters of administration must be re-sealed in England, English or Irish in Scotland, and English or Scottish in Ireland.

The re-sealing of Scottish and Irish grants is effected at the Principal Probate Registry, Somerset House, London, W.C., and the following fees are payable:—

SCOTTISH CONFIRMATION.

	£	s.	d.
Receipt	0	1	0
Collating copy confirmation up to 10 folios of 90 words	0	2	6
Collating copy confirmation above 10 folios, per folio	0	0	3
Search fee per full year or part of year since December	0	0	6
Sealing fee	1	1	0
Filing copy confirmation	0	2	6

IRISH GRANT.

	£	s.	d.
Receipt	0	1	0
Collating copy, probate or administration, up to 10 folios of 90 words	0	2	6
Above 10 folios ...	0	0	3
Search fee, per full year or part of year since death	0	0	6
Fiat	0	5	0
Sealing fee effects in England—according to value		—	
Filing copy probate or copy administration...	0	2	6
Filing Inland Revenue certificate as to duty...	0	2	6
Filing certificate as to bond (administration)	0	2	6

English or Irish probates and letters of administration for re-sealing in Scotland should have upon them a note of the domicile of the deceased certified by the Registrar and be sent to H.M. Commissary Office, Parliament Square, Edinburgh. The fee payable is 2*s.* 6*d.* if the gross value of the real and personal estate in the United Kingdom does not exceed £500, and 10*s.* if it exceeds that sum.

English or Scottish probates and letters of administration to be resealed in Ireland should be sent (*a*) to the district registry at Londonderry in respect of the counties of Londonderry, Tyrone and Fermanagh, and the county borough of Londonderry; (*b*) to the principal registry in Dublin in respect of the counties of Donegal, Monaghan and Louth; (*c*) to the principal registry in Belfast in respect of so much of Northern Ireland as is not included in the district of the district registry at Londonderry; (*d*) to the Chief Probate Registry, Four Courts, Dublin, in respect of other areas [*London Gazette*, Feb. 3rd, 1922 as to (*a*), (*b*) and (*c*) above]. The note as to domicile is not required. The fees payable are as follows, in the case of probate, letters of administration, or letters of administration with the will annexed:—

	s.	*d.*
Effects in Ireland sworn under £20	1	0
[,, ,, ,, £50	5	0][1]
,, ,, ,, £100	10	0
,, ,, at or over £100	12	6
Also:—Search per year, or part of year (excluding current year)	0	6
Filing notice of application	2	6
Receipt for grant	1	0
Registrar's fiat	5	0
Filing copy will and/or grant	2	6
Comparing copy with grant, 3*d.* per folio of 90 words with a minimum charge of	2	6
Stamp Office certificate	2	6
Certificate of bond (if any)	2	6

Foreign Probates.

As regards foreign probates, it is necessary for a fresh grant to be taken out in England by an attorney appointed for the purpose by the person entitled. The latter need not be the administrator in a foreign country, whom the Courts will not recognise under this process unless he is in fact the person who would, if he were present in this country, be entitled to the grant under English law. This procedure of obtaining a fresh grant is in simple cases often followed also

[1] In the case of letters of administration only.

in the case of colonial probates, as it is in such cases slightly less expensive than the process of resealing, and may be found more expeditious.

Letter of Request. As just stated, upon production of probate, without more, a company should not enter the names of the executors upon the register. As long ago as 1879, in *Buchan's Case* (4 A.C. 549), in the House of Lords, the then Lord Chancellor, Lord Cairns, laid it down that the names of executors should not be entered on the register without 'a distinct and intelligent request' on the part of the executors. But when the regulations, as they commonly do, provide for the executors being entitled to require the company to register them, it is then the duty of the company, upon a request, to enter their names, unaccompanied by any mention of their representative capacity [*T. H. Saunders & Co.* (1908), 1 Ch. 415]. If this be done, the executors become personally liable on the shares, and the company has nothing to do with the deceased or his estate. Hence the frequent provision in articles that directors shall not be obliged to consent to the registration of executors; they may not desire, where the shares are not fully paid, to accept the liability of the executors, who may be men of straw, in lieu of the liability of the estate of the deceased, and may prefer to await a substantial transferee. When an executor is, upon a proper request, entered on the register, a fresh certificate should be issued, and the request should be recorded as a transfer. Where an executor or administrator is also beneficially entitled to shares he can, upon a proper request, be placed on the register without any transfer being executed.

A form of request by executors, or administrators, to go on the register, will be found on p. 380 (Form 27).

A form of letter of indemnity on waiving production of probate or Letters of Administration in small estates of a value of under £100 in the United Kingdom is given on p. 382 (Form 29).

Evidence of Death. As regards the evidence which should be demanded on death, in the case of the death of a holder in sole account, the production of probate or letters of administration should be required; whilst in the case of the death of one holder in joint account, a certificate of death is usually sufficient. A Form of Certificate of Identity, where one is required, will be found on p. 381 (Form 28).

Upon the death of a holder in joint account, the shares vest, by right of survivorship, in the survivor or survivors.

Company Executor. A company is sometimes appointed executor. In such a case it must appoint under its seal a representative, called a syndic, to whom letters of administration with the will

annexed will be granted, and these will be produced to the company in which the deceased held shares. In the case of a company being appointed co-executor with individuals, no grant can be made to the syndic unless the individuals have renounced probate.

In cases where executors are to be noted in the register in their representative capacity, probate should be exhibited, and the register of probates should give the names and addresses of the executors. The common practice of making a note in the register of members that probate has been exhibited, and giving the names of the executors, is to be recommended. The same applies to administrators. Where probate has not been granted to all the executors, power being reserved to grant probate to the remainder, that fact should be noted also.

In the event of the sale by the executors of part of the holding—they being entitled to sell the holding under s. 29 of the Act—the balance certificates should be made out in the name of the deceased, the names of the executors being given in the margin of the certificate. Where executors have been noted in their representative capacity, dividend warrants should be made out to (say) 'John Brown one of the executors of A. Smith, deceased.' John Brown would indorse the warrant. If sent to a bank the warrant would be payable to (say) 'Coutts & Co. A/c A. Smith, deceased' (or as per instructions).

It is usually desirable, whenever possible, to compel the registration in their personal capacity of persons claiming by transmission. The best method of so doing is to withhold dividends, but this can only be done when the articles authorise it. An article in some such form as follows will serve the purpose: If within a year and day from the death of a shareholder his executors or administrators have not [themselves been registered as the holders of his shares, or have not] transferred his shares, the directors may withhold payment of all dividends that may be payable in respect of such shares until such time as the executors or administrators shall [themselves have been so registered, or shall] have transfered the shares, when the said dividends shall be payable to the [executors or administrators, or the] transferee of the shares [as the case may be].

Bankruptcy.

In the case of the devolution of title to shares on the bankruptcy of a shareholder, the trustee in bankruptcy is the representative of the bankrupt, and the company should require as evidence either an office copy of his appointment, or a copy of the *Gazette* containing notice thereof.

Lunacy. In the case of lunacy, the property of the lunatic can only be dealt with under an order of the Court, and this order, or an office copy of it, should be produced to the company.

Liquidation. If a company holding shares in another company goes into liquidation, the latter company should require evidence of the appointment of the liquidator. In voluntary liquidation, should the appointment have been made by special or extraordinary resolution, a copy of the *Gazette* containing the resolution will suffice; otherwise a certified copy of the ordinary resolution should be demanded. In compulsory liquidation, a copy of the *Gazette* containing notice of the appointment of the liquidator is sufficient. In all the above cases the change of title should be noted in the register of members. Registers should be kept of proofs of death, marriage, and other changes of title.

It is desirable that companies should charge fees for the registration of various documents, and the issue of certificates in certain cases. But none of these fees are properly chargeable, unless authorised by the articles of association. Opportunity should be taken to alter the articles of association, where necessary, in order to justify the charges. The following fees are those usually charged:—

		s.	d.
For registration of transfer		2	6
,, ,,	probate	2	6
,, ,,	proof of death in joint holdings	2	6
,, ,,	request by executors to be placed on register ...	2	6
,, ,,	proof of marriage	2	6
,, ,,	power of attorney	2	6
,, ,,	change of name by deed-poll, or otherwise	2	6
,, ,,	notice in lieu of distringas ...	2	6
,, ,,	lunacy orders	2	6
,, ,,	appointment of trustee in bankruptcy, &c. ...	2	6 each
For issue of duplicate certificates		1	0
,, ,, split certificates		1	0

No fee should be charged for registration of change of address, or for the issue of balance certificates, although in this latter case a fee of 1s. is sometimes charged.

CHAPTER VIII

OTHER MATTERS RELATING TO SHARES

WE have dealt in Chapter V with the nature of shares, with share-certificates and membership, in Chapter VI with application and allotment, and in Chapter VII with transfer and transmission. There are various other matters directly connected with shares, with which it is proposed to deal in this chapter.

Assuming that a shareholder has paid the application and allotment money due upon his shares, and that, as is generally the case, the shares are not then fully paid, the matter of the machinery for securing the due payment of the balance requires attention.

By the terms of the contract, *i.e.* the conditions of allotment, the unpaid balance may be payable at fixed dates. Thus, if (say) 2*s.* 6*d.* has been paid on application, and 2*s.* 6*d.* on allotment, the balance may be made payable by instalments as follows: 5*s.* on June 1st, 5*s.* on July 1st, and 5*s.* on October 1st. Or the unpaid balance may be payable by certain instalments at not less than certain fixed intervals. Thus, by the conditions of allotment, the balance of (say) 15*s.*, due after the allotment money is paid, may be payable by three instalments of 5*s.* each at intervals of not less than (say) two months. Or again, there may be no conditions as to the payment of the balance, in which case one or more calls will be made as and when the money may be required.

Where the balance is by the terms of allotment payable at fixed dates, it is the duty of the shareholder to pay each instalment on the date fixed without a demand being made for it. It is, however, customary for a reminder to be sent. In the other cases mentioned, the directors (if, as is usual, the power is vested in them) will resolve that the next instalment of a fixed sum be called up, or that a call be made of whatever amount is required, as the case may be. **Calls.**

A form of Resolution to make a call will be found on p. 130, and a form of Call Letter on p. 383 (Form 30).

Power to make calls may be vested in the company in general meeting, but, as stated above, it is more frequently

vested in the directors (see *e.g.* Table A, cl. 12). Since the regulations of the company are the terms of the contract whereby a shareholder has agreed to take his shares, all the requirements of the regulations must be strictly observed in making a call; otherwise the call may be invalid.

For instance, if a call be made by directors, the board meeting must be duly convened, and the directors must be properly appointed [*Garden Gully Co.* v. *McLister* (1875), 1 A.C. 39]. The prescribed quorum must be present [re *Alma Spinning Co., Bottomley's Case* (1881), 16 Ch. D. 681]. But a call made by less than a quorum, and afterwards confirmed when a quorum was present, has been held good [*Phosphate of Lime Co., Austin's Case* (1871), 24 L. T. 932].

Power to make calls is in the nature of a trust, and must be exercised by the directors for the good of the company [*Gilbert's Case* (1870), 5 Ch. App. 559]. Directors may not protect their own shares from a call and let the whole burden fall upon the other shareholders [*Alexander* v. *Automatic Telephone Co.* (1900), 2 Ch. 56].

But a company may, if authorised by its articles, make arrangements on an issue of shares for a difference between the shareholders in the amount and times of payment of calls (s. 39). *Primâ facie*, however, there is an implied equality between shareholders of the same class, and it is wrong to make a call on some members only of a class [*Galloway* v. *Hallé Concerts* (1915), 2 Ch. 233].

The amount of the call and the time for payment must be fixed by the resolution [re *Cawley & Co.* (1889), 42 Ch. D. 209]. A call is made when the resolution is passed, not when notice is given to the shareholder [*R.* v. *Londonderry Rly Co.* (1849), 13 Q.B. 998], and the articles generally contain a provision to that effect. A call is owing from the day on which it is made, although it is payable on a subsequent day [*China Steamship Co.* (1869), 38 L.J. Ch. 512].

A call is in the nature of a specialty debt, and recoverable at any time within twenty years [*Cork and Bandon Railway* v. *Goode* (1853), 13 C.B. 827; s. 14]. A company may prove in the administration of a deceased shareholder, whose estate is insolvent, for the estimated value of the liability to future calls in respect of the shares standing in his name [*Fuller* v. *McMahon* (1900), 1 Ch. 173].

Where the articles so provide (*e.g.* Table A, cl. 14), a shareholder will be liable for interest on overdue calls.

Where Table A, cl. 17, applies, or similar provision is made in special articles, calls may be paid in advance, and the company may pay interest on moneys so prepaid, even though

it is earning no profits, and the payment has to be made out of capital [*Lock* v. *Queensland Mortgage Co.* (1896), A.C. 461]. But money paid in advance of calls is capital paid up, and not an ordinary loan, so that it cannot be repaid except on a legal reduction of capital [*London & Northern Steamship* v. *Farmer* (1914), 111 L.T. 204]. The power to accept from a member the whole or any part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, is conferred by s. 39 of the Act upon companies which are so authorised by their articles. Hence the above-mentioned provision in many articles.

Lien. Under the articles of association of most companies a lien is given to the company on the shares (or more generally upon the shares not fully paid) of the members in respect of any debts for the time being due from them to the company, *e.g.* in the case of partly paid shares, for calls. If the original articles do not so provide they may be altered by special resolution, or if under the original articles the lien only applies to partly paid shares, it may be extended by special resolution to fully paid shares [*Allen* v. *Gold Reefs of West Africa* (1900), 1 Ch. 656]. If such a lien exists no transfer of the shares belonging to a member who is indebted to the company should be sanctioned by the directors until the debt is discharged. The Committee of the Stock Exchange, however, require the articles to provide that fully paid shares shall not be subject to a lien. See also p. 61.

Forfeiture. The articles of most companies authorise the forfeiture of shares in the event of failure on the part of a member to pay any call or instalment on or before the day appointed for the payment thereof (see *e.g.* Table A, cl. 24–30). The provisions of the articles as to forfeiture must be very carefully studied and scrupulously observed, for the right of forfeiture is very strictly construed by the Courts, and any irregularity in or deviation from the powers given to the directors by the articles will render the forfeiture bad. Where the articles give no power of forfeiture, the sanction of the Court must be obtained to make it valid [*Clarke* v. *Hart* (1858), 6 H.L.C. 633]. Under the Courts (Emergency Powers) Act, 1914, shares may not be forfeited without the leave of the Court [*Burgess* v. *O. H. N. Gases* (1914), 31 T.L.R. 59].

A power of forfeiture must not be exercised in the interests of a shareholder to enable him to escape liability, but in the interests of the company [*Spackman* v. *Evans* (1868), L. R. 3 H.L. 171].

Notwithstanding forfeiture a shareholder is liable to pay all calls owing at the time of the forfeiture, with interest, if the

regulations so provide [*Stocken's Case* (1868), 3 Ch. App. 412]. And where shares have been forfeited for non-payment of calls and re-sold, then (though Table A of 1862, cl. 22, applies) fresh calls may be made on the purchaser for the unpaid amount [*New Balkis Eersteling* v. *Randt Gold Mining Co.* (1904), A.C. 165]. But he is entitled to be credited with sums paid by the original holder since forfeiture [re *Randt Gold Mining Co.* (1904), 2 Ch. 468]. It has been held that where by the articles of association a member is not entitled to vote when calls are due from him, and is liable to pay the calls even after forfeiture, the purchaser of shares forfeited for non-payment of calls is not entitled to vote so long as the calls are unpaid by the original holder [*Randt Gold Mining Co.* v. *Wainwright* (1901), 1 Ch. 184].

The articles generally contain a power for the directors to annul a forfeiture. But such a power cannot be exercised adversely to the former shareholder, so as to make him liable for calls made subsequently [re *Exchange Trust, Larkworthy's Case* (1903), 1 Ch. 711].

A Form of Resolution of the board to forfeit shares will be found on p. 130.

A *bonâ fide* forfeiture made in accordance with the regulations of the company will not be disturbed by the Courts [*Sparks* v. *Liverpool Waterworks Co.* (1807), 13 Ves. 428]. Nevertheless the law does not recognise the forfeiture of the shares of a member for his debts, other than calls, notwithstanding that the articles of a company authorise it [*Hopkinson* v. *Mortimer Harley & Co.* (1917), 1 Ch. 646]. A shareholder may bring an action to set the forfeiture aside if he desires to test its validity [*Sweney* v. *Smith* (1869), 7 Eq. 324]. A slight irregularity, *e.g.* claiming interest from date of call instead of date of payment, is sufficient for the Court to annul a forfeiture [*Johnson* v. *Lyttle's Iron Agency* (1877), 5 Ch. D. 687]. Forfeiture will be restrained pending the trial of an action for rescission upon the plaintiff paying into Court the amount of the unpaid call [*Jones* v. *Pacaya Rubber Co.* (1911), 1 K.B. 455; *Lamb* v. *Sambas Rubber Co.* (1908), 1 Ch. 845].

Surrender. Closely akin to the subject of forfeiture is that of the surrender of shares. The law upon this subject was for some considerable time thought to have been authoritatively settled by the Court of Appeal and to be as summarised in the following extract: 'Every surrender of shares, whether fully paid up or not, involves a reduction of capital, which is unlawful, except when sanctioned by the Court under the Companies Acts of 1867 and 1877. Forfeiture is a statutory

exception, and is the only exception. For I regard a surrender, under circumstances which would justify a forfeiture, as merely equivalent to a forfeiture' [per Cozens-Hardy, L.J., in *Bellerby* v. *Rowland and Marwood Steamship Co.* (1902), 2 Ch. 14, at p. 32].

A surrender of shares already liable to forfeiture had been held to be valid [*Trevor* v. *Whitworth* (1887), 12 A.C. 409]; and since a company cannot issue its shares at a discount [*Ooregum Gold Co.* v. *Roper* (1892), A.C. 125], the principle was involved that a company could not by any device relieve a shareholder from the liability to pay the full amount due on his shares [*Bellerby* v. *Rowland & Marwood Steamship Co.* (above)].

But it has been held by Warrington, J., that, where a company has power by its articles to accept a surrender of old shares in exchange for new, fully paid shares may be validly surrendered, and new shares of the same nominal value issued as fully paid to the holder in exchange [*Rowell* v. *John Rowell & Sons* (1912), 2 Ch. 609; in which case the surrendered shares were not cancelled, but were subject to be re-issued by the company].

Underwriting Commissions

The important subject of the payment of commissions on the issue of shares is dealt with in s. 89 of the Act, to which reference may be made. The interpretation of the section is in some respects difficult, but it is believed that the following is a correct summary of the present law as to the payment of underwriting commissions, both by the company and by vendors and promoters:

1. By the Company.—

(i) *Where there is a public issue* (see p. 37).

The following conditions must be complied with:

(*a*) The articles (either as originally framed, or as altered by special resolution), must authorise payment of a commission of an amount or rate equal to or exceeding that proposed to be paid.

(*b*) The amount or rate must be disclosed in the prospectus.

(ii) *Where there is no public issue* (see p. 41).

(*a*) The payment must be authorised by the articles.

(*b*) The amount or rate must be disclosed (1) in the statement in lieu of prospectus, or (2) in a statement in the prescribed form, signed in like manner as a statement in lieu of prospectus, and filed with the Registrar.

(*c*) The amount or rate must be disclosed in any circular or notice, not being a prospectus, inviting subscriptions.

It would seem that on a first issue the disclosure must be made in the statement in lieu of prospectus, and on subsequent issues and in the case of a private company it must be made in the statement in the prescribed form. Unless the statement in the prescribed form has been duly filed before the shares are allotted, the commission cannot be recovered from the company [*Andreae* v. *Zinc Mines of Great Britain* (1918), 2 K.B. 454]. S. 89 also applies to private companies [*Dominion of Canada General Trading* v. *Brigstocke* (1911), 2 K.B. 648].

'Prescribed' means prescribed by the Board of Trade (s. 285).

2. By Vendors or Promoters.—Vendors or promoters, who wish to pay underwriting commissions out of money or shares received from a company, must comply with the conditions under (i) (above), where there is a public issue, and with the conditions under (ii) (above), where there is not a public issue.

The following points are to be noticed as regards underwriting generally:

The commission may be paid in consideration of (*a*) an absolute subscription, *i.e.* in effect shares may be issued firm at a discount (see below); or (*b*) a conditional subscription, *i.e.* underwriting; or (*c*) an agreement to procure either form of subscription, *i.e.* an overriding commission.

It will be observed that the Act permits the payment only of 'a commission' for one or other of the foregoing, and it may be said that a commission can only be paid for underwriting or procuring underwriting—not two commissions, one for each operation. On the other hand, it makes no difference to a company which pays 5 per cent. to the person who procures underwriting if that person gives away 4 per cent. to the actual underwriter or sub-underwriter. So long, however, as there is any doubt, it is advisable to draw underwriting contracts with this point in view.

Not only may shares not be applied, but the proceeds of shares issued may not be used, in payment of commission, unless the terms of the Act are complied with [*Shorto* v. *Colwill* (1909), 101 L. T. 598].

Options to subscribe additional shares at par or at a fixed price in consideration of subscribing part of the capital of a company are not affected by the Act. Such options are not an application of the shares or capital money of the company within the prohibition [*Hilder* v. *Dexter* (1902), A.C. 474].

Except in so far as the payment of a commission in consideration of an absolute subscription is authorised by the Act, the shares of a company may not be issued at a discount [*Ooregum Gold Co.* v. *Roper* (1892), A.C. 125]. And a colourable attempt to issue shares at a discount, purporting to be merely the payment of a commission as authorised by the Act, will be restrained [*Keatinge* v. *Paringa Consolidated Mines* (1902), W.N. 15]. But it is almost impossible to draw any logical distinction between issuing shares at a discount and issuing shares at par subject to a commission payable to the subscriber for the shares.

Debentures may be issued at a discount, unless the provisions of the memorandum or articles of association prevent it [re *Compagnie Générale, Campbell's Case* (1876), 4 Ch. D. 470; *Webb* v. *Shropshire Railways Co.* (1893), 3 Ch. 307]. But where debentures issued at a discount are exchangeable for fully-paid shares, this may involve the issue of shares at a discount [*Mosely* v. *Koffyfontein Mines* (1904), 2 Ch. 108].

Any discount or commission paid for placing debentures must be disclosed in a prospectus (s. 81), or statement in lieu (s. 82), and must appear in the Annual Summary (s. 26), and particulars must be given on registration of the debenture (s. 93).

The previously existing power of a company to pay brokerage is reserved by the Act. The power had been recognised in *Metropolitan Coal Association* v. *Scrimgeour* (1895), 2 Q.B. 604), where 2½ per cent. was paid. The basis of the decision in the case quoted was that 2½ per cent. was a reasonable remuneration for the work done by the brokers in placing shares. The decision is limited to work done by stockbrokers, but there appears to be no reason why similar brokerage should not be paid to any person or company who *bonâ fide* renders similar services.

Commissions may be paid to individuals on the issue of specific shares, subject, of course, to the provisions of s. 89; but more commonly they are paid upon a large number of shares being underwritten. 'An "underwriting" agreement means an agreement entered into before the shares are brought before the public, that in the event of the public not taking up the whole of them, or the number mentioned in the agreement, the underwriter will, for an agreed commission, take an allotment of such part of the shares as the public has not applied for' [per Cotton, L.J., in *Licensed Victuallers' Association* (1889), 42 Ch. D. 1, at p. 6]. The object of underwriting is thus to insure the subscription of the issue.

The underwriting agreement generally takes the form of a letter from the underwriter addressed to the promoter of the company undertaking, in consideration of a commission to be paid in any event, to take up a certain number of shares, or a proportion of them, if not subscribed for by the public. Whether such letter amounts to a concluded contract, or whether it is merely an offer, the acceptance of which must be communicated to the underwriter, depends upon its terms [*Consort Deep Level Gold Mines* (1897), 1 Ch. 575].

In practice it is common to pay a broker or other person (say) 1 per cent. overriding commission for his procuring others to underwrite, and to pay to the underwriters (say) 4 per cent. for their underwriting or conditional application. A better course, however, is for the company to enter into a contract with some individual or syndicate to procure underwriting, to the satisfaction of the company, for the whole number of shares to be underwritten, the consideration being a lump sum; thereupon the individual or syndicate enters into sub-underwriting contracts with others to cover the liability undertaken on such terms as are thought fit.

It is provided by s. 90 that 'Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.'

Register of Members.

The register of members [s. 25] must be kept at the company's registered office, and must be open during business hours to the inspection of any member without fee. Any other person may inspect it on payment of a fee not exceeding one shilling for each inspection. The hours for inspection may be restricted by the company in general meeting, provided that not less than two hours daily be allowed [s. 30 (1)]. Any person, whether a member or not, may require a copy of the register, or of any part of it, or of the annual summary (see p. 83) on payment of a sum not exceeding sixpence for every hundred words or part of a hundred words required to be copied [s. 30 (2)]; but he is not entitled to take copies himself without payment [*Balaghât Gold Mining Co.* (1901), 2 K.B. 665]. The right to inspect and require copies ceases when the company is in liquidation. It may be observed that in the case of statutory companies (see Chapter XXII), there is a right to take copies of all material parts of the register [*Mutter* v. *Eastern and Midlands Railway* (1888), 38 Ch. D. 92].

The register may be closed for a period or periods not exceeding in all thirty days in each year, but before so closing it the company must give notice by advertisement in some newspaper circulating in the district in which the registered office is situate (s. 31). A form of directors' resolution to close the books will be found on p. 130.

Rectification

The Court has power to rectify the register in any case where a name is improperly entered in or omitted from the register, or where there is default or unnecessary delay in entering on the register the fact of a person having ceased to be a member. The person aggrieved, or any member of the company, or the company itself, may apply to the Court for rectification [s. 32 (1)]. Where an order is made by the Court under this section, the secretary's duty is to strike out the entry ordered to be struck out by drawing a line through it, or to make the entry ordered to be made, as the case may be. He should add some such words as 'This entry was deleted (*or* made) pursuant to order of the Court, dated the th day of 19 .' An entry which has to be struck out should not be erased. An unauthorised alteration of the register by the secretary is a nullity [*Indo-China Steam Navigation Co.* (1917), 2 Ch. 100], since the power of rectification lies solely with the Court.

The register of members is *primâ facie* evidence of any matters directed or authorised by the Act to be inserted in it (s. 33), but the presumption thus raised may be displaced by evidence of the incorrectness of the entry.

Colonial Register.

A company authorised to transact business in a colony may, if its articles permit, keep in any colony where it transacts business a branch register of members resident in that colony. This register is called a 'colonial register.' 'Colony' includes British India and the Commonwealth of Australia. The Registrar must be notified of the situation of the office where any colonial register is kept, and of any change in its situation, and of its discontinuance (s. 34). A duplicate of a colonial register must be kept, duly entered up, at the company's registered office, which duplicate is deemed to be part of the principal register [s. 35 (3)]. For further details as to colonial registers, reference may be made to s. 35 of the Act.

Annual Summary.

In connection with the register of members, the annual list and summary, or, as it is commonly called, the Annual Summary, may conveniently be dealt with. The statutory form of this document is contained in the Third Schedule to the Act, being Form E in that Schedule, and s. 26 contains the statutory law on the subject.

The Annual Summary must be contained in a separate part of the register of members (which itself may be kept in one or more books). It must be made at least once in every year and must contain a list of all persons who, on the fourteenth day after the first or only general meeting in the 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) since the date of the company's incorporation.

The list must state:

(1) the names, addresses, and occupations of all the past and present members referred to above;

(2) the number of shares held by each of the present members at the date of the return (*i.e.* on the fourteenth day mentioned above);

(3) particulars of shares transferred since the date of the last return (or in the case of the first return since the incorporation of the company) by (*a*) present members, and (*b*) the past members referred to above;

(4) the dates of registration of all such transfers.

The list must contain a summary, which, besides distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, must specify a number of particulars, which may readily be ascertained from s. 26 (2), or from the statutory form of annual summary, and need not be set out here. It is noticeable with regard to these particulars that, in the case both of commissions and of share-warrants issued and surrendered, the Act, by a palpable oversight, whilst requiring the disclosure of the total amounts since the date of the last return, omits to require in the case of the first return the total amounts since the company's incorporation.

Amongst the particulars required by s. 26 of the Act to be returned in the annual summary are the names and addresses of the directors at the date of the return. But by the combined effect of s. 1 of the Companies (Paticulars as to Directors) Act, 1917, and s. 3 of the Registration of Business Names Act, 1916, the particulars now required to be included as regards directors are the following: 'The present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such' director. Where a director has another occupation

such as a solicitor, chartered accountant or stockbroker that description will be sufficient although the director may be a director of several other companies. Where a director has no occupation other than being a director of companies, it will be sufficient description of his other occupation if the name of one of the other companies of which he is a director is given.

Statement in form of Balance Sheet.

There is little difficulty in duly returning the particulars referred to above, but the summary is (except in the case of a private company) required to include 'a statement . . . in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of these 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.'

This statement is not required to be made up to any particular date, but the date to which it is in fact made up must be specified in the statement. This is a serious defect, since there is at present nothing to prevent the same statement being filed annually, the date to which it is made up becoming year by year more remote. The proper method of making up this statement has given rise to considerable difficulty; but the decision in *Galloway* v. *Schill, Seebohm & Co.* (1912, 2 K.B. 354) has thrown a certain amount of light on the requirements of the statute. From the judgments in that case one may obtain some guidance, although the Lord Chief Justice was careful to do no more than give a decision on the particular facts. It was held that the section was only intended to get a certain amount of information, but not to be inquisitorial, or to require all the details which are frequently found in balance sheets. The words 'a summary of its share capital, its liabilities, and its assets' do not mean 'a detail of the assets,' or the 'pricing out of each particular asset.' As to the words 'fixed assets,' these were held to be the same thing as 'fixed capital,' *i.e.* property acquired and intended for retention and employment with a view to profit, as distinguished from 'circulating capital,' meaning property acquired or produced with a view to re-sale, or sale at a profit. As regards the words 'how the values of the fixed assets have been arrived at,' where different principles of arriving at these values have been applied, a shareholder ought to know from the statement to what amount of fixed assets one principle has been applied, and to what amount another

principle has been applied. Thus if buildings, machinery, and fixtures have been taken at cost, less depreciation, and goodwill and trademarks at the sum at which they were taken over by the company, the total values of each of the two classes ought to be stated, and not merely one value for both classes together. Mr. Justice Pickford went further and held that separate values ought to be attached to tangible (*e.g.* buildings and machinery) and intangible assets (*e.g.* goodwill and trade-marks). Pending any further decisions, a statement prepared on the lines indicated above will apparently satisfy Somerset House. It will be noticed that the balance sheet, *i.e.* the statement in the form of a balance sheet, must be audited by the company's auditors, and that it need not include a statement of profit and loss.

This list and summary must be completed within seven days after the fourteenth day mentioned above, and should therefore, in the case of large companies, be put in hand as early as possible, as a copy of it, signed by the manager or secretary, must be forwarded to the Registrar forthwith.

Default in complying with the requirements of the Act as to the annual list and summary renders the company and its directors or managers liable to penalties. A secretary has been held liable as manager [*Gibson* v. *Barton* (1875), 10 Q.B. 329]; also a former director [*Edmonds* v. *Foster* (1876), 45 L. J. M. C. 41]. The truth or falsehood of the statements contained in the list and summary may be inquired into [*Briton Medical Association* (1888), 39 Ch. D. 61]. The company may be convicted if the return is misleading [*Grosvenor Bank* v. *Boaler* (1885), 49 J.P. 774]. An appeal lies against a conviction to the Divisional Court, but not further to the Court of Appeal [*R.* v. *Tyler* (1891), 2 Q.B. 588]. Penalties can be recovered for default made in previous years [*R.* v. *Catholic Assurance Institution* (1883), 48 L. T. 675].

Although the returns cannot be made up strictly in accordance with the statute if no general meeting has been held, yet directors, who are themselves in default as regards the holding of the meeting (s. 64), cannot rely upon the fact that no meeting has been held as a defence to proceedings for default in filing the Annual Summary [*Park* v. *Lawton* (1911), 1 K.B. 588].

CHAPTER IX

SHARE WARRANTS

THE issue by a company of share warrants to bearer may be next considered.

A Share Warrant to Bearer or, as it is designated by the Companies (Consolidation) Act, a share warrant, is a document under the seal of the company to the effect that the bearer is entitled to the number of fully paid shares of the company stated therein, the distinguishing numbers of those shares being specified (see Form 46, p. 403). A share warrant is by mercantile usage and by virtue of Section 37 (2) of the Companies (Consolidation) Act, 1908, a negotiable instrument transferable by mere delivery, that is to say, it may be passed from hand to hand, and the *bonâ fide* holder for the time being is entitled to the benefit of it. The statutory law relating to share warrants is contained in s. 37 of the Act.

Share warrants may be issued in respect of any fully paid up shares or stock by any public company limited by shares which is authorised so to do by its articles. A private company's articles of association must not take power to issue share warrants, as otherwise it cannot limit its membership in accordance with the requirements of s. 121 and of the Companies Act, 1913.

Conditions of Issue.

The conditions governing the issue of share warrants are settled either by the company's articles of association or by resolution of the board of directors.

It is not usual to print the conditions on the back of the warrant, but to print them separately and to issue them on application. The holder can then keep his conditions of issue by him, while he will probably lodge his warrant with his bank for safe custody. This course also enables the company more easily to vary the conditions subsequently, if it should become desirable to do so.

It is highly important to guard against forgery, and the warrants should therefore be printed on paper bearing a distinctive water mark. It is desirable that the printing

should be done direct from a steel plate which cannot easily be imitated.

Upon making an issue of share warrants the following points require consideration:

(1) The power of the company and the directors to issue share warrants under the articles of association.

(2) The denominations to be issued, that is to say, the number of shares to be comprised in each class of warrant it is proposed to have printed, *e.g.* it may be decided to issue warrants in three classes representing 1, 5 and 25 shares per warrant respectively. Each warrant should be given a distinctive serial number, and the respective denominations should be denoted by an initial letter, so that if the warrants are in denominations of 1, 5 and 25 shares respectively, warrants for 1 share would have the letter A before the warrant number, warrants for 5 shares would have the letter B, and warrants for 25 shares would have the letter C. In each denomination the numbers of the warrants printed could commence with the number one. It is usual to have each class of warrant printed in a distinctive colour. The distinctive numbers of the shares comprised in each warrant would be written in by hand when the warrant is being issued.

(3) The conditions of issue must in no way controvert the articles of association, for models of which see Clauses 35 to 40, Table A, appended to the Act. A specimen set of conditions is given hereunder:

1. Upon any dividend or interest being declared to be payable upon the share or shares specified in any share warrant, the directors shall insert an advertisement in a daily newspaper published in London, and elsewhere if they shall think fit, stating the amount per share or per cent. payable, the date of payment and the serial number of the coupon to be presented, and thereupon any person presenting or delivering up a coupon of that serial number at the place or one of the places stated in the said advertisement shall be entitled to receive, at the expiration of such number of days (not exceeding five) after so delivering it up, as the directors shall from time to time direct, the dividend or interest payable on the share or shares specified in the warrant to which the said coupon shall belong, according to the notice which shall have been so given by advertisement.

2. The company shall be entitled to recognise an absolute right in the bearer for the time being of any coupon so advertised for payment as aforesaid to the dividend or interest declared payable in respect of such coupon, and the delivery of such coupon shall be a good discharge to the company accordingly.

3. If any share warrant be worn out or defaced the directors may, upon the surrender thereof for cancellation, issue a new one in its stead. In every case provided for by this condition, there shall be paid to the company by the person availing himself of these conditions, such reasonable fee per share warrant as the directors shall from time

to time determine, and the stamp duty (if any) payable on the new share warrant.

4. No person shall as bearer of a share warrant be entitled (*a*) to sign a requisition for calling a meeting or to give notice of his intention to submit a resolution to a meeting, or (*b*) to attend or to exercise any privilege as a member of a meeting, unless he shall in case (*a*) before or at the time of lodging such requisition or giving such notice of intention as aforesaid, or in case (*b*) three days at least before the day fixed for the meeting, have deposited at the egistered office of the company or elsewhere, as the directors shall from time to time determine, the share warrant or warrants in respect of which he claims to act and vote as aforesaid, and unless the share warrant shall remain so deposited until after the meeting and any adjournment thereof shall have been held. The names of more than one as joint holders of a share warrant shall not be received, and the Board may, if it deem necessary, require from the depositor of share warrants as above a statutory declaration to the effect that he is the owner of the share warrant or warrants so deposited, and may endorse on such share warrant or warrants a statement of the fact, date, purpose and consequence of its or their production.

5. There shall be delivered to the person so depositing a share warrant as aforesaid a certificate stating his name and address and the number of shares represented by the warrant so deposited by him. This certificate shall be signed by the secretary or other person authorised by the directors, and such certificate shall entitle him to attend and vote at any general meeting in the same way as if he were a registered member of the company in respect of the shares specified in the said certificate. Upon delivering up the said certificate to the company, or the company's bankers, as the case may be, the warrant in respect whereof it shall have been given shall be returned. The warrant in respect of which such certificate is granted shall be retained, however, by the company until the surrender of the certificate aforesaid.

The certificate shall be as follows:—

THE 'A' COMPANY LIMITED.

No.....

This is to certify that

of has in accordance with the regulations of the company deposited the undermentioned share warrant(s) in respect of which he is entitled to attend the extraordinary (or ordinary) general meeting of the company to be held at

on the day of , 19 .

Dated the day of , 19 .

For THE 'A' COMPANY Limited.

(Here will follow particulars of share warrants deposited.)

6. No person as bearer of any share warrant shall be entitled to exercise any of the rights of a member (save as hereinbefore expressly provided in respect of general meetings) without producing such warrant and stating his name and address, and without (if and when the directors so require) making a statutory declaration that he is the true owner of the warrant so produced.

7. Upon surrender of a warrant to the company for cancellation together with all coupons not then due and upon payment of such sum and upon such conditions as the directors may from time to time prescribe, the bearer of the warrant shall be entitled to be registered in respect of the share or shares included in the warrant, but the directors shall in no case be responsible for any loss or damage incurred by any person by reason of the company entering in its register of members upon the surrender of the warrant the name of any person not the true and lawful owner of the warrant surrendered.

8. Upon surrender of a warrant to the company and upon payment of such fées as the directors shall determine and the amount payable in respect of stamp duty on the issue of such warrants, the bearer of a warrant shall be entitled to have issued to him warrants of smaller denominations equal in the aggregate to the denomination of the warrant surrendered to the company.

9. These conditions are subject to such alterations as may be made from time to time by resolution of the board of directors.

10. In the above conditions 'share warrant' or 'warrant' means warrant to bearer in respect of a share or shares of the company issued pursuant to the articles of association of the company.

Notes on Conditions. (For the purpose of illustration it is presumed that the company has shareholders in the United Kingdom, and in Egypt.) It is required by Condition 1 that notice of any dividends payable be advertised, and the following is a form of advertisement for this purpose:

THE 'A' CO. LTD.

DIVIDENDS ON ORDINARY SHARES.

Notice is hereby given that a dividend of four shillings (less United Kingdom income tax) per share has been declared payable upon the ordinary shares of the company as on the 1st July, 1921. Coupon No. 14 attached to share warrants will be payable on and after the 1st July, 1921, at the A. B. Bank Ltd., Lombard Street, London, E.C., at the rate of four shillings (less United Kingdom income tax) per share in payment of the aforesaid dividend.

Listing forms may be obtained from the said bank.

Coupons must be left three clear days for examination.

By order of the Board,

Secretary.

Address

Date

The following intimation may sometimes be added usefully to the notice:

> 'Holders of share warrants intending to submit a claim to the Inland Revenue for refund of income tax should apply for a certificate as to deduction of tax when presenting their coupons for payment.'

In dealing with cases of a share warrant or coupons stated to have been lost or destroyed it is necessary to act with the utmost caution. In no case should a duplicate share warrant be issued without the fullest possible indemnity from a bank or guarantee society, and only then after most exhaustive investigation and proof by a third person that it has been lost beyond recovery. **Lost Warrants.**

Condition 5 gives the form of the certificate to be delivered to anyone depositing warrants in accordance with Condition 4, and forms of this certificate may, when printed, be bound in book form with a counterfoil to each (see Form 47). The issue of this certificate requires to be carefully controlled and each form should bear a separate folio number. As a safeguard in the use of this form the following words should be added at the foot, viz.: '*Important*—The warrants named herein will be delivered only in exchange for this certificate, which must be carefully preserved.'

Subject to the articles of association the fees referred to in Conditions 7 and 8 may be fixed by the Board.

A specimen form of application for share warrants (Form 48) is shown on p. 404, and upon such a form being completed and handed in to the company's office together with the share certificates and fees payable, the company would issue a receipt (see Form 49, p. 405).

In recording the issue of share warrants three types of registers are usually required as follows:

> (1) Particulars of share warrant applications received and details of the warrants issued in respect thereof (see Form 52 p. 408).
>
> (2) Particulars of applications received for the exchange of warrants into registered shares, giving details of the warrants surrendered (see Form 53, p. 409), and
>
> (3) The serial number of every warrant printed with columns in which to enter the distinctive share numbers inserted on the warrants (see Form 54, p. 410).

In addition to the foregoing a stock book should be kept recording all the warrants printed and a summary of all warrants issued, so that at any time it may be possible to ascertain full details of the warrants remaining in stock.

Before execution of a warrant, stamp duty thereon must be paid by means of an impressed stamp at three times the *ad valorem* duty payable upon transfers of shares, that is to say, at the rate of £3 per cent. on warrants issued on and after 1st September, 1920, the duty being calculated upon the nominal value of the shares or stock comprised in the warrant (Stamp Act, 1891, Schedule 1, Section 1). The stamp duty must be impressed before the warrant is executed. The Stamp Act provides for commutation of the duty payable in respect of share warrants.

It is provided by the Stamp Act, 1891 (s. 107) that any person who, at the time when a share warrant is issued without being duly stamped, is the managing director, secretary or other principal officer of the company, shall be liable to a fine of £50.

The requirements of the articles of association with regard to the affixing of the seal should be strictly followed in the case of share warrants.

On issuing a share warrant, the name of the registered holder must be struck out of the register of members as if he had ceased to be a member, and the following particulars entered therein:

(*a*) The fact of the issue of the warrant.

(*b*) A statement of the shares or stock included in the warrant, distinguishing each share by its number.

(*c*) The date of the issue of the warrant (s. 37 (5)).

These requirements of the Act may conveniently be carried out by using a rubber stamp, which may be impressed on the right-hand side of the accounts concerned in the register of members, the latter being posted from the entries in the share warrant issue register referred to above, the distinguishing numbers of the shares being entered in the proper columns of the register of members, as if the shares were being transferred out of the member's name.

In view of the importance of safeguarding issues of warrants, the applications and cancelled share certificates are sometimes examined by the company's auditors and the share warrants checked and initialled by them, before submission to the Board for issue and sealing, the auditors giving a certificate that the warrants are in order and duly stamped.

When ready for delivery the warrants should be dis-

tributed in strict accordance with the instructions upon the application, and a form on the lines of Form 55 (p. 411), may be usefully employed for this purpose, the detachable receipt at the foot thereof being carefully safeguarded when returned to the company.

The necessity may arise for dealing with applications for the exchange of share warrants of certain denominations for warrants of other denominations, and for this purpose a form similar to Form 57 may be used and the receipt issued by the company upon the lodgment of such an application with the warrants for surrender may be on the lines of Form 50.

The only direct information given to the Registrar of joint stock companies regarding the issue of share warrants by a company is contained in the annual return and summary. In the return the issue of share warrants in exchange for registered shares during the period covered should be treated as if the member had transferred the shares since the date of the last return. The information required to be stated in the summary is set out in s. 26 (2) of the Act and appears on the form of summary.

Subject to the articles of the company the holder of a share warrant is entitled, in accordance with s. 37 (3), upon surrendering the warrant for cancellation to have his name entered as a member in the register of members. The warrant must be actually surrendered and cancelled, as otherwise the company is responsible for any loss which may be involved. In dealing with such cases an application form for exchanging share warrants for registered shares should be required (see Form 56, p. 412). A form of receipt for this application and for the share warrants deposited in connection therewith would be issued by the company (see Form 51), and might, in practice, be treated as a transfer receipt in the event of the shares being sold before the share certificate is ready for delivery in exchange. The application for registered shares would be entered in the share warrant surrender register (see p. 409), and the entry posted in due course from there to the holder's account in the register of members.

If by the conditions or articles the holder of a share warrant is entitled to receive notice of meetings it is generally provided that these may be given by advertisement, the right to attend being subject to the warrant having been previously deposited at the company's office or bankers (see Specimen Condition, 4 supra). When the annual report and accounts with notice of general meeting are printed, a para-

graph on the following lines may be inserted after the usual notice of meeting:

> 'Holders of share warrants are reminded that if they wish to attend and vote at the meeting, either personally or by proxy, they must, three clear days before the day appointed for the meeting, deposit their warrants at the
>
> registered offices of the company at.....
>
> ..... or at the.....Bank.....
>
> .....London.'

The payment of dividends [see s. 37 (1)] is provided for by means of a series of detachable coupons at the foot of the warrant (see Form 46). These coupons should be numbered consecutively the numbers commencing at the bottom right-hand corner in order to facilitate detachment, and they must bear on each one the serial number of the warrant to which they belong. A talon (see Form 46) should be provided for the issue of fresh coupons when the original series is exhausted. It is usual for the secretary's facsimile signature to be printed on the coupons and talon.

When a dividend is about to be paid, arrangements should be made for the coupons to be received and paid, usually at the company's bankers, or at the offices of the company.

The exact amount payable on the whole of the shares represented by the share warrants in circulation should be transferred from the general account to Coupon No....., Account with the bankers. Payment at the company's offices involves separate cheques and directors' signatures, which are obviated by payment of the coupons at the company's bankers.

It should be noted that shares represented by share warrants are not good for the purposes of share qualification for a director or manager of the company, where such a qualification is required by the articles [s. 37 (4)].

A contract to sell registered shares will not be satisfied by a delivery of share warrants [*Iredale* v. *General Securities Corporation* (1916), 33 T.L.R. 67].

Section 38 of the Act sets forth the very heavy penalties to which a person will become liable if he forges or otherwise alters any share warrant or coupon with intent to defraud, or falsely and deceitfully personates any owner of a share warrant or coupon.

Share warrants are more popular on the continent than in England, the majority of companies issuing warrants being those whose shares are dealt in abroad, and it is not uncommon for the terms on the warrants to be printed in two or three languages in parallel columns for the convenience of the foreign holders.

Coupon Registers should be kept in which the payment of coupons can be recorded. The entries in the coupon pass book are numbered consecutively and the corresponding number written against the numbers of the warrants in the coupon registers according to their denomination.

CHAPTER X

NOTICES

WE have already seen that, by s. 116 of the Act, a document (which includes a notice) may be served on a company by leaving it at or sending it by post to the registered office of the company (see p. 14). It is proposed in this chapter to deal generally with the notices which a company may require to give to its members.

A very important duty of the secretary of a company is to prepare, or supervise the preparation of, all notices, and to ensure their due despatch to the proper persons.

It will be remembered that by s. 63 every limited company must have its name, including, of course, the word 'Limited,' mentioned in legible characters in all notices of the company (see p. 13), and this will head the notice. The address of the registered office of the company, from which the notice will in general be sent, will follow, with the date. Or the date will be placed at the foot of the notice on the left-hand side. As regards the signature, or authentication, of the notice, s. 117 of the Act provides that a document (which by s. 285 includes notice) or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal. The secretary will not, of course, send out any notice to the shareholders without the authority of the board, and the ordinary and proper method of authenticating a notice is for the words 'By order of the Board' to appear over the signature of the secretary. Thus the general form of the notice will be as follows:

The 'A' Company, Limited.

221 Bridge Street,
London, E.C.
July 25th, 1922.

NOTICE is hereby given that, &c., &c.

By order of the Board,

Secretary.

Notices to individuals will in general take the form of letters, headed by the name of the company, with the address and date following, and commencing in some such form as follows:—'Dear Sir, I am directed to inform you that, &c.,' or 'Sir, I hereby give you notice that, &c.,' and concluding, 'Yours faithfully, John Smith, Secretary.'

Notices of Meetings.

The most important notices unquestionably are notices of general meetings. Others, such as notice of call, notice to holders of share warrants of declaration of dividend, although accuracy and clearness of expression are, of course, necessary, do not require special treatment. Ambiguity should be carefully avoided; and although it is desirable to write English, literary style should not be the first consideration in a business document.

The general meetings of a company which will have to be convened are the statutory meeting (p. 106), and ordinary general meetings. In addition, extraordinary general meetings may from time to time be necessary, whether convened by the directors on their own initiative, or convened on requisition.

Apart from the preliminary matter of ensuring that the meeting is convened by the proper authority (as to which see p. 109), the secretary's duties as to convening a meeting are threefold. He must take care (1) that the proper length of notice is given; (2) that it is duly given to all persons entitled to receive it; and (3) that it is properly framed. The salient point to remember is that the provisions of the articles must be strictly followed, whether the meeting be the statutory meeting, or an ordinary or extraordinary general meeting.

Length of Notice.

As regards the length of notice, the articles must be consulted. Table A of 1862, cl. 35, and many special articles, require seven days' notice at the least to be given. This, without more, means seven clear days [*Railway Sleepers Co.* (1885), 29 Ch. 204]; accordingly, neither the day of the service of the notice, nor the day on which the meeting is to be held, must be counted in the seven days. Therefore, in general, if the meeting is to be held on the 20th of the month, the notices, if sent by post, should be posted not later than the 11th. Articles, however, often prescribe that, *unless otherwise provided*, the day of the receipt of the notice shall be counted but not the day of the meeting; in such a case, where clear days are elsewhere required, this provision does not apply [*Pavilion, Newcastle-on-Tyne* (1911), W.N. 235]. Table A, cl. 49, provides for 'seven days' notice at the least (exclusive of the day on which the notice is served or deemed

to be served, but inclusive of the day for which notice is given)'; and since clause 110 provides that a notice shall be deemed to be served at the time at which the letter would be delivered in the ordinary course of post, the latest day for posting the notice, in the case of a meeting to be held on the 20th, would in general be the 12th. It is therefore necessary for the secretary to ascertain from the articles, (1) the length of notice required; (2) when notice is deemed to be served; and (3) whether the day of service, or the day of the meeting is or is not to be included in the number of days. In the rare cases where the articles of a company do not provide for the length of notice, s. 67 of the Act applies, and the notice will be a seven days' notice, served as required by Table A.

To whom Notice sent.

In despatching the notices the secretary will have to consider whether all the shareholders are entitled to receive a notice, and this depends on the articles of the company. In the absence of regulations to the contrary, all shareholders on the register are entitled to receive notices of meetings and to attend and record such votes as they are entitled to. But sometimes particular classes of shareholders, *e.g.* preference shareholders or shareholders, the calls upon whose shares are in arrear, are not entitled to receive notices or to attend general meetings. But in cases where particular shareholders are simply excluded from the right to vote at general meetings, it would appear that they are entitled to receive notices and to attend and even to speak at meetings. In some companies, whilst certain classes of shareholders are excluded from general meetings, they are specially empowered to attend meetings called for certain specified purposes, and more particularly meetings convened for the purpose of passing a resolution for winding up.

Notices need not be sent to shareholders who choose to reside abroad [*Union Hill Silver Co.* (1870), 22 L. T. 400; *Smyth* v. *Darley* (1849), 2 H. L. C. 789]. But sometimes the regulations provide that a member living abroad may appoint an agent to receive notices, and notify the company of the fact, or that the company may give notice by advertisement, or by posting up a copy at the registered office of the company.

Where the company has issued share warrants to bearer (see p. 87), the articles, or regulations made by the directors in pursuance of the articles, may provide for notices being given to the holders by advertisement, or, where they have furnished the company with an address, for the sending of notices to that address.

It is commonly provided that, in the case of shares registered in joint names, only the person whose name stands first on the register is entitled to notice.

Representatives of a deceased or bankrupt shareholder are not entitled to receive notices until they have become members by formal registration [*Allen* v. *Gold Reefs of West Africa* (1900), 1 Ch. 656] unless the articles otherwise provide.

Notice of Statutory Meeting.

With reference to the statutory meeting, doubts have been expressed whether all the members of the company are necessarily entitled to notice of it, although they may not all be entitled to notices of other general meetings. S. 65 (1) of the Act provides for 'a general meeting of the members of the company which shall be called the statutory meeting.' S. 65 (2) provides that the statutory report shall be sent 'to every member of the company' (as well as to every other person entitled under the Act to receive it). If the notice of the statutory meeting is, as is common, indorsed on the statutory report, all the shareholders must necessarily receive it. But even if it is not, it would be unsafe to assume that certain members need not receive it. The words of s. 65 (1), 'a general meeting of the members of the company,' differ from those of s. 64 (1) (which makes provision for the annual general meeting) 'a general meeting of every company.' Although there can be no doubt that some members may be precluded from attending general meetings of the company, other than the statutory meeting, yet having regard to the special wording of s. 65 (1) and to the object of the statutory meeting, it appears to be intended that no member is to be precluded from attending that meeting. If, however, a company has issued share warrants before the statutory meeting, it seems clear that, apart from special provisions in the articles, or regulations made by the board in pursuance thereof, a holder is not entitled to notice of the statutory meeting or to receive the report, since he is not a member [s. 37 (4)].

In addressing notices it is not necessary that they should be directed exactly in the same way as the member's address appears upon the register, but the member's place of abode must be given with substantial accuracy [*Liverpool Marine Insurance Co.* v. *Haughton* (1874), 23 W. R. 93].

It is a matter of the utmost importance that proper notice should be given to every shareholder who is entitled to receive it, for the omission to serve even a single member will render a resolution invalid [*Smyth* v. *Darley* (1849), 2 H. L. C. 789; *Young* v. *Ladies Imperial Club* (1920) 2 K. B. 523], unless, as

is commonly the case, there are provisions in the articles to the effect that the accidental omission to give notice to any member, or the non-receipt by any member of the notice, is not to invalidate the meeting. It should be observed that, where by the articles notice may be given personally, or by sending it through the post to a member at his registered address, it is not properly given if it be left by hand at the registered address.

Contents of Notice.

In framing the notice, the primary point to remember is that the meeting has no power to pass any resolution outside the scope of the notice [*Bridport Old Brewery Co.* (1867), 2 Ch. App. 191; *Vale of Neath Brewery Co., Lawe's Case* (1852), 1 De G.M. and G. 421; *Isle of Wight Railway Co.* v. *Tahourdin* (1884), 25 Ch. D. 320]. And, of course, the provisions of the articles must be strictly followed.

The articles usually provide that the notice of a meeting shall state the place, day, and hour of meeting, and in the case of special business the general nature of such business. Special business is usually defined as all business transacted at an extraordinary general meeting, and all business transacted at an ordinary general meeting, except the sanctioning of a dividend, and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

The principle of law, that a meeting has no power to pass any resolution outside the scope of the notice, must be considered in connexion with the common provision of articles of association, just mentioned, to the effect that a notice of a meeting to transact what is commonly described as special business must state the general nature of the business. The sufficiency of notices has frequently been discussed before the Courts, and a few instances may be mentioned as affording some guidance. It is impossible to lay down any hard and fast rule as to what notice is or is not sufficient, since it has been held, in *Normandy* v. *Ind, Coope & Co.* (1908, 1 Ch. 84), that the sufficiency of a notice must be determined by the special circumstances of each case.

Examples.

Here are five concrete examples: (1) A notice specified a resolution to the effect that directors' remuneration should be 40 per cent. of certain profits; the resolution was passed with the substitution of 30 per cent. for 40 per cent.: held, that the alteration did not invalidate the resolution [*Torbock* v. *Lord Westbury* (1902), 2 Ch. 871]. (2) Notice was given of an extraordinary meeting for the purpose of altering the company's articles; the notice did not indicate the nature of the alterations, which were important: held, that the notice was

insufficient [*Normandy* v. *Ind, Coope & Co.* (above)]. (3) The notice convening a general meeting stated that it would be held for the purpose of receiving the directors' report, and the election of directors and auditors. The directors' report which accompanied the notice, mentioned special business not referred to in the notice, namely, the ratification of the board's previous election of a director: held, that the notice and report together were sufficient notice of this special business [*Boschoek Proprietary Company* v. *Fuke* (1906), 1 Ch. 148]. (4) The notice of the annual general meeting stated that the meeting was for the purpose of considering and, if thought fit, of passing certain resolutions, 'with such amendments and alterations as shall be determined upon at such meeting.' One of the resolutions was for the appointment of three specified persons as directors. To this resolution an amendment was carried that two additional specified persons should also be appointed; the articles provided that the number of directors should not be more than seven nor less than three: held, that the business transacted was within the scope of the special business indicated in the notice [*Betts & Co.* v. *Macnaghten* (1910), 1 Ch. 430]. (5) The notice of a meeting to pass special resolutions, authorising directors to retain the remuneration they had received as directors of a subsidiary company, did not specify the amount of such remuneration, which was large; neither did an accompanying circular: held, that the resolutions were invalid [*Baillie* v. *Oriental Telephone* (1915), 1 Ch. 503].

The above cases illustrate two general principles which have been laid down with regard to notices, namely (1) that the notice must fairly disclose the purpose for which the meeting is convened [*Kaye* v. *Croydon Tramways Co.* (1898), 1 Ch. 358; *Tiessen* v. *Henderson* (1889), 1 Ch. 861]; and (2) that at the same time it must not be construed with excessive strictness [see remarks of Selwyn, L.J., in *Wright's Case* (1868), reported in footnote 12 Eq. 345].

As regards the statutory meeting the body of the notice will be in the following, or some similar form:

> 'Notice is hereby given that, pursuant to s. 65 of the Companies (Consolidation) Act, 1908, the statutory meeting of the company will be held at House, Street, London, E.C., on day, the th day of 19 , at o'clock in the noon.'

As a rule in convening general meetings for the transaction of special business, the notice should state the resolutions which it is proposed to bring before the meeting; and then,

at the meeting, as indicated by the cases referred to above, any amendment relevant to the resolution may properly be moved and carried, provided it does not go beyond the scope of the notice.

A number of forms of common resolutions will be found in Chapter XIII. Great care must be taken in framing a notice of a meeting at which it is proposed to pass either a special or an extraordinary resolution. In this connexion it is important to observe the precise words of s. 69 (1) and (2), where an extraordinary resolution and a special resolution are respectively defined. These two sub-sections run as follows:

Extraordinary Resolution.

1. A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

Special Resolution.

2. A resolution shall be a special resolution when it has been:

(*a*) passed in manner required for the passing of an extraordinary resolution; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

Extraordinary.

It will be observed that, in the case of an extraordinary resolution, the notice must specify the intention to propose the resolution as an extraordinary resolution. The body of the notice will accordingly be in the following, or some similar, form:

> 'Notice is hereby given that an extraordinary general meeting of the above-named company will be held at , on day, the th, day of , 19 , at o'clock in the noon, for the purpose of considering and, if thought fit, of passing the following extraordinary resolution:—That etc.'

If the notice does not specify 'the intention to propose the resolution as an extraordinary resolution,' the resolution will not be validly passed [*MacConnell* v. *E. Prill & Co.* (1916) 2 Ch. 57.]

Special.

But in the case of a special resolution it will be noticed that the resolution must be '*passed* in manner required for the passing of an extraordinary resolution.' And it has been held by Swinfen Eady, J., that this does not involve the notice specifying that the resolution is to be proposed as an extraordinary resolution [*Penarth Pontoon Co.* (1911), W.N. 240]. None the less it is probable that the cautious secretary will prefer to word his notice as he did before the decision just mentioned. The body of the notice may be framed as follows:

> 'Notice is hereby given that an extraordinary general meeting of the above-named company will be held at , on day the day of , 19 , at o'clock in the noon, for the purpose of considering and, if thought fit, of passing the following [extraordinary] resolution;
>
> 'That &c., &c.'
>
> 'Should the above resolution be passed by the requisite majority it will be submitted for confirmation as a special resolution to a subsequent general meeting to be hereafter convened.'

Convening two meetings concurrently

Sometimes the articles of a company provide that the two meetings may be convened by one and the same notice, and it has been decided by the Court of Appeal that such a provision is valid. The particular article ran as follows: 'Whenever it is intended to pass a special resolution, the two meetings may be convened by one and the same notice, and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting' [re *North of England Steamship Company*, (1905), 2 Ch. 15].

In such a case the form of notice given above will suffice, if, in substitution for the final paragraph, commencing 'Should the above resolution,' the following is inserted:

> 'Notice is also hereby given that, should the above resolution be passed by the requisite majority, a further extraordinary general meeting of the company will be held at , on day, the th day of , 19 , at o'clock in the noon, when the said resolution will be submitted for confirmation as a special resolution.'

In the absence of such a provision, the two meetings cannot be convened by the same notice, if the second meeting is to be held contingently [*Alexander* v. *Simpson* (1889), 43 Ch. D. 139]; but there seems to be no objection to convening both meetings definitely by the same notice, in which case the following form of notice may be adopted:

'Notice is hereby given that an extraordinary general meeting of the company will be held at on the day of 19 , at o'clock in the noon, when the following resolution will be proposed:

'That &c., &c.'

'And notice is hereby also given that a further extraordinary general meeting of the company will be held at on the day of 19 , at o'clock in the noon, for the purpose of receiving a report of the proceedings at the above-mentioned meeting, and of confirming, if thought fit, as a special resolution, the above-mentioned resolution.

In connexion with notices, care must be taken that the confirmatory meeting which must be held 'after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting' is convened for a date within the statute. The fourteen days have been held to be clear days [*Railway Sleepers Co.* (1885), 29 Ch. D. 204]. Accordingly, if the first meeting has been held on the 5th of the month, the earliest possible day for the confirmatory meeting is the 20th. By s. 3 of the Interpretation Act, 1889, 'month,' means 'calendar month.'

CHAPTER XI

MEETINGS OF SHAREHOLDERS

THE subject of this chapter is meetings of shareholders of a company, board meetings being dealt with in Chapter XII. Besides general meetings of shareholders, there may also be class meetings, *i.e.* meetings of a particular class of shareholders summoned for a specific purpose specially affecting the class, and these are also dealt with here so far as they appear to require special mention.

The provisions of the Act as to meetings while the company is a going concern are contained in a little group of eight sections, ss. 64–71, under the general title of 'Meetings and Proceedings.' S. 64 provides for the holding of the annual general meeting. S. 65 deals with the statutory meeting and statutory report. S. 66 treats of meetings convened on requisition. S. 67 contains a few general regulations as to meetings, which apply in the very rare instances where a company's articles contain no appropriate provisions. S. 68 provides for the representation of companies at meetings of other companies of which they are members. S. 69 defines extraordinary and special resolutions. S. 70 provides for their registration, &c. S. 71 enjoins the keeping of minutes of general meetings and board meetings.

A meeting *primâ facie* means a gathering of two or more persons. And the Courts have in two cases held that there cannot in general be a meeting of one person [*Sharp* v. *Dawes* (1877), 2 Q.B.D. 26; *Sanitary Carbon Co.* (1877), W.N. 223]. But, as Lord Coleridge said in *Sharp* v. *Dawes*, 'It is, of course, possible to show that the word "meeting" has a meaning different from the ordinary meaning,' and this was shown in the case of *East* v. *Bennett Brothers* (1911, 1 Ch. 163). In that case by the memorandum no new shares could be issued so as to rank equally with or in priority to the existing preference shares, unless the issue was sanctioned by an extraordinary resolution of the holders of the preference shares at a separate meeting of the holders specially summoned for the purpose. The existing preference shares

being all in the hands of one person, and there being nothing in the constitution of the company to prevent one person holding them all, the word 'meeting' was held to be applicable to the case of a single shareholder.

The general meetings of a going company comprise the statutory meeting, ordinary general meetings, and extraordinary general meetings.

Statutory Meeting.

The statutory meeting (s. 65) is a general meeting of the members, which must be held by a company limited by shares not less than one month nor more than three months from the date at which the company is entitled to commence business (see p. 40). The object of the statutory meeting is to give shareholders the opportunity of making themselves acquainted with the promotion and flotation of the company, both by means of the statutory report (see below) which they receive before the meeting, and by means of discussion at the meeting, in case there are any points not included in the report upon which they desire information.

The statutory meeting is a general meeting, and accordingly there seems no doubt that the provision of s. 64 that a general meeting of every company is to be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, is complied with in the first instance by holding the statutory meeting. 'Calendar year' means the period from January 1 to December 31, and not the period of a year dating from the company's registration [*Gibson* v. *Barton* (1875), 10 Q.B. 329]. A company registered in July, 1912, will necessarily hold its statutory meeting within that year, *i.e.* if it becomes entitled to commence business before the end of September, 1912. Its next general meeting must be held during the year 1913, at an interval of not more than fifteen months from the statutory meeting. But a company registered on September 20, 1912, which becomes entitled to commence business on October 10, need not necessarily hold its statutory meeting until January 10, 1913; and if it is held then, or on any preceding day in January, 1913, it is not necessary to hold the next general meeting until the year 1914, care being taken of course that it is held not later than fifteen months after the statutory meeting. This seems to be clear from the judgment of Lush, J., in *Gibson* v. *Barton*.

Statutory Report.

Seven days at least before the day on which the statutory meeting is held the statutory report must be sent by the directors to every member of the company (see p. 99), and to every other person entitled under the Act to receive it. These last words refer to s. 114 of the Act, which provides

that in the case of companies registered on or after July 1, 1908, holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and *other reports* as is possessed by the holders of ordinary shares in the company. Accordingly, in the case of the companies referred to, the statutory report must be sent to debenture holders and debenture stock holders.

The statutory report must state the following [s. 65 (3)]:

(*a*) 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 allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

As regards the verification of the report, it must (*a*) be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and manager [s. 65 (3)]; and (*b*) so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any), of the company [s. 65 (4)].

Immediately after the report is despatched to the members, a copy, certified as above, must be filed with the Registrar [s. 65 (5)].

At the commencement of the meeting a list must be produced, showing the names, descriptions and addresses of the members, with their respective holdings, and this must remain open and accessible to any member during the meeting [s. 65 (6)].

As regards the business at the statutory meeting, the members may discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not. No resolution, however, may be passed, unless notice has been given in accordance with the articles (s. 65 (7)].

As regards adjournments, the Act provides that 'the meeting may adjourn from time to time.' This appears to introduce a modification of the usual practice, for, generally speaking, the chairman of a meeting has a discretion as to adjournment. But it would seem that at a statutory meeting the majority can compel the chairman to adjourn. Notice of a resolution can be given in the interval between the original and the adjourned meetings, if there is sufficient time to give the length of notice required by the articles of association [s. 65 (8)].

It is to be observed that no penalty is prescribed for failure to send the statutory report to the shareholders, or for failure to do so within the required time, or for failure to file a copy. But in case of default in holding the statutory meeting or filing the statutory report, a shareholder may present a petition for winding up the company [ss. 65(9); 129; 137 (1)].

Annual General Meeting.

As regards the ordinary annual general meeting, this is usually fully provided for by the articles, which should be carefully consulted. The articles generally make provision for the approximate time when it shall be held, and empower the directors to fix the date, place and hour. Any provisions of the articles must, however, be read subject to the provisions of s. 64 (1), which require a general meeting to be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting. Not holding a meeting within the calendar year, and not holding it within fifteen months after the preceding meeting, are separate offences, and the former offence is not committed until after December 31st, even though the period of fifteen months has already elapsed [*Smedley* v. *Registrar of Companies* (1919), 1 K.B. 97].

It is usual for, and most articles of association require, the

directors to send to the shareholders before each annual general meeting a report on the affairs of the company for the year in review; the report usually comments on the leading features of the company's business, and explains when necessary the salient points in the balance sheet and accounts for the year, states the dividend, if any, recommended by the directors, and mentions the directors and auditors retiring and offering themselves for re-election.

As regards extraordinary general meetings—and indeed as regards all general meetings—it will be the secretary's concern to see that every meeting is a valid meeting, and that any resolutions passed thereat are validly passed.

Who may Convene a Meeting.

Before convening a meeting it is necessary to be sure that it is convened under proper authority, and the articles should be consulted as to who may convene a meeting. In most cases (as, for instance, in clause 48 of Table A) the directors may convene an extraordinary general meeting whenever they think fit, and the secretary, acting on their instructions, will then prepare and send out notices. Unless the articles otherwise provide, directors cannot act without meeting as a board. Accordingly, the secretary's first duty will in general be to see that the board meeting, at which it was resolved to call a general meeting, was itself duly convened and that a quorum of the directors was present. Assuming that the board meeting was in order, he may then prepare and despatch the notices. Although a secretary cannot convene a meeting without authority, yet, if under the authority of an irregularly constituted board he has convened a meeting, the resolutions passed at that meeting are not invalid [*Boschoek Proprietary Co.* v. *Fuke* (1906), 1 Ch. 148].

The articles may possibly provide that general meetings may be convened by others than the directors. If no provision at all as to convening meetings is contained in the articles, s. 67 of the Act supplies the deficiency by providing that, in default of regulations, five members may call a meeting.

Requisitioned Meeting.

All regulations, however, as to convening extraordinary general meetings must be read subject to the provisions of s. 66 of the Act, which entitles 'the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid' to requisition such a meeting. This means that the requisitionists must hold one-tenth of such part of the issued capital as has no calls in arrear upon it, not that the requisitionists must hold one-tenth of the whole of the issued capital, and must have paid all calls due upon that one-tenth [*Fruit & Vegetable Growers* v. *Kekewich* (1912), 2 Ch.

52]. The requisition, which may consist of several documents in like form, must be signed by the requisitionists and deposited at the office of the company, and it must state the objects of the meeting. (In the case just mentioned all the documents required the meeting to be convened 'for the purpose of considering the reconstitution of the board and resolutions concerning the directorate and officers of the company'; some of them added the words 'in addition to the affairs of the company in general.' It was held that the documents were in like form within the meaning of s. 66 (2), and that they sufficiently indicated the objects of the meeting.) Thereupon it becomes the duty of the directors, within twenty-one days, to cause a meeting to be convened, and this they will do by meeting and instructing the secretary to call the meeting. After the twenty-one days, if no meeting has been convened, the requisitionists may themselves convene one in the same manner as nearly as possible as meetings are to be convened by the directors. It was decided in 1901 by Wright, J. [re *State of Wyoming Syndicate* (1901), 2 Ch. 431], that the secretary cannot, within the twenty-one days, convene the meeting without the authority of the directors; but the further point was left open as to whether, after the expiration of the twenty-one days, the requisitionists could convene the meeting by notices signed by the secretary.

The matter of notices is dealt with at length in Chapter X.

Quorum. On the day of the meeting, it is necessary to see that the proceedings are validly carried through. The first point is to ascertain that a quorum is present. The quorum is practically always determined by the articles and needs little further comment. The want of a quorum invalidates a meeting [*Cambrian Peat Co.* (1875), 31 L. T. 773]. The representative of a company, authorised under s. 68 of the Act to vote on its behalf (see p. 112), may be reckoned in the quorum [*Kelantan Coco Nut Estates* (1920), W.N. 274].

Chairman. The chair must be filled in accordance with the articles. The articles usually provide that the chairman of the board shall be chairman at general meetings; failing this, the meeting elects a chairman from among the directors, or, failing them, from among the members present. In default of, and subject to, any regulations in the articles, any person elected by the members present may take the chair (s. 67).

The duties of a chairman are to preserve order, to conduct proceedings regularly, and to take care that the sense of the meeting is properly ascertained with regard to any question before it [*National Dwellings Society* v. *Sykes* (1894), 3 Ch.

159]. If the chairman improperly refuses to put an amendment, the resolution carried will be invalidated [*Henderson* v. *Bank of Australasia* (1890), 45 Ch. D. 330]. When the views of the minority have been heard, the chairman may move the closure; and if the motion is carried by the meeting, he may declare the discussion closed and put the question to the vote [*Wall* v. *London and Northern Assets Corporation* (1898), 2 Ch. 469].

In due course a resolution will be put to the meeting (see, as to resolutions, Chapter XIII) and the voting taken by a show of hands. On a show of hands the principle of 'one man, one vote' obtains, but by the express terms of s. 69 no one may vote who is by the company's regulations not entitled to vote. S. 69 is only applicable to special and extraordinary resolutions, but the principle is equally made applicable to ordinary resolutions by the articles of practically all companies. It would obviously be easy in many cases for a member not entitled to vote to attend and vote on a show of hands; hence the desirability of members attending signing their names on entering the room. Proxies are not counted on a show of hands [*Ernest* v. *Loma Gold Mines* (1897), 1 Ch. 1].

Most articles provide that a declaration of the chairman, that a resolution has been carried, is to be deemed conclusive evidence of the fact. And this is expressly provided by s. 69 (3) in the case of special or extraordinary resolutions. The question how many votes were in fact given cannot afterwards be gone into [*Arnot* v. *United African Lands Co.* (1901), 1 Ch. 518]. But a declaration which is erroneous in point of law is not conclusive [*Caratal New Mines* (1902), 2 Ch. 498]. The chairman usually has a casting vote given him by the articles.

Voting.

As regards the right to vote, the *primâ facie* rule is that every member of a company whose name is on the register of shareholders is entitled to vote. The register is the only evidence by which that right can be ascertained. The fact that shares have been transferred to a member by other shareholders in order to increase their voting power, or with an object alleged to be adverse to the interests of the company, and that such member is not the beneficial owner of the shares, does not disentitle himto his vote [*Pender* v. *Lushington* (1877), 6 Ch. D. 70; *Stranton Iron Co.* (1873), 16 Eq. 559].

A prohibition in a company's articles against a director voting in respect of any matter in which he has an interest does not preclude him from voting as a shareholder at a general meeting in respect of any such matter [*East Pant*

Du United Lead Mining Co. v. *Merryweather* (1864), 13 W. R. 216], even though such director be sole vendor [*North West Transportation Co.* v. *Beatty* (1887), 12 A.C. 589].

Unless otherwise provided by the articles, a holder of any class of shares has the right to vote. Some articles restrict the right to ordinary shareholders, whilst some companies even allow debenture holders to vote.

A transmission clause is usually inserted in articles, enabling any person who becomes entitled to shares, in consequence of the death or bankruptcy of any member, to be registered in respect of those shares, and to exercise the right of voting. In the case of joint holders of shares, the articles usually give the holder whose name appears first in the register the right of voting (see also p. 35). The bearers of share warrants are usually given power to vote, but on certain conditions (*e.g.* that the warrants are produced and lodged for a stated time for examination).

Voting when Calls are due. The articles usually forbid any member upon whose shares any calls are in arrear to vote; and it has been held that, where an article provided that a member should not be entitled to vote whilst any call should be due and payable in respect of his shares, and the shares of a member were forfeited for non-payment of calls, the purchaser of the forfeited shares, which had been re-sold to him by the company with a certificate stating that he was to be deemed to be the holder of the shares discharged from all calls due, was not entitled to vote [*Randt Gold Mining Co.* v. *Wainwright* (1901), 1 Ch. 184]. The articles also sometimes forbid any member to vote who has acquired his shares less than three months before the date of the meeting.

Proxy. The fact that one member holds a proxy for another does not entitle him to another vote on a show of hands, but it appears that if the articles allow proxies to be given to non-members, every such non-member who holds a proxy can give one vote [*Ernest* v. *Loma Gold Mines* (1897), 1 Ch. 1].

Company Representation. As regards voting by the representative of another company holding shares in the company of which the meeting is being held, inasmuch as, by s. 68 of the Act, the representative (who may be one of the officials of the company or any other person) must be authorised by resolution of the directors, the chairman of the meeting will be entitled to reasonable evidence of the representative's appointment. It has been held that he may properly admit the vote on the evidence afforded by a copy of the resolution [*Colonial Gold Reef* v. *Free State Rand* (1914), 1 Ch. 382]. Such a representative may be reckoned in the quorum (see p. 110).

Poll.

If the voting is taken by a poll, the number of votes to which each member is entitled depends on the articles. In default of regulations every member has one vote only (s. 67).

Many articles provide that upon a poll every member present in person or by proxy shall have one vote for every share held by him. Various sliding scales are also sometimes adopted. It is frequently provided that no member shall have more than a fixed number of votes; sometimes a member is not given a vote unless he holds a fixed number of shares. A sliding scale is most necessary where a vendor takes a large block of fully paid shares, unless it is desired that he should control the company.

An agreement to vote in a particular way is good [*Greenwell* v. *Porter* (1902), 1 Ch. 530], and can be specifically enforced. [*Puddephatt* v. *Leith* (1916), 1 Ch. 200]. Debenture trustees, who hold shares as such, may exercise their voting rights as they deem best, without regard to the wishes of the mortgagor company [*Siemens Brothers* v. *Burns* (1918), 2 Ch. 324].

Demand of Poll.

If a poll is duly demanded, the conclusiveness of the chairman's declaration becomes immaterial. In general the articles provide by how many members a poll may be demanded. By s. 69 it is expressly provided that a poll may be demanded by three persons entitled to vote, unless the articles provide that it may be demanded by one, two, four, or five persons entitled to vote. S. 69, however, applies only to special and extraordinary resolutions. Consequently, if the articles provided for (say) ten members demanding a poll, this provision would be valid in the case of an ordinary resolution, although in the case of a special or extraordinary resolution three would suffice.

Assuming that the members demanding a poll are duly qualified voters, which should not be taken for granted, the chairman will grant the poll. As to the taking of the poll, the regulations usually provide that it shall be taken in such manner as the chairman directs (see, *e.g.* Table A, clause 57). However, under such a provision, accompanied by articles providing in the ordinary way for votes being given either personally or by proxy, for the appointment of proxies, &c., the chairman cannot direct that the poll shall be taken by means of polling papers signed by the members and delivered at the company's office; there must be a personal attendance by the voter or his duly appointed proxy [*McMillan* v. *Le Roi Mining Company* (1906), 1 Ch. 331]. The chairman may, however, in such a case direct that the poll be taken forthwith. If a poll has been anticipated, the secretary will probably, before the meeting, have examined the proxies

received at the company's office in favour of the directors, rejecting all not duly stamped, not delivered in time, not in proper form, or sent in by members who for some reason, *e.g.* non-payment of calls, are not entitled to vote. The whole matter of proxy voting depends entirely upon the articles of association, and their provisions must be strictly followed. Every voter when polling should be required to sign his name, and insert the number of shares held by him on the voting paper. When all the votes have been given it is the usual practice for the chairman to appoint scrutineers to examine the votes; sometimes the articles provide for the appointment of scrutineers. In the absence of scrutineers the responsibility of rejecting any invalid votes will rest with the chairman, who will in most cases be guided by the information furnished him by the secretary. Where a poll is demanded upon more than one resolution, the resolutions should, upon the poll being taken, be separately voted upon [*Blair Open Hearth* v. *Reigart* (1913), 108 L.T. 665].

'The poll operates as an adjournment of the meeting, which is not ended until the decision of the poll has been taken' [per Cotton, L.J., in *R.* v. *Wimbledon Local Board* (1882), 30 W.R. at p. 402]. Adjournment here means continuation, and not an adjournment in the ordinary sense, so as to make proxies which have been obtained after the meeting, but before the poll, available, in a case where the articles permit the use of proxies lodged a specified time before the meeting or adjourned meeting [*Shaw* v. *Tati Concessions* (1913), 1 Ch. 292]. But where the articles provide that proxies must be deposited not less than two clear days before the day for holding the meeting, proxies lodged after the meeting, but more than two clear days before the day fixed for an adjournment thereof, cannot be used [*McLaren* v. *Thompson* (1917), 2 Ch. 261].

Proxies. The right to vote by proxy, and the mode of exercise of the right, depend on the regulations of the company. The articles usually provide for such a right and set out a form of proxy, and the provisions and form must be strictly followed [*Harben* v. *Phillips* (1882), 23 Ch. D. 14]. But where articles prescribe that proxies must be in a specified form, 'or as near thereto as circumstances permit,' and the specified form is a proxy applicable to a single meeting, general proxies, properly stamped as such, should not be excluded [*Isaacs* v. *Chapman* (1916), 32 T.L.R. 237]. There is no need for a shareholder's signature on a proxy to be witnessed, unless the articles of the company so require.

The proxy may be signed in blank so long as it is properly

filled up by the time it is used [*Ernest* v. *Loma Gold Mines* (1897), 1 Ch. 1], even though at the time of the execution the date of the meeting has not been fixed [*Sadgrove* v. *Bryden* (1907), 1 Ch. 318]. And though an unqualified person is named in a proxy, yet if the qualification exists when the proxy is lodged and when it is used, it cannot be objected to [*Bombay Burmah Corporation* v. *Dorabji* (1905), A.C. 213]. A proxy can in general only be held by a person who is a member of the class of which a meeting has been summoned [*Madras Irrigation Co.* (1881), W.N. 120].

The company's funds may be used by the directors in sending out proxies containing the names of the directors, or in stamping the instruments, provided the directors in so doing are acting *bonâ fide* in the interests of the company [*Peel* v. *London and North Western Railway Co.* (1907), 1 Ch. 5, overruling on this point *Studdert* v. *Grosvenor* (1886), 33 Ch. D., 528].

A proxy to be used at one specified meeting or an adjournment thereof need only be stamped with a penny stamp. In all other cases a 10*s.* stamp is necessary [Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80]. If only a penny stamp is needed, the stamping must be done before execution [*Sadgrove* v. *Bryden* (1907), 1 Ch. 318], but this does not apply to proxies which need a 10*s.* stamp [*English, Scottish and Australian Bank* (1893), 3 Ch. 385], nor to proxies executed abroad (Finance Act, 1907, s. 9), which may be stamped within thirty days after their arrival in the United Kingdom. An adhesive stamp must be cancelled by the person executing the instrument, which will otherwise be void.

Adjournment.

The articles usually give power to a chairman to adjourn a meeting, with the consent of the members present; he may do so, but is not bound to adjourn, although requested so to do by a majority of the meeting [*Salisbury Gold Mining Co.* v. *Hathorn* (1897), A.C. 268], except, it would seem, at the statutory meeting (see p. 108).

A chairman cannot, without the consent of the shareholders, dissolve or adjourn a meeting while any business for which it was convened remains unfinished. If he attempts to do so, the meeting may elect another chairman and proceed with the business [*National Dwellings Society* v. *Sykes* (1894), 3 Ch. 159].

An adjourned meeting is legally a continuation of the original meeting [*Scadding* v. *Lorant* (1851), 3 H.L.C. 418], and therefore no business can be transacted at an adjourned meeting which was not within the scope of the original meeting, except in the case of the statutory meeting (see p. 108).

Class Meetings. As to meetings of classes of shareholders, these may occasionally be required to be held in cases where the articles make provision for them. Where such provision is made, it is commonly with a view to enabling a specified majority of shareholders in a class to bind the minority to a variation of the rights of the class. Table A, clause 4, is typical of the kind of article which is often found in the articles of a company. It runs as follows: 'If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.'

The provisions of the particular article, whatever they may be, must be carefully observed in convening and holding a class meeting, special care being exercised in ensuring that the necessary quorum is present.

Class meetings may also be necessary in cases of reorganisation of capital pursuant to s. 45 of the Act (as to which, see p. 30). In such a case, the class meeting being a meeting enjoined by statute, it is immaterial whether the articles contain any provision as to class meetings or not.

Minutes. An important duty of the secretary is the recording of minutes. These are required by s. 71 to be entered in books kept for the purpose, and minutes of proceedings at general meetings, as well as of proceedings at board meetings, must be kept. The minutes in either case should be signed by the chairman of the meeting at which the proceedings recorded took place, or by the chairman of the next succeeding meeting. They then become evidence of the proceedings. This does not mean that they are conclusive evidence, but, in the absence of any other evidence to show their incorrectness, they will be accepted by the Courts as reliable. Neither are the minutes exclusive evidence of what took place at a meeting, and an unrecorded resolution may be proved by other evidence [*Umney* v. *Fireproof Doors* (1916), 2 Ch. 142]. Detailed information in regard to minuting will be found in Chapter XXV.

CHAPTER XII

DIRECTORS

By s. 285 of the Act the expression 'director' includes 'any person occupying the position of director by whatever name called.' A director is a person who guides or governs the policy of a company; he may be called a manager, or a governor, or, as in the case of some financial and trust companies, a trustee; so long, however, as he occupies a position which imposes on him the duty of guiding or governing the policy of a company, he is a director in law, with all the consequent liabilities and responsibilities.

A managing director is usually also an ordinary director, who, besides having as an ordinary director to guide and govern the policy of the company, has in his capacity of managing director to perform certain executive functions. In so far as he performs those functions, he is simply an officer of the company; whilst, in so far as he guides and governs the policy of the company, he is, with the other ordinary directors of the company, from some points of view, a trustee; from others, an agent or a managing partner.

The very large body of existing law relating to directors is, for the most part, outside the scope of this book. But it is perhaps desirable to deal with certain points which are to some extent within the province of the secretary.

There is no statutory obligation on a company to have directors at all; and where the articles so provide, the control may be vested in a manager or managers; as the law now stands, there would appear to be nothing to prevent such manager being a limited company [*Bulawayo Market Co.* (1907), 2 Ch. 458].

1 and 2 Vict. cap. 106, secs. 28 to 31, and 4 and 5 Vict. cap. 14, provide that it is not lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director of any trading company carrying on business for

gain and profit, except in a few specified cases such as schools and insurance companies.

Appointment and Qualification.

A director is usually appointed in one of the following ways:

1. By the articles.
2. By the signatories to the articles.
3. By other directors to fill a vacancy.
4. By the shareholders in general meeting.

The articles of most companies require a director to be a shareholder, although there is no enactment rendering it obligatory. Table A requires at least one share as a qualification.

Where the articles provide that the qualification of a director must be the holding of a certain number of shares 'in his own right,' he need not be the beneficial owner [*Pulbrook* v. *Richmond Consolidated* (1878), 9 Ch. D. 610], but he must hold the shares in such a way that the company can safely deal with him in respect of them [*Bainbridge* v. *Smith* (1889), 41 Ch. D. 462]; thus, a bankrupt director does not, after notice to the company by his trustee, hold in his own right [*Sutton* v. *English & Colonial Produce* (1902), 2 Ch. 502; see also *Boschoek Proprietary Co.* v. *Fuke* (1906), 1 Ch. 148]. Where the articles provide simply that a director must be the registered holder of a certain number of shares, the joint holding of shares is a sufficient qualification [*Grundy* v. *Briggs* (1910), 1 Ch. 444].

1. As regards appointment by the articles, the conditions laid down by s. 72 as to signing and filing a consent to act, &c., must be complied with (see p. 7).

2. The articles of association may provide that the signatories shall appoint the first directors.

The appointment may be made at a meeting by a majority of the subscribers [*London & Southern Counties Land Co.* (1885), 31 Ch. D. 223], which must be held after, and not before, the registration of the company [*Möller* v. *Maclean* (1889), 1 Meg. 274]; but without a meeting an appointment in writing is good if all the subscribers to the memorandum of association concur [re *Great Northern Salt & Chemical Works* (1889), 44 Ch. D. 472], or, in case the articles give the power to the majority, if signed by the majority.

3. It is commonly provided that any casual vacancy on the board may be filled by the existing directors.

4. A director appointed to fill a casual vacancy usually holds office only until the next general meeting, when the

shareholders may renew the appointment or substitute another director. Generally the shareholders in general meeting have the right to make such appointments as may be necessary to fill vacancies, however caused.

In all the cases (2), (3), and (4) above, no consent to act or contract to take qualification shares is required by the Act, but the articles must be complied with, and s. 73 makes it incumbent upon a director to obtain his qualification within the time thereby limited, *i.e.* two months from appointment, or within such shorter time as the articles may fix, failure to do which renders his office vacant.

The articles of many companies contain a clause to the effect that a director shall acquire his qualification within one month from his appointment, and, unless he do so, he shall be deemed to have agreed to take the qualification shares from the company, and the same shall be forthwith allotted to him accordingly. It was held by the Court of Appeal that under such a clause the director, after signing the memorandum and articles of association, had agreed to take, and the company had agreed to allot him, his qualification shares [*Anglo-Austrian Printing Co., Isaac's Case* (1892), 2 Ch. 158]. But he can escape liability by resigning within the month [re *Bolton & Co., Salisbury Jones' Case* (1894), 3 Ch. 356]. A director, being a trustee, must not receive his qualification shares as a gift from a promoter or any one else; nor is he entitled to purchase his qualification shares and be refunded the purchase price. Anything he may receive he must account for to the company [re *Carriage Supply Association* (1884), 27 Ch. D. 323; *Canadian Oil Works Corporation, Hay's Case* (1875), 10 Ch. App. 593; *Caerphilly Colliery Co., Pearson's Case* (1877), 5 Ch. D. 336; *North Australian Co., Archer's Case* (1892), 1 Ch. 322]. Nor may he accept and hold his qualification shares in trust for and at the will of a promoter to whom he has handed blank transfers [*London and South Western Canal* (1911), 1 Ch. 346].

To avoid inconvenient consequences in cases where a director has inadvertently acted when his appointment or qualification was defective, s. 74 of the Act provides that 'The acts of a director or manager shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification.'

Improperly appointed directors, or directors acting after disqualification, may bind the company by their acts. They are treated in the light of agents of the company, and the company is bound by contracts entered into by them on its behalf, unless it can show that the other party knew of the

defective appointment [*Mahony* v. *East Holyford Co.* (1874), L. R. 7 H.L. 869; *Dawson* v. *African Trading Co.* (1898), 1 Ch. 6; *British Asbestos Co.* v. *Boyd* (1903), 2 Ch. 439; re *Bank of Syria* (1901), 1 Ch. 115; *Staffordshire Gas Co.* (1892), 66 L.T. 413].

Remuneration. The remuneration of a director is not a matter of right unless it is so provided by the articles of association. Where no remuneration is given in the articles of association, the company may vote it in general meeting [*Dunstan* v. *Imperial Gas Co.* (1833), 3 B. & Ad. 125].

Unless otherwise provided, a director is not entitled to his expenses of attending board meetings, in addition to his remuneration [*Young* v. *Naval & Military, &c., of South Africa* (1905), 1 K.B. 687]; nor apart from special provisions is he entitled to his fees free of income tax [*Boschoek Proprietary Co.* v. *Fuke* (1906), 1 Ch. 148].

A director may sue for his fees [*Nell* v. *Atlanta Gold Co.* (1895), 11 T. L. R. 407], or may prove for his fees with other creditors in the winding-up of a company [*Beckwith's Case* (1898), 1 Ch. 324].

When the articles of a company merely provide that directors' remuneration shall be a specified sum per annum, they are not entitled to an apportioned part of such remuneration for serving for part of a year [*Salton* v. *New Beeston Cycle Co.* (1899), 1 Ch. 775; *London & Northern Bank, McConnell's Case* (1901), 1 Ch. 728]. It has been suggested that the Appointment Act, 1870, applies to such a case, and that a director is accordingly entitled to be remunerated in such circumstances for a broken period of a year; but the Court of Appeal has expressly left the point open. [*Moriarty* v. *Regent's Garage & Engineering Co. Ltd.* (1921), 2 K.B. 766]. Where the remuneration is a certain sum per annum to be paid at such time as the directors shall determine, it is a condition precedent to a director's right to sue that the directors shall have determined a time for payment [*Caridad Copper* v. *Swallow* (1902), 2 K.B. 44]. Similarly, if the remuneration is an aggregate sum, to be divided in such manner as the directors shall determine, a director cannot sue until the board has made a formal division [*Joseph* v. *Sonora (Mexico) Land* (1918), 34 T.L.R. 220]. But it is now usually provided that their remuneration shall accrue due *de die in diem*, or shall be at the rate of so much per annum.

Directors who are appointed by the Court to be receivers and managers at a remuneration are entitled to their remuneration as directors in addition [*South Western of Venezuela Railway* (1902), 1 Ch. 701].

Vacation of Office.

The office of director may be vacated by disqualification, removal, resignation, or rotation.

Disqualification depends upon the regulations of the company; but the majority of companies provide in their regulations that a director vacates office when be becomes bankrupt, though under such a regulation a bankrupt may be appointed director [*Dawson* v. *African Trading Co.* (1898), 1 Ch. 6]; or lunatic; or accepts an office of profit under the company [*Astley* v. *New Tivoli* (1899), 1 Ch. 151]; or fails to acquire, or ceases to hold, his qualification shares (see s. 73); and where the articles so provide, a director automatically vacates his office on the happening of the event which disqualifies him, and the board cannot waive the event, though the disqualification ceases and he is eligible for re-election on its cessation [*Bodega Co.* (1904), 1 Ch. 276]. 'Insolvent' in a disqualification article means commercially insolvent in the ordinary acceptation of the term [*James* v. *Rockwood Colliery Co.* (1912), 28 T.L.R. 215; *London & Counties Assets* v. *Brighton Grand Hall* (1915), 2 K.B. 493; see, however, *Sissons & Co.* v. *Sissons* (1910), 54 S.J. 102]. An article providing that a director vacates office, 'if he is concerned in or participates in the profits of any contract with the company,' means that he vacates office if he, or a firm of which he is a member, is concerned in any contract with the company, though he has not participated in the profits [*Star Steam Laundry* v. *Dukas* (1913), 108 L.T. 367].

Fees erroneously paid.

The company may recover from a director any fees erroneously paid to him while disqualified [*Bodega Co.* (1904), 1 Ch. 276]. In addition he is liable to a penalty of £5 for every day on which he acts as director (s. 73).

Removal.

It is usual to provide that a director shall be removed by special resolution only. The Court guards the position of a director jealously; and unless the shareholders pass a resolution that they wish the director to be removed, it will grant an injunction against anyone preventing the director from acting [*Pulbrook* v. *Richmond Mining Co.* (1878), 9 Ch.D. 610].

Resignatio

The articles usually provide that a director may resign. A resignation, when given, cannot generally be withdrawn [*Glossop* v. *Glossop* (1907), 2 Ch. 370].

The most convenient way for a director to resign, where the articles do not provide for his resignation, is for him to part with his qualification shares and so *ipso facto* cease to be a director.

Retiring.

Sometimes it is provided in the regulations of a company that the directors shall retire year by year by rotation. This provision is a convenient one, for a director anxious to retire

need not offer himself for re-election; and a company anxious to remove a director may refuse to re-elect him after his retirement by rotation.

Register of Directors.

Amongst the books which the Act requires a company to keep at its registered office is a register of directors or managers (s. 75). The particulars required to be inserted in this register were, by s. 75, the names, the addresses and the occupations of the directors or managers. Now, however, by the combined effect of s. 1 of the Companies (Particulars of Directors) Act, 1917, and s. 3 of the Registration of Business Names Act, 1916, the following particulars must also be included:—The present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation, if any, of each director. The Registrar must be furnished with a copy of the register for filing, and must also from time to time be notified of any change in the directorate, or in any of the particulars. When notice of a change is sent to the Registrar, a complete list of the existing directors should be given. The list should have four columns: 'Names,' 'Addresses,' 'Occupations,' and 'Changes.' In the last column, changes since the last list was filed should be noted, *e.g.* by placing against a new director's name 'in place of ,' and by adding 'dead,' 'resigned,' 'additional,' or as the case may be.

In this connection it must be remembered that, unless exempted by order of the Board of Trade, companies registered after November 22nd, 1916, and foreign companies establishing a place of business in the United Kingdom after that date, are required to publish in trade catalogues, trade circulars, show cards and business letters, on which the business name appears, and which are sent to any part of His Majesty's dominions, the present Christian names (or initials) and surnames, any former Christian names and surnames, the nationality if not British, and, if the nationality is not the nationality of origin, the nationality of origin, of all directors [Companies (Particulars of Directors) Act, 1917, s. 2 (2); Registration of Business Names Act, 1916, s. 18].

Board Meetings.

The business of a company is usually transacted by the directors at board meetings, and, unless the articles provide otherwise, the directors must act together as a board, and cannot act without meeting [*D'Arcy* v. *Tamar Ry.* (1867), L. R. 2 Ex. 158; *Haycraft Gold Reduction Co.* (1900), 2 Ch. 230].

Board meetings are to some extent regulated by the articles in practically every case. Clauses 87 and 88 of Table A are, in substance, very frequently the governing regulations as to board meetings. Clause 87 is as follows: 'The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.' By the first words of clause 87, a very wide discretion is left to directors as to regulating their meetings. It would, no doubt, be competent to them, under such a power, to frame an elaborate code of rules as to the convening of meetings and as to the procedure thereat, and to place these on the minutes, when they would govern the future, until altered. But, as a rule, few if any rules are definitely made, and, apart from any practice which may grow up, matters are left very much at large. In consequence, decisions as to board meetings have been numerous, and where neither the articles nor any rules made by the board themselves apply, these decisions are binding.

Clause 88 runs: 'The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.'

Quorum.

The articles usually prescribe the number of directors required to constitute a quorum, but, if not so prescribed, the number who usually act in conducting the business of the company will constitute a quorum [*Tavistock Ironworks Co., Lyster's Case* (1867), 4 Eq. 233; see also re *Bank of Syria* (1901), 1 Ch. 115], or a majority of the whole board [*York Tramways Co.* v. *Willows* (1882), 8 Q.B.D. 685]. Where the articles provided that the minimum number of directors should be four, that A and B should be the first directors, and that the first directors should have power to appoint others, it was held that there could be no valid board meeting until A and B had appointed two other directors [*Sly, Spink & Co.* (1911), 2 Ch. 430].

A board meeting of a number less than the quorum prescribed by the regulations is invalid [*Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141]; and where a director may not vote on any matter in which he is interested, he does not count towards a quorum for such business [re *Greymouth Point Elizabeth Co.* (1904), 1 Ch. 32; *North*

Eastern Insurance Co. (1919), 1 Ch. 198], *e.g.* where the business is the allotment of shares to himself [*Neal* v. *Quinn* (1916), W.N. 223]. Most companies have a clause empowering directors to act in spite of vacancies; but this will not enable them to act unless they form a quorum [*Newhaven Local Board* v. *Newhaven School Board* (1885), 30 Ch. D. 350].

Time and Notice. Ordinary board meetings are usually held at fixed intervals (*e.g.* once a fortnight) at some fixed hour and place; extraordinary board meetings are usually summoned by the secretary or one or more of the directors. Notice ought to be given to the directors of such ordinary board meetings; if they are not held at such fixed intervals, notice must, to ensure a valid meeting, always be given to all the directors [*Portuguese Copper Mines, Steele's Case* (1889), 42 Ch. D. 160]; but not if they are abroad [*Halifax Sugar Co.* v. *Francklyn* (1890), 59 L. J. Ch. 591]. The notice need not state what business is to be transacted, unless it is so provided in the articles [*Compagnie de Mayville* v. *Whitley* (1896), 1 Ch. 788], or in the regulations made by the directors themselves; but it is advisable to specify the business in the case of a notice of a special board meeting. As regards the length of notice, subject to any provision in the articles or to any regulation made by the directors, no special length of notice is required, but the notice should be a reasonable one.

The regulations often provide that any irregularity in the directors' proceedings shall be of no effect as regards the company itself.

The invalidity of a meeting will not affect persons dealing with the company without notice [*Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327; *County of Gloucester Bank* v. *Rudry Colliery Co.* (1895), 1 Ch. 629]. The transactions of an invalid meeting may be ratified at a subsequent board meeting, provided it is held within a reasonable time [*Portuguese Copper Mines, Badman's and Bosanquet's Cases* (1890), 45 Ch. D. 16].

Rights. A director can, if qualified, sustain an action in his own name against the other directors on the ground of individual injury to himself, for an injunction to restrain them from wrongfully excluding him from acting as a director [*Pulbrook* v. *Richmond Mining Co.* (1878), 9 Ch. D. 610].

Responsibility. A director does not make himself responsible for an act done at a meeting at which he was not present, and which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes [*Burton* v. *Bevan* (1908), 1 Ch. 240].

Delegating powers.

Directors can delegate their powers to a committee of their number, if authorised so to do by the articles, but not otherwise [*Howard's Case* (1866), 1 Ch. App. 561]. The committee need not consist of more than one director [re *Taurine Co.* (1884), 25 Ch. D. 118; *Umney* v. *Fireproof Doors* (1916), 2 Ch. 142]. The articles usually provide that the regulations as to meetings of directors, keeping minutes, &c., shall apply also to meetings of committees.

Secretary at Board Meetings.

It is the duty of the secretary to be present at all board meetings. He should have prepared an Agenda paper, and he will, of course, take notes as the business proceeds, in order that he may afterwards be in a position to write the minutes. (As to minutes, see Chapter XXV.) He will also have at the meeting the Directors' Attendance Book, in which those present will sign their names. The Bankers' Pass Book, made up to date, should also be produced, and, if necessary, some financial statement in addition should be prepared, in order that the financial position of the company may be perfectly clear. All letters and other documents requiring the attention of the board, including cheques for signature, should be ready for immediate production as and when required.

Seal.

A company must have a common seal, upon which its name must be engraved (see pp. 9, 13). The custody and use of the seal are matters which should be strictly provided for. As regards its custody, this is usually provided for by resolution of the board, duly entered upon the minutes. It is common for the seal of a company to be provided with two locks, and the keys of those locks to be kept by the chairman and the secretary respectively, so that the seal cannot be used in any informal or improper manner.

As regards its use, Table A, clause 76, provides that the seal shall not be affixed to any instrument except by the authority of a resolution of the board, and in the presence of at least two directors and the secretary, or some other person appointed by the directors; and that these persons must sign every instrument to which the seal is affixed. Special articles frequently vary these provisions, but strict formalities are almost invariably prescribed.

A Seal Book should be kept in which should be entered particulars of the documents to which the seal of the company is affixed. This should contain a description of the document, the date of the resolution authorising its sealing, and the names of those in whose presence the seal was affixed and who signed the document.

It is not advisable to affix the seal of the company

Contracts. unnecessarily to documents, since, if sealed, they become liable to be stamped with a deed stamp of 10s. It must be remembered that the making of contracts by a company is expressly provided for by s. 76 of the Act, which is as follows:

(1) Contracts on behalf of a company may be made as follows (that is to say):

(i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged:

(ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged:

(iii) Any contract which if made between private persons would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

The effect of this provision is to place a company in the same position as an individual in regard to the formalities to be observed in the making of contracts.

CHAPTER XIII

RESOLUTIONS

RESOLUTIONS are of two classes—resolutions of shareholders (or classes of shareholders) and resolutions of directors. Resolutions of shareholders are of three kinds—ordinary, extraordinary, and special.

A shareholders' resolution may perhaps be defined as the formal expression of the will of the company, for the proper method by which the shareholders can express the will of the company on any particular question is by passing a resolution in general meeting.

The articles usually provide that certain things can be done with the consent of the company in general meeting. The Act also provides that certain things can only be done with the sanction of a special or extraordinary resolution.

If there are no provisions in the articles as to the way in which the consent is to be given, it may be that a formal resolution is not strictly necessary, and that the proved assent of every one of the shareholders (and not a majority only) to a proposal would bind the company. But if the articles lay down rules for ascertaining the wishes of the shareholders, those rules must be observed.

When Invalid.

A resolution is invalid:—

1. If it contravenes any provision of the law, or is contrary to public policy;

2. If it proposes that something shall be done which is beyond the powers of the company;

3. If the meeting is not validly constituted according to the articles or the Act, and if any of the provisions of the articles or the Act as to the conduct of business are not observed; but a resolution duly passed by a meeting convened by a board irregularly constituted is valid [*Boschoek Proprietary Co.* v. *Fuke* (1906), 1 Ch. 148].

Unless the articles otherwise provide, a resolution (not being special or extraordinary) can be passed, if the voting is taken by show of hands, by a simple majority of those

present, and, if a poll is demanded, by a simple majority of the votes given at the poll.

Extraordinary Resolution.

The characteristics of extraordinary and special resolutions have already been dealt with to some extent in Chapter X (see p. 102). Both are defined in s. 69 of the Act, the effect of which is here summarised.

For a resolution to be an extraordinary resolution:

(1) It must be passed by a majority of not less than three-fourths of the members present in person or by proxy (where proxies are allowed);

(2) Only those members present who are entitled to vote may be counted;

(3) It must be passed at a general meeting;

(4) Notice of the meeting must have been duly given;

(5) The notice must have specified the intention to propose the resolution as an extraordinary resolution.

If any one or more of the above conditions are not fulfilled, the resolution is not an extraordinary resolution.

Special Resolution.

For a resolution to be a special resolution:

(1) It must be passed in manner required for the passing of an extraordinary resolution. This involves the fulfilment of the first four of the conditions specified above as necessary in the case of an extraordinary resolution, but not necessarily of the fifth [*Penarth Pontoon Co.* (1911), W. N. 240; and see p. 102];

(2) It must be confirmed by a majority of the members present in person or by proxy (where proxies are allowed) at a second general meeting;

(3) Only those members then present who are entitled to vote may be counted;

(4) Notice of the second meeting must have been duly given;

(5) The second meeting must be held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

The effect of the other provisions of s. 69, which are applicable both to extraordinary and to special resolutions, may be thus summarised:

(1) At any of the meetings referred to above, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the resolution (see p. 111).

(2) At any of the meetings a poll may be demanded by three persons entitled by the articles to vote, or, if the articles so provide, by any other number of persons entitled to vote not exceeding five persons.

(3) On a poll, members may give the number of votes to which they are entitled by the articles.

(4) Notice of any of the meetings is duly given and the meeting duly held when the notice is given and the meeting held in accordance with the articles.

S. 70 of the Act provides that within fifteen days from the passing of an extraordinary resolution, or the confirmation of a special resolution, as the case may be, a printed copy of the resolution must be forwarded to the Registrar, to be recorded or filed; and that copies of all special resolutions in force must, when articles have been registered, be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution; in case no articles have been registered, a member is entitled to have a printed copy of every special resolution forwarded to him on payment of a sum not exceeding 1*s*. There are penalties for default in obeying these provisions.

A resolution (whether ordinary, extraordinary, special or by directors) should be clearly expressed and should deal definitely with the result intended to be attained, providing as may be necessary for the means by which the result is to be attained, and for the consequences that will follow: if a resolution required by the Act is to be passed, it should follow the wording of the Act.

Thus a resolution to increase the capital should define the nature of the new shares; a resolution to pay a dividend should, besides stating the amount, state the day on and the period in respect of which it is to be paid, and the members to whom it is to be paid (*e.g.* those on the register on a fixed day).

A few common forms, both of directors' resolutions and of shareholders' resolutions, are given below, and may be adapted to meet the requirements of particular cases.

Directors' Resolution to Issue Prospectus.

Forms of Resolutions.

Resolved that the Prospectus of the Company which has been considered at this meeting be dated and be signed by the Directors now present, and that the same be sent to each other Director named therein for signature by him or his authorised Agent, and that the same when signed by all the directors named therein be forthwith filed with the Registrar of Companies and that immediately thereafter the Prospectus be issued and advertised as hereafter resolved.

Directors' Resolution to Allot Shares.

The minimum subscription being £

It is Resolved that the number of shares mentioned in the column set against the name of each applicant mentioned in the column of the Application and Allotment Sheets (signed for identification by one of the Directors) be, and the same are hereby, allotted to such applicant, making a total allotment of shares.

Resolved, that a letter of allotment, with notice of the amount payable on allotment, be sent to each allottee, and that a letter of regret returning his application money be sent to each applicant to whom no allotment has been made.

Directors' Resolution to make Call.

That a call of *s.* per share be made upon the members (*or*, upon shares Nos. to), such call to be payable on the day of , 19 , to Messrs. , the Company's bankers, at .

Directors' Resolution to Forfeit Shares.

That , the registered holder of shares of £ each, numbered to inclusive in this Company, having failed to pay the instalment of per share due on the said shares on the day of , 19 , and having failed to comply with the notice served upon him, dated the day of , 19 , the said shares be and the same are hereby forfeited.

Directors' Resolution to Pay a Dividend

That a dividend of per share be paid upon the Preference shares, and a dividend of per share be recommended to be paid upon the Ordinary shares of the Company in respect of the period of months to the th last to all shareholders whose names appear on the Company's register on the day of , 19 , and that such dividends be paid on the day of 19

Directors' Resolution to Close Books.

That the transfer books of the company be closed from the day of to the day of , 19 , both inclusive.

Special Resolution to Alter Articles.

That the articles of association of the company be altered as follows:

1. That in Article 17 the words " " be inserted after the words " "
2. That in Article 23 the words " " be cancelled.
3. That the following Article be substituted for Article 113:

Resolution of Company Appointing Committee of Investigation.

That a committee be appointed to investigate the affairs of the company, and that the committee have right of access to the books and accounts of the company, with power to examine directors and

officials of the company, and power to employ at the expense of the company professional assistance in the investigation, and that the committee do make a report to be circulated among the shareholders, and that and be members of the committee, with power to add to their number, and that this meeting be adjourned to to receive the report.

Resolution of Company to Increase Capital.

THAT the capital of the company be increased to £ by the creation of new preference shares of each, to rank *pari passu* as regards dividend and in all other respects with the preference shares of the original capital of the company, and that such new shares be offered in the first instance at a premium of per share to the members of the company in proportion, as nearly as may be, to their holdings, whether of preference or of ordinary shares, and that the directors be authorised to dispose of all such new shares as may not be taken up by the members of the company as aforesaid to such persons and upon such terms as they may deem expedient in the interests of the company.

Resolution of Company to Issue Debentures.

THAT the directors be and they are hereby authorised to borrow the sum of £50,000, and to secure the same by the issue of 500 Debentures of £100 each, bearing interest at the rate of 5 per cent. per annum payable half yearly, and charged upon the undertaking of the company, and all its assets, present and future, including its uncalled capital, and that except as aforesaid the said Debentures be issued upon such terms and conditions in all respects as the directors think fit.

Extraordinary Resolution to Wind Up.

THAT the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

Special Resolution to Wind Up.

THAT the company be wound up voluntarily.

Amendments

As regards amendments to resolutions the following points may be noted:

Any amendment relevant to the motion may be moved, provided that it does not go beyond the scope of the notice convening the meeting, or of the business that may be transacted at a meeting without notice.

If such an amendment is improperly withheld by the chairman from the meeting, the Court will declare the resolution invalid [*Henderson* v. *Bank of Australasia* (1890), 45 Ch. D. 330]. If such an amendment is passed, the chairman should put to the meeting the resolution as amended. If there are more amendments than one, they may be put to the meeting in the order in which they are proposed, or, if this is inconvenient, in the order which the chairman judges most convenient. If an amendment is proposed to

an amendment, the former should be put first, and if it is passed, the amendment as amended should then be put, followed by the resolution as amended.

An amendment altering the terms of a resolution cannot be moved at a second meeting which has been called simply for the purpose of confirming or rejecting the resolution [*Wall* v. *London & Northern Assets Corporation* (1898), 2 Ch. 469].

Directors' resolutions are, of course, passed by a simple majority in all cases. If the voting is equal, the chairman may, if so authorised by the articles, give a second or casting vote. If he has no casting vote, and the voting is equal, the resolution is not carried. The matter of voting generally is dealt with in Chapter XI.

Although a resolution of the company in general meeting is a formal expression of the will of the majority of the shareholders, yet it does not follow that such a resolution is effective to control the policy of the company, for by the articles the control may be vested in the directors. Sometimes practically the whole of a company's powers are vested in the directors, and in that case, unless the articles otherwise provide, neither an ordinary resolution, nor even an extraordinary resolution, of the members can coerce the directors in the exercise of those powers, but the articles must be altered by special resolution, if the directors are to be controlled [see *Automatic Self-Cleansing Filter Co.* v. *Cuninghame* (1906), 2 Ch. 34; *Marshall's Valve Gear Co.* v. *Manning, Wardle & Co.* (1909), 1 Ch. 267; *Quin & Axtens* v. *Salmon* (1909), A.C. 442].

CHAPTER XIV

ACCOUNTS

A CHAPTER on Accounts may, to some secretaries, appear to be out of place in a book dealing with secretarial practice. In a company of any magnitude the book-keeping and accounts will naturally be under the control of a separate official, who may or may not be responsible to the directors through the secretary, but in any case there can be no doubt that the secretary who desires to be efficient in the highest sense—and indeed every man wholly or partially controlling or directing a commercial undertaking—needs to be acquainted with the principles of accountancy, even if his duties do not actually demand executive ability in that direction. It is for this reason that this chapter is included. It is intended to be of assistance to the secretary in the execution of his duties to the directors of his company, and is not in any way a treatise on book-keeping or accountancy. There are already many excellent works dealing with accountancy from every point of view, which can be consulted by any secretary who requires a deeper knowledge of the subject.

The secretary is in a fiduciary position in relation to his directors, and through them to the proprietors of his company, and in this sense the more abstruse side of accountancy interests him to a greater extent than the elements of book-keeping. He should be concerned with the results obtained by the book-keepers rather than with the actual machinery of book-keeping. In every large business in which the accounts are in the charge of a separate official, it may be taken for granted that an adequate system of book-keeping by double entry will be in use, and that it will be intelligently adapted to the particular business concerned, so that the results obtained may be clear and of practical service to the directors.

In case the secretary is directly responsible for the accounts he will necessarily, unless the business operations are very small in number, require the assistance of a competent

book-keeper whose work in detail will be controlled and checked by the auditors of the company.

When there is a responsible accountant in the service of the company, the secretary, like the directors, relies upon the accountant for information to guide him in his actions and to justify him in his decisions, and for this reason the secretary is primarily concerned with the results of the accountant's work, but only secondarily with the means used to obtain the results.

It may be taken for granted that in the office of any properly organised company the ordinary books of account will exist. These will include the cash book, containing the banking accounts in detail. In large concerns, which frequently have more than one banker in England, and conceivably one or more banking accounts in countries with which they trade, there may be more than one cash book. In any case the procedure of book-keeping will be the same, and the result should be to provide the secretary at intervals with a return showing the balance according to the banker's pass book, the cheques issued but not cleared, the lodgments made but not credited, and finally the balance available for actual drawings. In large concerns, or concerns working with a small margin of free capital, this should be prepared daily. Such a return will, in case of need, also show amounts standing on deposit account, overdrafts, and balances at foreign bankers available for transfer to the main banking account. It will also be necessary for the secretary of any concern trading largely with foreign countries to have a daily return of the rates of exchange between England and the countries in which his company buys or sells. Until recently rates of exchange were so stabilised that this was not of importance, but at present (and so far as can be seen, for some time to come) it is and will be very necessary in the circumstances mentioned.

With such returns as these the secretary will be able to see his way ahead financially. He will probably require to see that sufficient money is accumulated for the payment of salaries, and (in the case of a manufacturing concern) wages, and raw materials. He will be provided with a list of recurring commitments, such as rents, rates, water, gas, etc., and of intermittent commitments such as bills payable, and of special commitments, as for example large or special expenditure on plant or buildings.

Speaking generally also the onus will be on the secretary to see that the directors are provided at their monthly or possibly weekly meetings with a synopsis of the financial

transactions since their previous meeting, a statement of the cash resources at the time of the meeting, a statement of cheques to be drawn or bills to be accepted at the meeting, and a forecast of the anticipated collections and disbursements to be made before the next meeting.

Subsidiary to the work of the cashier as affecting the secretary is the petty cash, which in the case of large concerns may involve the disbursement of very considerable amounts annually. It is advisable that the petty cash should be in the nature of an imprest fund, and that a synopsis of the expenditure through the petty cash during any given period should be provided, and a cheque drawn for the total amount, so as to bring the fund up to its original amount. In this way the expenditure from petty cash is brought before the secretary and directors in an analysed form, and their especial attention is called to any large or exceptional disbursements.

In the case of branches it may be arranged for their petty cash expenditure to be made from an imprest fund provided out of the petty cash of the main office, and always forming part of the petty cash balance of that office.

Postage should again be subsidiary to petty cash, and should also preferably be treated as an imprest fund, to be brought up daily to its original amount. The cashier, or some other official appointed by the secretary for the purpose, should examine the postage book and the balance of stamps and money in hand at irregular intervals, and the secretary himself should endeavour occasionally to examine and call for the postage book, and the record (if a separate record be kept) of the cost of telegrams despatched. The consciousness that such an examination may at any time be made is a powerful deterrent of petty defalcations.

It will be found also that the cost of providing printed petty cash dockets is amply repaid to any large concern. It will also be found a salutary provision to couple with the use of these dockets the rule that no payment is to be made by the cashier without the counter-signature of the head of a department, or (if the sum be over a certain predetermined amount) of the secretary himself. This should apply also to payments which cannot immediately be passed through the books, such as advances (to be accounted for later) to members of the staff for travelling expenses.

In the case of large branches, or large works separated from the main office, it will probably be more practical for separate banking accounts to be set up, as well as separate petty cash accounts. Copies of these, with the

necessary supporting vouchers can be sent to the main office at regular intervals to be embodied in the books of the company.

Under such circumstances as these, *i.e.* when the works or spending departments are separated by some distance from the main office at which the principal book-keeping of the company is done, it is particularly necessary that care should be taken to devise a system which provides the necessary safeguards for the directors and the secretary and other officials. Effective methods are, that either the whole of the cash transactions of the works or branch shall be worked by what are in effect imprest funds, or preferably, that as much as possible of the cash disbursements shall be made direct from the main office.

Under either system it will be necessary for the works or branch to requisition what monies they require from the head office for wages and salaries as there is no other place at which the disbursements of these sums can be made than the actual place where they are earned. Cheques for the amounts required to be disbursed will be paid into the works' banking account, and the receipts for the disbursements will afterwards be sent to the head office for checking. This, however may be modified in part by an arrangement for the payment of the wages of higher officials of the works or branch direct from the head office, by cheque or other means.

It is possible, under the first of the alternatives mentioned above, for money to be provided for the other disbursements of works or branches—such as those for purchases of materials—against requisitions supported by detailed lists of the accounts which the works or branch have to pay. For many reasons, however, it is advisable that the actual power of disposal of money by works or branches shall be reduced to a minimum. Therefore so far as concerns purchases of materials or other goods, or contracts for work, the invoices or certificates should be received by the works or branch, checked, authorised for payment by them and forwarded to the head office. At the same time arrangements should exist by which suppliers send their monthly statements of account or other demands for payment direct to the head office, who will issue cheques in payment directly to the suppliers. Under this system there is a fairly adequate safeguard against collusion or fraud, while at the same time there is an added security against error from the book-keeping point of view.

The secretary may be responsible in some cases for the conduct of foreign branches of his company, or of agencies.

No section of the accounts of a company is more difficult to control than this; personal inspection can only be maintained at comparatively long intervals and at an expense which is apt to become onerous. In very large businesses a travelling audit is conducted from the head office, and in some cases the book-keepers of the various foreign branches interchange visits at uncertain intervals determined by the head office. In such cases as these the secretary at the head office may arrange for a series of reports which will assure him of the well-being of the branches. But short of this it will be his duty, in conjunction with the accountant, to ensure the good and proper conduct of the branches so far as is possible under distant control. The most difficult part of this problem will obviously concern the cash at the branches, and this can be most effectively controlled by the following system, which has been successfully used by a number of companies having foreign branches.

Each foreign branch has two accounts opened at a local bank, into one of which all collections are paid without any deduction. A certain amount of control of these collections is maintained by the head office, owing to the fact that the latter is aware of the debts owing each month by customers in connection with each branch. From this first or No. 1 account (over which no official at the branch has any power other than that of lodging amounts collected) there is transferred automatically by the banker at the end of each month to a second or No. 2 account a fixed monthly sum, calculated by experience to be sufficient to meet the expenses of the branch for the ensuing month. The manager of the local branch has power to draw upon this second account only. By this means, although the possibility of fraud or defalcation is obviously not avoided, yet the time during which defalcations might remain undiscovered is limited, and the amount endangered is also limited. At the same time the personnel at the local branch are aware that by the means described there is a constant, but not in any way humiliating, check sustained by the head office.

The remaining balance in the first account can either be drawn upon by the directors as need arises, or instructions can be given to the foreign or branch bankers to transfer either fixed amounts at irregular intervals, or irregular amounts at fixed intervals to the company's main banking account.

Similar procedure may be adopted in those cases where the foreign branches take the form (so frequent nowadays) of subsidiary companies registered in the country in which

they trade, except that in these cases the directors of the subsidiary company will release the balance of funds in the first or No. 1 account as and when need arises.

It may be taken as a rule that the larger the business the secretary has to control, the more difficult it will be to keep in touch with details, and it is therefore to the advantage of the secretary to devise forms and synopses which, while they arise logically out of the work of departments and do not add to it more than is absolutely necessary, shall give the secretary, and through him the directors, a condensed view of all that happens. In regard to cash there can be no more important or helpful document than an analysis of the cash books, bringing together of course the details of whatever number of cash books may be in use. This document is preferably prepared each month, beginning and ending with the combined bank balances shewn on the cash books. These balances will naturally be checked by the secretary with the pass books and the cashier's agreements thereof.

The details of receipts may be briefly sub-divided according to the needs of the business, either into classes of goods sold, or geographically into the districts in which the sales are made.

The expenditure should also be classified so as to show the monthly expenditure on salaries, wages, raw materials (with any sub-analysis which may be necessary), freight, and so on, according to the nature of the business. In manufacturing concerns a useful subsidiary figure is the average number of workmen who earned the wages shewn, and this can, if necessary, be further sub-divided into classes of goods made, or (if more fitting to the needs of directors) into shop departments. A refinement of great utility is to combine in this main analysis the sub-analysis of amounts spent through the petty cash, instead of showing merely the amounts paid over to the cashier for petty cash purposes. This will of course necessitate bringing in the petty cash balance at the beginning and end of each month.

A combination of the twelve monthly analyses here described will provide an invaluable document, forming (as it will) a chart of what may be called the financial circulatory system of the business.

The immediate duties of the secretary in connection with accounts and cognate branches of his business must, as we have already said, depend largely on the size of that business and the method and perfection of its organisation. In most companies the accountant, the sales manager, the works manager, the chief engineer, or other chief officials will

probably report periodically in regard to their own branches of the business. A report will, in all probability, be made on all these branches at the periodical meetings of the board, and it will quite possibly fall within the secretary's province to provide returns of this nature, dealing with other than the purely secretarial side of the business.

The secretary therefore may be well advised to keep running summaries of the work of all departments, such as the value and classification of orders received, and of goods delivered; of the output of the factory, mine, or estate concerned; of the number of men engaged in each operation of the work, and so on, according to the nature of the business. He should also periodically have in his hands a list of balances owing by customers and to suppliers, with indication of the approximate dates when both become payable. Lists of bills receivable and payable are also necessary for that full survey of the business which the modern secretary should have, if he is to be in fact the 'chief of staff' to the board.

The modern secretary should moreover be skilled in reading a balance sheet. He should be able to examine the published accounts of any company, and, if called upon, reduce them to their lowest terms, leaving out extraneous items and taking into account all relative considerations, even though not immediately apparent in the wording and figures, so that a person not so skilled may be able to digest the result.

It will also, in all probability, be the duty of the secretary to assure himself that vouchers or invoices, duly checked and passed by the authorised officials, are in existence for all amounts, payment of which is demanded by the cashier. It should be the duty of the secretary to see that complete lists of these items, with brief descriptions and the numbers of the cheques, accompany the cheques which are placed for signature before the board, or the finance committee, if one exists. One very important incidental task of the secretary, frequently overlooked, is to make sure that duplicate payments for the same items are not called for, either by negligence or fraud. He should personally examine all spoiled cheques and assure himself that they are cancelled and that every cheque is used or accounted for.

The energetic secretary will always require cheques to be drawn fully, legibly, and according to the oft repeated advice of bankers, to prevent fraud, and he will make rules with regard to the insertion of the full and proper names of the drawees, the due crossing of cheques when necessary, and the adequate checking of the letters and enclosures

which may have to accompany the cheques when they are posted.

The preceding remarks deal with those portions of the accounts of a large trading concern which may be held to reflect upon the work of the secretary in his primary capacity of chief official, and as the focussing point under the directors of the whole of the concerns of his company. There are of course other matters of account in which the fully equipped secretary will be interested, even if the magnitude of his company makes it impracticable for him to take any active part in the book-keeping. These matters of account are those dealing with the company as a legal entity, such as, for example, capital and dividend accounts.

A company having decided to issue the whole or part of the authorised capital, the necessary board minutes and arrangements for the issue will be made, and it will then be the duty of the secretary to see that the money for the shares is paid into the coffers of the company, and he will first of all collect the amount due from the original subscribers, and when this is paid into the company's banking accounts, it will, in the ordinary way, be entered in the share cash book.

A separate account must be opened at the bankers called 'Share Capital—Application Account,' and the application forms will be collected day by day from the bank, agreed with the pass book, and entered in detail in a share cash book.

Supposing the issue has been over-applied for, the surplus amount will remain to the credit of the 'Application Account' until after allotment, when it will be transferred to the 'Allotment Account' and credited to the individual subscribers in respect of amounts payable on allotment.

As soon as the allotment letters have been posted, an account will be opened at the bank called 'Share Capital: Allotment Account,' to which the surplus balance referred to above will be transferred.

The amounts received on allotment, and subsequently the amounts received on calls, will be dealt with in the same manner as in the case of amounts received on applications. In dealing with debenture stock, the same method will apply.

In the event of shares being issued at a premium, or of a commission being paid on their issue, or of debentures being issued at a discount or a premium, the amount of the instalment will vary. In the case of a discount on an issue, where the debentures are terminable and repayable at par, if the discount cannot be written off, a sinking fund should

be created, built up by annual contributions from revenue of such an amount as shall, by the date of redemption, represent the total amount of discount at which the debentures were originally issued. Commission on issues of shares should be written off at the earliest possible date.

In the case of a premium, if the conditions of the issue provide for the repayment at par of the loan capital in respect of which it was collected, this can be retained on the balance sheet, and in the case of both share and debenture capital, there is no legal obstacle to the amount of cash collected by way of premium being treated as divisible profit, if the articles of the company permit.

In regard to cash resulting from issues of capital, and its use for the ordinary purposes of the company, the bankers will be instructed to transfer amounts from day to day from the share capital cash accounts to the current banking account, and, if necessary, to the deposit account in the event of the money not being required on current account.

Should there be any amounts outstanding on account of any call, after the due date fixed for its payment, notice will have to be sent to the shareholders in arrear, and such steps taken as may be necessary to enforce payment, in order that the call account may be fully cleared by the cash received.

The orders to the bankers to receive calls (*i.e.* the upper parts of the call letters) are returned to the company with the pass book, checked against the call cash book, and the amounts paid up on the shares posted to the credit of the individual shareholders in the share register.

The transfer and other registration fees should be collected from the registration department at stated intervals by the accountant, who should satisfy himself that all fees for transfers lodged for registration, probates, letters of administration and other transfers of title have been collected.

It is usual for the board to issue a cheque in favour of the bankers for the exact amount of any dividend or debenture interest, with instructions for it to be placed to the credit of the specific dividend or interest account, and this cheque will be treated through the cash book in the same way as an ordinary payment and charged to dividend or interest, which will in due course be cleared by crediting the warrants, as paid, by a journal entry agreeing with the special pass book.

In some companies it is the practice to journalise the whole of the entries in the cash book. The only object attained by this method of treating the accounts is that every transaction of the company is put through the journal,

and nothing is posted into the ledger except from the journal; the ledger then balances; whereas in treating the cash book as its own ledger account, the balance at the debit or credit of the cash account has to be taken into account for the purpose of balancing both sides of the ledger. The first system is practically obsolete in this country, although it is required by law in all countries governed by the Code Napoleon. From the point of view of modern English or American book-keepers, it is understood to entail considerable unnecessary labour without material advantage.

In effective book-keeping, very few if any disbursements should be posted direct to expense or impersonal accounts. A personal account should be opened with every creditor of the company immediately the invoice is received, and after payment the cash should be posted to that account.

While every care has to be exercised to bring into the accounts month by month all the charges corresponding to such month, special care will have to be exercised at the closing of every accountancy period, and it will certainly be within the province of the secretary to assure himself that charges have been made for all commodities or services which may be chargeable by the company, and on the other hand that provision has been made for every liability affecting the period of the accounts.

In addition to rent, rates, taxes, salaries and all the ordinary expenses of the business, cognisance must of course be taken of interest accrued in respect of debentures or other securities where the interest is not actually contingent upon the earnings of the company, and therefore not subject to declaration or approval by the shareholders in general meeting. While it may of course be possible to pay this interest on the last day of the year, it is generally found more convenient to pay it on the day following, or even at some later date, and it may, in fact, be paid two or three months after the date of closing the accounts, in which case the proportion of such accrued interest corresponding to the accountancy period will have to be brought into the accounts.

Provision will also have to be made for income tax on the profits, in so far as the liability may not be automatically provided for by deduction of tax from the debenture interest and other fixed charges paid, or from dividends when paid to shareholders.

Provision will also have to be made for corporation profits tax if there be any liability.

The items published in the balance sheet and profit and

loss account should be so grouped as to render them as concise as possible without sacrificing intelligibility.

The duties devolving upon the registrar (in some companies on the accountant) in connection with the preparation of dividend warrants should also be within the purview of the up-to-date secretary.

In anticipation of the declaration of a dividend, or the payment of interest upon debenture stock there will naturally be prepared whatever number of dividend sheets may be required, in the form approved by the secretary and the board. The warrants will be stamped and numbered, with a view to having everything in readiness to start writing them out immediately any of the dividend sheets are completed.

The accountant or registrar will carefully check the warrants with the sheets and will then pass them on to the secretary for signature, and where directors also sign warrants, arrangements must be made for their attendance at the office to sign them previous to the secretary appending his signature thereto. It is, however, now generally considered that the signature of the secretary and the initial of the accountant or registrar as having examined the warrant are sufficient fully to protect the interests of the company, the board confining itself to issuing a cheque on the current banking account for the total amount of the warrants, as stated. This is paid into a special dividend account with the bank, accompanied by an order of authority for the acceptance of the secretary's signature and accountant's or registrar's initial on all warrants presented against such an account.

Finally, all warrants are carefully examined to see that none are unsigned or missing, and enclosed in envelopes which have been in the meantime prepared. They are then counted, checked and agreed with the total number to be issued and, all being in order, they are posted on the day fixed by the board.

With many companies, an adhesive or impressed stamp is used for the envelopes, and in this case the counting and checking of the warrants must be performed by one or more responsible clerks who must personally take them to the post, and sign a certificate at the foot of the dividend sheets to the effect that the number of warrants as therein referred to were posted by them at a particular post office at a certain time on the day fixed. Where, however, as is the case with large companies, the company pays the postage in one sum and collects a definite receipt from the Post Office for so many addressed envelopes, this forms the company's certificate for having posted the number as therein stated.

Previously to posting the warrants an official advice should be sent to the bankers of the company, instructing them to open the dividend account and enclosing a cancelled specimen warrant with the cheque for the total amount of the dividend, and after the warrants become payable, daily application should be made to the bankers for them as they are presented. After being checked off against the pass book they are put in numerical order and marked off on the dividend sheets as paid.

In cases where a large number of warrants are paid to the same bank for account of various shareholders, it is the custom, with some companies, for the dividend warrants payable to such bank to be filled up only as regards the upper half, the cheque portion being detached and cancelled. Special lists are then made of the upper halves, and one warrant only is prepared for the total amount in accordance with each of such lists and despatched to the bank in question, together with the list and corresponding upper halves of the warrants.

Immediately preceding the payment of a dividend, all outstanding warrants in respect of the previous dividend should be transferred to a dividends unclaimed book.

Applications may be received from time to time from shareholders notifying the company that they have not received their dividend or interest warrants, or that these, having been received, have either been lost, mislaid or destroyed. In this case, the first thing to do is, on their request, to stop the payment of the warrant at the bankers of the company. After instituting due enquiries with a view to satisfying the board that the warrant has not been passed through the company's account, and that the statement as made by the shareholder is, so far as can be ascertained, correct, a form of indemnity is sent to the shareholder, and upon this being signed by the shareholder in the presence of a witness, a duplicate warrant is issued, the indemnity of course being carefully preserved in order that it may be made effective should the necessity for so doing arise. If the warrant is for a sum less than £5 no stamp is necessary on the indemnity, but if for a sum of £5 or more the indemnity must be signed across a sixpenny stamp.

There are other aspects of the accountant's work of which the modern secretary who wants to be really abreast of his work should have at least some knowledge. These would include the law and custom in regard to cheques and negotiable instruments generally, and also the subjects of income tax, super-tax, and corporation profits tax,

the importance and complexity of which increase almost daily. These subjects are, however, not in the direct line of the secretary's duties, but only cognate. They are so large and so highly technical that, broadly speaking, it is only possible for the secretary to have sufficient knowledge of them to enable him to carry on his work, and to refer to the best text-books in connection with any points arising in the course of his daily work. The wise secretary, however, when he is faced with any point in connection with these subjects which is of major importance, will not rely upon his own knowledge, however extensive it may be, but will call for the advice of an expert.

Another subject of which the secretary should have some knowledge is the method of collecting debts due to his company, either by the ordinary methods of business, or by legal process, and he will probably find it distinctly advisable to provide that his office organisation includes an adequate system for obtaining full information, through trade or banking channels, or through credit enquiry agencies, with regard to the credit and standing of actual or prospective customers or clients.

As the officer responsible for obtaining the authority of the board where necessary, the secretary should take particular care to see that every accounting transaction which does not come within the ordinary routine of his company's business is covered by a duly recorded minute of the board. Appropriations to or from reserve or depreciation funds, the purchase or sale of investments, the writing off of bad debts, and various other transactions not of an ordinary character which are certain to arise in the history of any company, should all be authorised by the minutes of the board.

It is the usual practice now for auditors to require minutes on such points as these to be produced for their inspection, but whether asked for or not they should be in the minute book. The secretary who cannot produce them whenever demanded can only have himself to blame if he be accused of neglecting his duties.

There is another aspect of this part of a secretary's duties to which attention might be called. The record contained in the minute book, duly confirmed by the chairman's signature, is a protection not only for himself but also for the staff working under him, and the secretary owes a duty to himself and his staff as well as to his board of directors.

CHAPTER XV

AUDIT

Appointment of Auditors. THE first auditors of a company may be appointed by the directors before the statutory meeting, and will then hold office until the first annual general meeting, unless previously removed by a resolution of shareholders in general meeting: if the auditors are so removed, the shareholders may replace them at the meeting at which they are removed [s. 112 (5)]. It is clear that 'the first annual general meeting' just mentioned is not the same as the statutory meeting.

Whether auditors have or have not been previously appointed as above, a company is bound to appoint an auditor or auditors at each annual general meeting, to hold office until the next annual general meeting [s. 112 (1)]. Failing any such appointment being made at any annual general meeting, any member of the company may apply to the Board of Trade, who may appoint an auditor for the current year and fix his remuneration [s. 112 (2)].

If the directors have previously appointed the first auditors, their names and addresses must appear in any prospectus issued on the formation of the company (s. 81), or in the statement in lieu of prospectus (s. 82). And if before the statutory meeting the directors have appointed the first auditors, their names and addresses must appear in the statutory report, and they must certify it so far as it relates to the shares allotted, to the cash received in respect of such shares, and to the receipts and payments of the company on capital account (s. 65). If there are no auditors, the directors' certificate of the statutory report [s. 65 (3)] must suffice.

The auditors, who must necessarily have been appointed at the first annual general meeting, are also required to audit the statement in the form of a balance sheet, which is required by s. 26 to be included in the Annual Summary (see p. 85).

No director or officer of a company can be appointed its auditor [s. 112 (3)].

As regards the appointment at an annual general meeting of new auditors in the place of existing auditors, this is provided for by s. 112 (4), the effect of which may be stated as follows:

(1) Retiring auditors may be re-elected at the annual meeting, without previous notice of intention to nominate them.

(2) Other auditors may be elected at the meeting, subject to the condition that a shareholder must have given notice, not less than fourteen days before the meeting, of intention to nominate. It is then the duty of the company to send a copy of the notice to the retiring auditor, and notify the shareholders, in such manner as the articles allow, not less than seven days before the meeting.

(3) But if, after the shareholder's notice has been given, a meeting is called for a date fourteen days or less after the notice has been given, the shareholder's notice is to be deemed good, and the notice by the company may be given with the notice of the meeting.

These provisions are intended to protect, and will protect, a retiring auditor. He will know when his re-election is to be opposed, since a proposal to appoint another auditor in his place cannot be sprung upon him and the shareholders at the general meeting without notice. Apparently, even if the directors omit to give notice, either to the retiring auditor or to the shareholders, of the nomination of the new auditor (and there is no penalty for the neglect), he, as well as the retiring auditor, will still be eligible for election.

Casual vacancies in the office of auditor may be filled by the directors, but during the continuance of the vacancy the surviving or continuing auditor or auditors (if any) may act (s. 112 [6]).

As regards the remuneration of auditors, as has been stated above, where the Board of Trade appoints, it may also fix the remuneration; where the company in general meeting appoints, it fixes the remuneration; and where the directors appoint, *i.e.* before the statutory meeting, or to fill a casual vacancy, they fix it [s. 112 (7)].

Rights and Duties of Auditors.

The rights and duties of auditors are set out in s. 113 (1) and (2) of the Act, which are as follows:

(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to

require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

The above imposes upon the directors and officers of the company, including the secretary, correlative duties, which are (*a*) to produce at all times to the auditors the books (*i.e.*, not merely books of account, but also minute books, &c.), accounts, and vouchers of the company; and (*b*) to give at all times to the auditors such information and explanation as may be necessary to enable the auditors to perform their duties.

The headnote to the case of *Republic of Bolivia Exploration Syndicate* (1914, 1 Ch. 439), thus usefully summarises some of the main duties and responsibilities of auditors: 'Auditors are bound to know or make themselves acquainted with their duties under the company's articles and under the Companies' Acts for the time being in force, and if the audited balance sheets do not show the true financial condition of the company, and damage is thereby occasioned, the onus is on the auditors to show that this damage is not the result of any breach of duty on their part. Auditors are *primâ facie* responsible for *ultra vires* payments made on the faith of their balance sheet, but whether and to what extent they are responsible for not discovering and calling attention to the illegality of payments made prior to the audit must depend on the special circumstances of each case.'

Any regulations, precluding auditors from availing themselves of all the information to which they are entitled under the Act, are *ultra vires* and invalid [*Newton* v. *Birmingham*

Small Arms Co. (1906), 2 Ch. 378]. It has been held, however, that auditors cannot insist upon their statutory rights in all circumstances; for instance, the Court will not force them upon a company which does not require their services [*Cuff* v. *London & County Land Co.* (1912), 1 Ch. 440].

Auditors' Report.

The balance sheet must be signed on behalf of the board by two of the directors (or by one director, if there is only one), and the auditor's report must be attached to it, or a reference to the report must be inserted at the foot of the balance sheet. The report must be read before the company in general meeting [s. 113 (3)]. It will be the duty of the secretary to read it, and in view of the express statutory provision, it seems clear that the report must not by agreement be taken as read.

The report must at the meeting be open to inspection by any shareholder, and any shareholder is entitled to a copy of the balance sheet and auditors' report on payment of a charge not exceeding sixpence for every hundred words (s. 113 (3)]. Most articles require a copy of the balance sheet and report of the directors to be sent to all the shareholders before the meeting.

In the case of companies, other than private companies, registered on or after July 1, 1908, preference shareholders and debenture holders have the same right to receive and inspect the balance sheets and reports of the auditors and other reports as is possessed by the ordinary shareholders (s. 114). In the case of such companies, therefore, care must be taken to forward the directors' report and the balance sheet to preference shareholders and to debenture holders, as well as to ordinary shareholders, in cases where they are entitled to receive these documents, before the general meeting.

CHAPTER XVI

DIVIDENDS

THE payment of a dividend is a distribution, intended to be made periodically by a company among its shareholders, of its net revenue or profits. No dividend can be paid out of capital, except in the special circumstances mentioned in s. 91 of the Act, and subject to the provisions of the section.

Payment of Interest out of Capital.

The section extends to companies incorporated under the Companies Acts the powers usually granted by private Acts of Parliament to statutory undertakings, *e.g.* railway companies, of paying out of capital interest on paid-up capital during the unprofitable period of construction of works. The section only permits interest to be paid on shares which are issued to provide money for the construction of works or buildings, or the provision of plant, 'which cannot be made profitable for a lengthened period.' It seems likely that the Courts will not be troubled with decisions as to what constitutes 'a lengthened period' in each case, seeing that the previous sanction of the Board of Trade is required to any such payment of interest as the section allows. So far as the company is concerned, all that it can do is to take care (1) that the shares are issued solely for the purpose of defraying expenses of the kind specified; (2) that the articles are, if necessary, altered, or a special resolution passed, to authorise the payment; (3) to apply to the Board of Trade for its sanction. If the Board of Trade grants its sanction, the company (1) may charge such payments to capital as part of the cost of construction; (2) must show in its accounts, from time to time, the capital on which, and the rate at which, interest has been paid during the period covered by the accounts.

The Board of Trade determines the period for which interest may be paid, which must never extend beyond the end of the half-year in which the works, &c., are completed. No higher rate than 4 per cent. can in any circumstances be paid, and a lower rate may be fixed by Order in Council.

Payment of Dividends.

The power to declare a dividend is usually vested by the articles in the directors, either with or without the sanction of a general meeting, or in a general meeting of shareholders. Where the power is vested in a general meeting, it is commonly provided that no dividend shall be declared exceeding in amount that recommended by the directors. The directors are generally authorised by the articles to pay to the members such interim dividends as the profits of the company appear to them to justify.

All dividends must be paid in cash, unless the articles authorise some other form of payment [*Wood* v. *Odessa Waterworks Co.* (1888), 42 Ch. D. 636].

Unless the regulations otherwise provide, dividends are payable in proportion to the nominal amount of share capital held by each shareholder, irrespective of the amount paid up. For example, A has ten £1 shares with 5*s.* paid up on each, B has ten £1 shares with 10*s.* paid up on each; a 10 per cent. dividend is declared; both A and B receive £1. [*Oakbank Oil Co.* v. *Crum* (1883), 8 A.C. 65; re *Bridgewater Navigation Co.* (1889), 14 A.C. 525.] The regulations of a company usually, however, provide for the payment of dividends in proportion to the amount of capital paid up by each shareholder, as permitted by s. 39 of the Act.

Dividends must be paid in accordance with the rights of the shareholders as fixed by the memorandum or articles of association. Thus the capital of a company may be divided into shares of different classes, *e.g.* preference and ordinary shares, and dividends must be paid accordingly. As to cumulative dividends see p. 33.

All dividends become due immediately they are declared, and they are treated for all purposes as a debt due from the company to the shareholders [re *Severn Railway Co.* (1896), 1 Ch. 559], except that they do not usually bear interest against the company.

A dividend due will become barred by the Statute of Limitations if not claimed within twenty years from the date of declaration [*Artisans' Land Corporation* (1904), 1 Ch. 796]. The length of time within which a dividend can be claimed is often provided for in the regulations of the company, the number of years varying in different companies. There is no illegality in providing in articles that dividends unclaimed for a specified time will be forfeited. But the Committee of the Stock Exchange object to any such provision (see p. 333), and consequently if an official quotation is desired it should not be inserted.

A form of resolution to pay a dividend will be found on p. 130.

Out of what Moneys Payable.

As stated on p. 150, the fundamental rule with regard to the payment of dividends is that no dividends shall be paid out of capital; a payment of dividend out of capital is an *ultra vires* act on the part of the directors of a company, and constitutes a breach of trust, and renders them liable to make good to the company any amount so paid [*Oxford Building Society* (1887), 35 Ch. D. 502; *Flitcroft's Case* (1882), 21 Ch. D. 519; *Masonic Assurance Co.* v. *Sharpe* (1892), 1 Ch. 154].

No such payment can be made, even though the memorandum [*Verner* v. *General and Commercial Trust* (1894), 2 Ch. 239], or articles [*Trevor* v. *Whitworth* (1887), 12 A.C. 409; *Masonic Assurance Co.* v. *Sharpe* (see above)], or a general meeting [*Flitcroft's Case* (see above)] purport to authorise it.

But although no dividend can be paid out of capital, yet a dividend can be paid out of moneys which are certainly not 'net profits.'

A difficulty has been felt in drawing the line between capital and net profits, chiefly arising from the various methods in which depreciation or loss of assets may be dealt with. The Companies Acts have not required any uniform system of book-keeping, and consequently it happens that companies deal with depreciation or loss in many different ways: some provide out of revenue for depreciation or loss as it arises; others only partially, or not at all. Given the same amount of depreciation or loss and the same revenue, the net profits may apparently be increased or reduced according to the method employed in dealing with depreciation or loss. [See *Spanish Prospecting Co.* (1911), 1 Ch. 92, as to the meaning of profits.]

The question then arises whether dividends can be paid out of the revenue, or only out of the net profits after taking from revenue such amount as may be necessary to keep the capital intact. The answer depends upon the constitution and objects of each company [*Davison* v. *Gillies* (1879), 16 Ch. D. 347 (*n*); *Dent* v. *London Tramways Co.* (1880), 16 Ch. D. 344; *Lambert* v. *Neuchatel Asphalte Co.* (1882), 51 L. J. Ch. 882], and varies with the class of business carried on. The question whether a company has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the company, and the evidence of competent witnesses [*Bond* v. *Barrow Hæmatite Co.* (1902), 1 Ch. 353].

The following are some general principles extracted from the more important cases on the subject:

Fixed and Circulating Capital.

1. The 'fixed capital' of a company need not be maintained out of revenue, but the 'circulating capital' must be made good before dividends are paid.

Fixed capital is used to denote that portion of the company's assets which consists of investments of a more or less permanent form, such as land, buildings, plant, or securities purchased for the sake of the income they produce.

Circulating capital, on the other hand, consists of that portion of the company's assets which is used for 'turnover' purposes. Incidentally it may be income-bearing while retained, *e.g.* shares in a dividend-paying mine bought as a speculation, but intended to be used as stock-in-trade, and to bring profit to the company by being sold [*Verner* v. *General and Commercial Trust* (1894), 2 Ch. 239]. For a judicial explanation of the nature of fixed and floating capital, see *Ammonia Soda Co.* v. *Chamberlain* (1913), 1 Ch. 266, *per* Swinfen Eady, L.J., at pp. 286, 287.

2. If the objects of a company include the investment of capital in wasting property, depreciation by waste need not necessarily appear in the revenue account, but may, if the regulations so provide, be dealt with in the capital account [*Lee* v. *Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1].

Where a company's business is to acquire a wasting property, *e.g.* a coal mine under a lease for years, and make a profit by working it, the diminution of the property is a gradual consumption of the capital, and it is for the shareholders to decide whether they will have a sinking fund to meet the waste [*Verner* v. *General and Commercial Trust* (1894), 2 Ch. 239].

3. A company may set off an appreciation in the value of its capital assets, as ascertained by a *bonâ fide* valuation, against losses on revenue account [*Ammonia Soda Co.* v. *Chamberlain* (1918), 1 Ch. 266].

4. If the capital account is in credit, the credit balance, when realised, may be used for the payment of dividends, if the constitution of the company allows it, since there is nothing in the statute to prevent it, and there is no obligation to retain appreciation of the capital [*Lubbock* v. *British Bank of South America* (1892), 2 Ch. 198].

Reserve.

The articles of a company usually contain a clause empowering the directors, before recommending any dividend, to set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for any other proper purpose (see *e.g.* Table A, cl. 99). And even without such provision, a reserve fund may be formed, if the shareholders approve,

and may be invested in such securities as the directors may select, subject to the control of a general meeting [*Burland* v. *Earle* (1902), A.C. 83]. Power is often given to use the reserve fund in the business of the company; if not so used it may be invested in the shares or securities of other companies, but not in the shares of the company to which it belongs.

Where the memorandum of a company provides that the profits available for dividend shall be distributed as directed, and the articles contain a clause similar to the above, a reserve fund may be created, if the directors think fit, before any distribution of dividend [*Fisher* v. *Black and White* (1901), 1 Ch. 174].

If the fund is accumulated out of profits, it can be treated as undivided profits, and dividends can be paid thereout. It retains its character of undivided profits until effective steps are taken to capitalise it.

Capitalisation of Profits.

It is often desired to distribute a bonus out of reserve, satisfying it by the issue of fully paid shares. In such a case it becomes necessary to capitalise such portion of the reserve as is required for the purpose, thereby divesting it of its character of undivided profits. In order that a company may properly carry out a scheme of this kind, it may, and probably will, be necessary to make certain alterations in its articles of association. The reserve fund article must authorise the payment out of the reserve fund of a special dividend or bonus; and further there must be a power to satisfy a dividend or bonus by the issue of fully or partly paid shares. For, as has been stated above (p. 151), dividends can only be paid in cash, unless some other form of satisfaction is authorised by the articles. The article which enables the company to satisfy the bonus by the allotment of fully paid shares will authorise the company, by resolution in general meeting, to capitalise any part of the undivided profits and to distribute the same as a bonus, power being given to the directors to make provision as to fractions.

The articles having been altered as far as is necessary, and the capital of the company, if necessary, increased, the resolution to capitalise will be passed, and the matter in due course carried out. The bonus will be expressly made payable free of income tax, the company having already paid income tax on its undivided profits.

Bonus shares so issued are issued for a consideration other than cash, and therefore, on making the return as to allotments (see p. 44), a contract or contracts constituting the title of the allottees to the shares must be filed.

In cases where the issued shares of a company are not fully paid, a dividend can be declared out of the undivided profits, and a call made on the shares, payable on the same date. The shares thus become fully paid and profits to the extent of the unpaid liability capitalised.

Dividend Warrants.

On the declaration of a dividend, warrants must be prepared. In practice it is usually possible to prepare and fill in all warrants and have them ready for despatch before the general meeting at which the dividend is formally declared. They can then be posted after the meeting. But if there is any likelihood of the company in general meeting declaring a dividend less in amount than that recommended by the directors, this cannot, of course, be done. The resolution of the meeting is, however, in almost all cases merely a formal sanctioning of the previous recommendation of the board.

The methods of the preparation and despatch of dividend warrants and the arrangements for their payment are dealt with fully in Chapter XIV (see pp. 143, 144).

Forms of Dividend Warrant will be found on pp. 389–392 (Forms 36 and 37), and a form of Dividend Request by a shareholder, requiring the company to pay dividends in a particular way, will be found on p. 393 (Form 38). A similar form, attached to a request by the company for a specimen signature, which request is often sent out with share or stock certificates in the case of new holdings, will be found on p. 394 (Form 39). When forms of Dividend Request are received by the company, they must be carefully preserved. At the same time as the dividend warrants are sent out, a cheque should be sent to the company's bankers to cover the total amount to be disbursed by the bank.

In the case of coupons, arrangements may be made for their presentation and payment at the company's bank, or, if thought fit, at the registered office of the company.

The articles of a company commonly provide that dividends may be sent through the post. As regards joint holders, it is usually provided that the warrants shall, unless otherwise directed (*i.e.* by a Dividend Request), be sent to the registered address of the one whose name stands first on the register in respect of the joint holding, and that any one joint holder may give effectual receipts for dividends.

In the event of a dividend warrant being lost or mislaid, a fresh one should not be issued without a satisfactory indemnity. A form of Indemnity and Request for a Duplicate

Dividend Warrant is given on p. 388 (Form 35). Except in cases where the amount of the dividend is very large, this indemnity will probably be considered sufficient, but the guarantee of a third party in addition may occasionally be required.

The payment of dividends to a shareholder may be prevented by notice in lieu of distringas (see p. 65).

CHAPTER XVII

MORTGAGES, DEBENTURES AND RECEIVERS

Borrowing Powers.

PRACTICALLY all companies have an express power to borrow, which is conferred by the memorandum of association, and in almost all cases the express power to borrow is coupled with a power to give security for the loan upon the company's property.

A trading company, however, has in general an implied power to borrow [*General Auction Co.* v. *Smith* (1891), 3 Ch. 432]. And where a company has power to borrow, it can, unless forbidden by its articles, give security, *e.g.* by mortgaging its property [*Patent File Co.* (1870), 6 Ch. App. 83].

The express power to borrow, which most companies possess, generally includes the power to 'raise' money. The use of the word 'raise' is not meaningless, since a power to borrow money merely, without power also to raise money, does not enable a company to issue irredeemable debentures, which are really a perpetual annuity [*Southern Brazilian Railway Co.* (1905), 2 Ch. 78].

The power to borrow may be exercised by the directors, if the articles expressly or impliedly authorise them to exercise it. Sometimes the exercise of the power is placed in the hands of the company in general meeting, but this is frequently inconvenient. It may be, for example, that a temporary overdraft is required, and it would, if the power to borrow were exerciseable only by the company, be necessary to convene a general meeting before the transaction could be carried out.

The usual plan, however, is for the directors to be authorised to exercise the borrowing powers of the company up to a certain limit, and for that limit not to be exceeded, except with the sanction of the company in general meeting. The limit may be the amount of the nominal capital of the company, or the amount of the issued capital of the company for the time being, or any other sum. Where by the articles the amount borrowed may not exceed the preference share

capital, and no preference shares have been issued, the restriction does not apply until preference share capital exists [*Johnston Foreign Patents* (1904), 2 Ch. 234].

We have already seen (p. 40) that, by s. 87 of the Act, a company may not exercise its borrowing powers until it has received a certificate entitling it to commence business, but that a company may nevertheless, before it obtains the certificate, offer shares and debentures simultaneously for public subscription, may allot shares and debentures, and receive money payable on application for debentures.

Where a company has power to borrow and wishes to borrow money, the method usually employed is to issue a debenture or debentures. There is, of course, nothing to prevent a company securing a loan from an individual by a specific mortgage of some or all of its freehold or leasehold property, or from securing an overdraft by the guarantee of its directors or others, or from securing any loan by any method available to an individual. But the common practice is for a company to secure its loans by the issue of debentures.

Nature of Debentures.

'In my opinion a debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture. I cannot find any precise legal definition of the term; it is not either in law or commerce a strictly technical term, or what is called a term of art' [per Chitty, J., in *Levy* v. *Abercorris Slate Co.* (1888), 37 Ch. D. at p. 264].

A debenture is a document under the seal of the company, acknowledging or creating a liability to pay a certain sum of money with interest thereon at a specified rate. The money may be payable at a fixed date, or on notice, or the debt may be irredeemable. The debenture may be payable to bearer, in which case it is a negotiable instrument passing by delivery (see below), or to the registered holder. The payment of principal and interest need not be secured at all, in which case the debenture amounts to a mere promise to pay under the seal of the company; but more commonly the payment is secured by a mortgage or charge on the property of the company. The charge may be created (*a*) by a trust deed, to the benefit of which the debenture holders are by the words of the debentures declared to be *pari passu* entitled; or (*b*) by the language of the debenture itself. In either case the charge may be: (1) a fixed charge on the property of the company; (2) a floating charge on the property of the company; (3) a fixed charge on some, and a floating charge on other, parts of the property of the company.

Debentures secured by Trust Deed.

In the case of debentures secured by trust deed the specific property which is to be the security is generally conveyed by deed by the company to trustees upon trusts for the benefit of the debenture holders, and the deed prescribes the terms and conditions on which the security is to be held, and, if need be, enforced, by the trustees. The debentures themselves, by one of the conditions endorsed thereon, declare the holders to be entitled *pari passu* to the benefit of, and subject to the provisions in, the trust deed, the terms of which are thus incorporated in the debentures. The debentures, even though a specific charge is created by the trust deed, often contain a general charge on the undertaking of the company.

The advantages of a trust deed are that the property charged actually vests in the trustees, and that they, as representing the whole body of debenture holders, can act more conveniently on their behalf.

The trust deed also usually contains provisions for the calling of meetings of the debenture holders at which a specified majority (usually three-fourths) is able by resolution to bind the minority, and such provisions are valid [*Follit* v. *Eddystone Granite Quarries* (1892), 3 Ch. 75]. But a majority will not be allowed to exercise its voting power in such a way as to defraud a minority [*New York Taxicab Co.* (1913), 1 Ch. 1].

The powers given to the majority should, however, be strictly defined, as the Court will refuse to allow the will of the majority to override that of the minority except in regard to matters definitely provided for in the trust deed, *e.g.* a power to release the mortgaged premises does not include a power to release the company; a power to modify the rights of the debenture holders does not include a power to relinquish their rights; a power to compromise their rights presupposes some dispute about them, or difficulty in enforcing them, and cannot be exercised where there is no such dispute or difficulty [*Mercantile Investment Trust Co.* v. *International Co. of Mexico* (1891), reported in footnote to *Sneath* v. *Valley Gold* (1893), 1 Ch. 477].

For the Stock Exchange requirements as to a trust deed, see p. 333. The remedies of the debenture holder depend for the most part on the provisions of the trust deed. The deed generally provides that on default by the company the trustees may enter, sell the property charged, and distribute the proceeds amongst the debenture holders. The trustees may be plaintiffs in an action to enforce the charge, or one debenture holder may generally sue on behalf of the class, in which case the trustees as well as the company are defendants. But

in the case of debenture stock, it would appear that the only proper plaintiffs are the trustees [*Dunderland Iron Ore Co.* (1909), 1 Ch. 446]. A receiver can be appointed by the Court in proper cases, or by the trustees under the power in the trust deed; a manager can also be appointed where necessary. As to receivers and managers, see pp. 165-168.

Debentures secured, without a Trust Deed.

In the case of debentures secured without a trust deed the security is created solely by a charge contained in the debenture itself, charging the property which is to be the security with the payment of the mortgage debt. The debenture usually contains conditions providing for enforcing the security.

The holder of debentures of this class has, subject to the conditions of the debenture itself, all the remedies of a mortgagee. The debenture usually provides that if the security becomes enforceable, a majority of the debenture holders may exercise the power of sale and of appointing a receiver (see pp. 165-168) conferred by the Conveyancing Act, 1881, s. 19, and that they may enter into possession. A debenture holder may bring an action on behalf of himself and other debenture holders to enforce the security, and the Court may make a declaration of the charge, appoint a receiver and sometimes a manager (see pp. 167, 168), direct necessary accounts and inquiries, and order a foreclosure or sale of the mortgaged property. A debenture holder may also bring an action in his own name upon the covenant by the company contained in the debenture to pay the principal and interest. He may also petition the Court to wind up the company. When the principal and interest are in arrear the Court will grant the petition as a matter of course [*Uruguay Central Railway Co.* (1879), 11 Ch. D. 372].

Fixed and Floating Charges.

A fixed charge is usually given upon the immovable property of the company, whilst a floating charge as a rule serves to charge the convertible property, such as stock, book debts and cash of the company.

A floating charge leaves the company free to use the property the subject of the charge as it pleases until the charge attaches; that is, it is a charge on the company as a going concern, which will not attach until the company ceases to be a going concern [*Governments Stock Co.* v. *Manila Railway Co.* (1897), A.C. 81; re *Borax Co.* (1901), 1 Ch. 326; *Illingworth* v. *Houldsworth* (1904), A.C. 355], or until by the conditions (if any) of the debenture the floating charge attaches. The usual conditions are, if execution or distress is levied against the company, or if the company ceases to carry on business.

A floating charge does not prevent the company from

creating mortgages on the property charged, unless there is a declaration that the company shall not have power to mortgage in priority to the floating charge [*Wheatley* v. *Silkstone Coal Co.* (1885), 29 Ch. D. 715; and see *Cox-Moore* v. *Peruvian Corporation* (1908), 1 Ch. 604]. Where there is a declaration that the company has not power to make a mortgage in priority to, or *pari passu* with, a floating charge, this may be defeated by a legal mortgagee showing that he had no knowledge of the floating charge [*English and Scottish Investment Co.* v. *Brunton* (1892), 2 Q.B. 700]. The company has complete power to deal with the property the subject of the floating charge, until the company is wound up or a receiver put in [*Governments Stock Co.* v. *Manila Railway* (1897), A. C. 81; *Florence Land Co.* (1878), 10 Ch. D. 530]. When a floating charge attaches, the rights of the debenture holders are good as against an execution creditor or general creditors of the company [*Davey* v. *Williamson* (1898), 2 Q.B. 194].

But by s. 212 of the Act, a floating charge created within three months of the commencement of a winding-up is only good to the extent of the amount then actually advanced to the company, with interest at 5 per cent., unless the company was solvent at the date when the floating charge was given. A floating charge may also, by s. 107, be postponed to preferential creditors.

Unsecured Debentures.

The term 'naked debentures' is frequently used to describe debentures which are not secured by any charge. They are simply promises under the seal of the company to pay a certain sum. Being under seal, the debt is a specialty debt, but the holder is merely an unsecured creditor of the company, and he cannot prevent the company, unless it is so provided by the conditions of the debenture, from issuing mortgage debentures which will rank in priority to his claim.

The holder may bring an action against the company for the principal and interest due, and, if necessary, issue execution on his judgment; or he may present a petition for winding-up the company, either before or after obtaining judgment; or, if a winding-up is in progress, he may prove for the debt as an ordinary unsecured creditor.

Bearer Debentures.

Debentures, whether secured by a trust deed, or by a charge, or unsecured, may be payable to the registered holder or to bearer. A debenture to bearer is a negotiable instrument and transferable by delivery, and is so treated by the law merchant [*Bechuanaland Exploration Co.* v. *London Trading Bank* (1898), 2 Q.B. 658].

Being a negotiable instrument, a debenture to bearer will

pass on delivery free from all equities between the company and the original or intermediate holders, and the delivery by the holder to the company of the debenture and the interest coupons will be a good discharge to the company for the principal and interest respectively.

Debenture Stock. Debenture stock is a term used to denote the capital sum lent to a company, which is usually secured by a trust deed creating a mortgage or charge in favour of the trustees upon the property forming the security. The capital sum or stock is by the terms of the trust deed divided into units, in respect of his holding of which each stockholder is entitled to a certificate. The trust deed provides for a register of holders being kept, and for transfers of the stock in certain fractions, and usually contains provisions for repayment of the stock and for enforcing the charge. The incidents of debenture stock are for practical purposes the same as those of debentures, and the holders of the stock occupy a position very similar to that of the holders of debentures.

Scrip. Scrip to bearer is often issued to applicants for debentures and debenture stock before the instalments are finally paid up, and the debenture itself or the stock certificates issued. The scrip is a negotiable instrument, with the consequence that any person taking it in good faith and for value obtains a title to it, independent of the title of the person from whom he takes it [*Goodwin* v. *Robarts* (1876), 1 A.C. 476]. Transfer may be made by delivery. The stamp duty on scrip to bearer is 2*d*.

Debentures giving a charge on the company's property need not be registered under the Bills of Sale Acts, 1878 and 1882 [*Standard Manufacturing Co.* (1891), 1 Ch. 627]; nor need trust deeds be registered under those Acts [*Richards* v. *Kidderminster Overseers* (1896), 2 Ch. 212].

Registration. There is, however, an elaborate system of registration of mortgages and charges prescribed by the Act, with which companies must comply. The object of the system is the protection of creditors and persons dealing with the company by compelling publicity of secured loans. The existing system is a double system, for not only must mortgages and charges be registered with the Registrar, but the company must also itself keep a register of mortgages and charges. It is unnecessary here to give in detail the relevant provisions of the Act, but the more important features of each of the two branches of registration are summarised.

Somerset House Register. 1. *The Somerset House Register.*— This will contain the following:

(i) The statutory particulars of mortgages and charges registered under s. 14 of the Companies Act, 1900,

on or after January 1st, 1901. These will include mortgages and charges of the classes (*a*), (*b*), (*c*), and (*f*) set out in (iii), but not (*d*) and (*e*).

(ii) A statement of the total amount of all the other secured indebtedness of the company as at July 1st, 1908, in respect of mortgages and charges of all the six classes set out in (iii).

(iii) The statutory particulars of all mortgages and charges created after July 1st, 1908, being either:

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or

(*e*) a mortgage or charge on any book debts of the company; or

(*f*) a floating charge on the undertaking or property of the company [s. 93 (1)].

Loans by Deposit of Securities.

It will be observed that loans secured by a deposit of shares are not included, nor are loans secured by the deposit of acceptances, warrants, or other negotiable instruments. The list of mortgages and charges requiring registration at Somerset House is thus by no means complete.

The instrument (if any) by which the mortgage or charge is created or evidenced must be registered, and in addition certain particulars are required to be furnished. These include the date and description of the instrument creating or evidencing the mortgage or charge, the amount secured, short particulars of the property charged, and the names, addresses and descriptions of the mortgagees or persons entitled to the charge. Further, the amount or rate of any discount or commission to subscribers for debentures must be given. In the case of a series of debentures the particulars are in many respects different.

Non-Registration.

The effect of non-registration is that the mortgage or charge is void against the liquidator and any creditor of the company, and on its so becoming void (*i.e.* at the expiration of the twenty-one days allowed for registration) the money secured is immediately to become payable [s. 93 (1)].

On registration the Registrar must give a certificate of registration [s. 93 (5)], and a copy of the certificate must be indorsed on every debenture, or certificate of debenture stock, issued after the creation of the charge [s. 93 (6)].

This register is open to the inspection of any person whatsoever on payment of a fee of one shilling for each inspection [s. 93 (8)].

It should be observed that the appointment of a receiver and the fact of his ceasing to act, must also be registered (ss. 94, 95).

Company's Register.

2. *The Company's Register.*—By s. 100 of the Act every limited company must keep a register of mortgages. This register ought to furnish a complete record of all the secured indebtedness of the company, since there are required to be entered therein 'all mortgages and charges, specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer), the names of the mortgagees or persons entitled thereto.'

In the case of the company's register, however, the registration of a mortgage or charge is not a condition precedent to its validity [*Wright* v. *Horton* (1887), 12 A.C. 371], but the officers of the company are liable to penalties for knowingly authorising the omission of a necessary entry [s. 100 (2)].

Copies of the instruments creating any mortgage or charge requiring registration at Somerset House must be kept at the registered office of the company, although in the case of a uniform series of debentures, a copy of one debenture will suffice [s. 93 (9)]. These copies and the register itself must be open to the inspection of creditors and shareholders gratis, and the register to the inspection of any other person on payment of a fee not exceeding one shilling for each inspection [s. 101 (1)]. The right to inspect includes the right to take copies [*Nelson* v. *Anglo-American Land Co.* (1897), 1 Ch. 130]. This decision appears to be based upon the fact that s. 100 contains no provision as to a person being entitled to require copies on payment, and is therefore not in conflict with the decision as to taking copies of the register of members mentioned on p. 82.

Register of Debenture Holders.

Besides the above register, a company may keep a register of debenture holders. The Act does not compel a company to keep a register of debenture holders, but unless the debentures are all payable to bearer a register is in practice necessary. By s. 102 of the Act, the register (if any) must be open to the inspection both of the debenture holders

themselves and of shareholders of the company, except when closed in accordance with the articles of the company for a period or periods not exceeding thirty days in any year. Inspection must be permitted for at least two hours in every day. A debenture holder may require a copy of the register or any part of it on payment of sixpence for every hundred words required to be copied. He may also require a copy of a trust deed which has not been printed on payment at the same rate, or a copy of a printed trust deed on payment of a sum not exceeding one shilling.

A register of debentures or debenture stock should be kept substantially in the same style as a share register. See Form 31, p. 384.

Certificates of debenture stock should, as in the case of share certificates, be issued from a book with counterfoils. A form of Debenture Stock Certificate will be found on p. 355 (Form 3), and of Mortgage Debenture Stock Certificate on p. 356 (Form 4).

When a debenture is paid off by the company, a formal receipt should be taken from the debenture holder, releasing the company from all claims in respect of the debenture, which should be surrendered to the company for cancellation. A certificate for debenture stock should similarly be surrendered. A form of Redemption Receipt will be found on p. 395 (Form 40).

Although there is no statutory obligation to lodge with the Registrar a memorandum of satisfaction of a mortgage or charge, it is clearly to the interest of a company that this should be done (see s. 97).

Transfers of registered debentures are effected in the manner provided by the conditions of the debenture, and on registration of the transfer a note recording the transfer is indorsed on the debenture.

Receivers.

It has already been pointed out that amongst the remedies of a debenture holder, when entitled to enforce his security, is the right to appoint, or to apply to the Court to appoint, a receiver. It is common for the conditions of a debenture to provide that, upon the security becoming enforceable, the holder, or, in the case of a series of debentures, the holders of a certain proportion of the debentures, may, by writing under his or their hands, appoint a receiver with specified powers. But, whether or not this right exists, a debenture holder, when entitled to enforce his security, can always commence a debenture holder's action, and immediately after doing so can apply to the Court to appoint a receiver.

The position of a receiver appointed by the Court differs radically from that of a receiver appointed by debenture holders themselves by virtue of a power contained in their debentures.

Appointed by Debenture Holders.

A receiver appointed by debenture holders, or by the trustees of a debenture trust deed, is an agent. Whether he is the agent of the company, or the agent of the debenture holders or trustees, as the case may be, depends upon the construction of the terms of the power under which he is appointed. Frequently, he is expressly declared to be the agent of the company, and it is provided that the company is alone to be responsible for his acts or defaults. In such a case he incurs no personal liability for his acts [*Owen* v. *Cronk* (1895), 1 Q.B. 265].

He may, however, be the agent of the debenture holders or their trustees, either by the express terms of the provisions under which he is appointed, or, where his status is not definitely specified, upon the construction of the provisions under which he is appointed. Ss. 19 to 24 of the Conveyancing Act, 1881, are frequently incorporated, as varied by the provisions of the power, and in spite of the fact that s. 24 (2) of that Act provides that a receiver appointed under the Act is to be deemed the agent of the mortgagor, *i.e.* of the company, none the less it may often be the case that, where those sections are incorporated and varied, a receiver may be held to be the agent, not of the company, but of the debenture holders or their trustees [see *Deyes* v. *Wood* (1911), 1 K.B. 806]. The reason of this is that the powers of a receiver appointed by debenture holders are in general far greater than those of a receiver appointed under the Conveyancing Act, 1881.

Upon liquidation, a receiver who was the agent of the company, ceases to be the agent of the company, but nevertheless he does not then become the agent of the debenture holders or their trustees, unless they in fact clothe him with authority to act on their behalf [*Gosling* v. *Gaskell* (1897), A.C. 575]. Probably he then assumes personal liability for his acts, but this has never been judicially decided.

Duties.

By s. 94 of the Companies (Consolidation) Act, 1908, any person who appoints a receiver or manager under the powers contained in any instrument must within seven days of the appointment give notice to the Registrar of Companies. There are penalties for default. A receiver, although this notification to the Registrar is not his own duty, should nevertheless satisfy himself that it is being, or has been, done.

The statutory duties of a receiver appointed by debenture holders or their trustees are:—

(1) If he has taken possession, to file with the Registrar once in every half year an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates (s. 95).

(2) To file a similar abstract on ceasing to act (s. 95).

(3) On ceasing to act, to file notice to that effect (s. 95).

(4) Unless a winding up is in progress, to pay out of any assets coming to his hands, in priority to any principal or interest due on the debentures, the debts which in a winding up are entitled to preferential payment (s. 107; and see p. 203).

The date from which these debts are to be reckoned is the date of the appointment of the receiver, or of his taking possession.

His general duties depend to a great extent upon the terms of his appointment, and are closely analogous to those of a liquidator, so far as the collection and realisation of assets is concerned. As a rule, a receiver has express power given him to take possession of all or any of the property subject to the charge, to carry on the company's business, to sell, and to compromise. But he cannot carry on the business unless he is expressly empowered to do so.

He will accordingly enter into possession, carry on the business, collect the assets, and, if necessary, sell all or any of them. Out of the proceeds he will pay the expenses of the business, interest on prior charges, and his own remuneration, after which he will pay to the debenture holders the interest due to them. If, in order to pay off the principal due on the debentures, he sells, any surplus must be paid to the company, as also any surplus income if there is no sale.

Appointed by the Court.

A motion to the Court to appoint a receiver and manager is ordinarily the next step after the issue of a writ in a debenture holder's action, and a receiver (and, if there is a going business, a manager) will be appointed, if either principal or interest is in arrear, or if the security is in jeopardy, *e.g.* by a threatened winding up, or by execution having been issued on a judgment against the company.

When the Court appoints a receiver, it assumes the protection of the property which constitutes the security of the debenture holders, and holds it for their benefit. A receiver appointed by the Court, and a manager appointed by the Court, are officers of the Court, and any interference with their possession or acts is contempt of Court. They are

neither agents of the company, nor of the debenture holders. They are under the directions of the Court; and since the Court cannot be liable as their principals, it follows that they are *primâ facie* personally liable, although they have a right of indemnity against the assets [*Burt* v. *Bull* (1895), 1 Q.B. 276; *Strapp* v. *Bull* (1895), 2 Ch. 1].

A receiver appointed by the Court must give security to account for what he receives. He is entitled to a proper salary or allowance for the performance of his duties.

His appointment must be notified to the Registrar by the person at whose instance it was obtained within seven days from the date of the order appointing him (s. 94). This order directs him to make the preferential payments mentioned on p. 204 out of the first assets that come to his hands, and also provides for his passing his accounts at intervals, generally, of six months.

His duties are to take possession, to collect rents and debts, and generally to act as owner of the property charged. He may obtain the directions of the Court as to taking any contemplated step, and he should always do so where it is proposed to incur expense, *e.g.* by borrowing money. As manager, when a favourable opportunity for a sale arises, and a sale is necessary in order to pay off the principal due on the debentures, he will invariably apply for the consent of the Court to the proposed sale, before attempting to carry it out.

CHAPTER XVIII

RECONSTRUCTION

IT is proposed in this chapter to give some account of the reconstruction of companies, indicating briefly the methods by which such reconstructions can be carried out. 'Reconstruction' is a word which is frequently loosely, but inaccurately, used to include amalgamations, absorptions, reorganisations, and arrangements of all kinds, and any such transaction is commonly described as a reconstruction scheme, and it is in that sense that the word is used as the title of this chapter.

Into the reasons for reconstruction it is not proposed to enter, but it may be of use to show what may be effected by reconstruction and by what methods.

Reconstruction may be effected in the following ways:—

1. By special Act of Parliament;
2. By a sale under s. 192 of the Companies (Consolidation) Act;
3. By a sale under the powers in the memorandum of association;
4. By a scheme of arrangement under s. 120 of the Act;
5. By a scheme of arrangement with creditors alone under s. 191 of the Act;
6. By the acquisition of a complete or controlling interest in a company.

Of the above methods, 1, 5 and 6 need but passing mention. As regards 1, it may sometimes occur, even now, that the legal and technical difficulties in the way of carrying out a reconstruction by the usual methods are insuperable, and, in such circumstances, the only possible course is to obtain a special Act of Parliament, whereby all obstacles may be surmounted. This procedure is, of course, expensive.

As regards 5, a scheme of arrangement with creditors alone under s. 191 of the Act, this procedure is uncommon, and unsatisfactory in all but the simplest cases. An arrangement between a company about to be, or in the course of being, wound up voluntarily, is, by the section, 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, subject to an appeal to the Court within three weeks by any creditor or contributory. Since the required majority of creditors is more difficult to obtain than that required in the case of an arrangement under s. 120, and, further, since there is no power to bind classes of creditors, it is almost always better to proceed under s. 120 (see p. 180).

As regards 6, the acquisition of a complete or controlling interest in a company, this amounts simply to the acquisition of all, or at least three-fourths of the shares of the company, and may be effected by another company or by one or more individuals. An agreement with some one or more members of the company, the shares of which it is desired to acquire, to procure the transfer of the shares is commonly entered into. But, however the result aimed at be attained, the matter is as a rule simple. It should be observed, however, that where all the shares are being acquired, it is necessary to take care not to acquire the qualifying shares of the directors, until by the machinery of the articles a fresh board of properly qualified persons has been appointed, after which the old qualifying shares can be transferred, thus completing the matter. Further, care should be taken that the shares acquired are put into the names of not less than seven persons.

Of the remaining methods of reconstruction mentioned above, 2 and 4 are by far the most important, but it will be necessary later to deal shortly with 3. It may be stated at the outset, that though the basis of most reconstructions is either s. 192 or s. 120 of the Act, yet in a very large number of cases the scheme is complicated by various other elements, *e.g.* subdivision of shares (p. 29), reduction of capital (p. 31) or reorganisation of capital (p. 30). If a reduction of capital is included in a scheme, the provisions of the Act relating to reduction must be strictly complied with, and the reduction cannot be effected merely by obtaining the sanction of the Court to the reduction as part of the scheme [*Cooper, Cooper and Johnson* (1902), 51 W.R. 314]. It seems to follow that if a reorganisation of capital is involved in the scheme, the meetings prescribed by s. 45 of the Act must be held as well as those provided by s. 120. In *Palace Hotel* [(1912), 2 Ch. 438] the point was raised, but was not necessary for decision and was left open. It is not possible here to deal in detail with complex schemes of the nature just indicated.

Reconstruction under s. 192.

Reconstruction under s. 192 is frequently resorted to, when it is desired to obtain further working capital and the ordinary means of so doing are impracticable. But it may also be

utilised for various other puposes, *e.g.* as an alternative to a petition for reduction, or for alteration of objects, or to obtain enlarged powers when the case is not within s. 9 of the Act (see p. 17), or to effect an alteration in the respective rights of more than one class of shareholders when these are fixed by the memorandum. But the expense involved in registering a new company, which the new capital duty has greatly increased, does not encourage reconstructions of this class when other means are available.

The effect of s. 192 is to enable the liquidator of a company in voluntary liquidation, with the sanction of a special resolution, to sell the whole or any part of its business or property to another company, the consideration for the sale being either wholly or in part shares or other interests in the purchasing company for distribution among the members of the selling company, or the right for the shareholders of the old company to participate in the profits of the new company. Such a sale is to be binding upon the old company, subject, however, to the right of a shareholder who has not voted at either the first or the confirmatory meeting at which the resolution was passed, to leave a notice of dissent, addressed to the liquidator, at the office of the company, within seven days of the confirmation of the resolution, requiring the liquidator either to abstain from carrying the resolution into effect, or to purchase the interest of the dissentient. Accordingly, a three-fourths majority may effectively resolve upon this form of reconstruction, subject only to the liability to purchase the rights of a dissentient minority.

It is to be observed that the liquidator may be authorised to sell the whole or part of the business or property of the company. Property means the assets at the time of liquidation; and although it has been held that capital, then uncalled, cannot be included in the sale [*Clinch* v. *Financial Corporation* (1868), 4 Ch. App. 117], yet it is exceedingly doubtful whether that decision would now be followed; and if it is desired to include the uncalled capital, there is nothing to prevent a call being made just before the winding up, in order that the proceeds, though unpaid, may be included in the sale [*Sankey Brook Company*, (1870), 10 Eq. 381].

The section only authorises the sale to another company; accordingly a sale to an individual, who is to form the new company, making what profit he can, is invalid [*Bird* v. *Bird's Patent* (1874), 9 Ch. App. 358], though possibly the sale may be made to an individual as agent for a proposed company [*Hester and Co.* (1875), 44 L.J., Ch. 747]. It was long ago held that the consideration for the sale may be

partly paid shares in the purchasing company. A strange result of the Consolidation Act, which must have been wholly unforeseen by those who were responsible for its form, is this: s. 285 of the Act defines a company as 'a company formed and registered under this Act, or an existing company'; and 'existing company' means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862. The definitions are, however, subject to the proviso 'unless the context otherwise requires.' Eve J., held, in *Thomas* v. *United Butter Companies of France* [(1909), 2 Ch. 484], that, having regard to these definitions, the sale cannot be made to a foreign company, as was possible under the Act of 1862.

Procedure under s. 192.

The general procedure in this kind of reconstruction is shortly as follows: The agreement for sale to the new company, which will embody the particulars of the proposed scheme, must first be prepared. Then a meeting of the old company will be convened for the purpose of passing a special resolution for winding up and appointing a liquidator, and a special resolution authorising the liquidator to enter into the proposed agreement. The special resolutions are confirmed at a subsequent meeting, after which notice of the winding-up resolutions must be inserted in the *Gazette*, and a printed copy of the special resolutions forwarded, as usual, to the Registrar. It will not be forgotten that, by s. 188 of the Act, it is the duty of the liquidator, within seven days from his appointment, to summon a meeting of creditors. This provision appears oppressive where the voluntary winding up has been entered upon solely for the purposes of reconstruction. The new company will then be registered and the sale agreement duly entered into, after which, in due course, the shares in the new company will be distributed amongst the shareholders of the old company. The winding up of the old company will be completed, and the final meeting held, after which the return of the meeting having been held will be made to the Registrar, three months after which the company will be automatically dissolved. The new company is frequently registered with a name identical with that of the old. This is permissible under s. 8 of the Act, on the old company testifying its consent in such manner as the Registrar may require. Unless the objects of the company are being enlarged, it is often advisable to retain the old name. As regards the distribution of the consideration, *i.e.* of the shares of the new company, amongst the shareholders of the old, it is always better to provide for their allotment direct to the persons entitled, in order to avoid the

expense of transfer stamps and fees; but if the shares are partly paid it is especially desirable, in the liquidator's interest, that this should be done, since he might incur serious liabilities by taking partly paid shares into his name.

A reconstruction of this kind is in general extremely simple, unless more working capital is wanted. Supposing that the sole object of the reconstruction is to enable the company to carry on a class of business which it has no power to carry on, then the memorandum of the new company will be drawn to contain the necessary power, and after the sale is complete a share of the new company will be allotted for each share of the old company of the same value and denomination, and, apart from the matter of dissentients, the result will be that a new company, exactly the same as the old, with the same board, the same capital, the same shareholders, and the same articles, and, perhaps, the same name, will continue to trade with enlarged powers. Or if the object of the reconstruction is to write off 50 per cent. of the capital of the company which has been lost, or is unrepresented by available assets, each shareholder in the old company will receive, say, for every fully-paid £1 share held by him a fully-paid 10*s.* share in the new company; and, irrespective of this reduction, the same undertaking will be carried on by substantially the same people.

Alteration of Rights.

A scheme of reconstruction of this kind may not provide for the division of the shares in the new company among the shareholders of the old company, otherwise than in accordance with their rights under the memorandum and articles. This was the decision in *Griffiths* v. *Paget* [(1877), 5 Ch. D. 894], and if the rights are fixed by the memorandum, and therefore unalterable, this method cannot be used *simpliciter* where a distribution involving a variation of rights is desired. If, however, the rights are fixed by the articles, either of two clauses common in articles of association will get over the difficulty: one is a clause enabling the liquidator, with the sanction of an extraordinary resolution, in making any distribution of assets amongst the shareholders, to make it otherwise than in accordance with their rights; the other is a clause enabling a majority of a particular class of shareholders to bind the minority in modifying the rights or privileges of the class. And if the articles contain no such provision, it is open to the company, as a first step towards the desired reconstruction, to alter them by special resolution in the ordinary way, so as to introduce the necessary provisions.

If the rights of classes of shareholders are, however,

unalterably fixed by the memorandum, it appears to be possible, when a distribution of assets, otherwise than in accordance with those rights, is desired, to proceed by means of a scheme of arrangement under s. 120, provided that provision is made for the treatment of dissentients in the same way as they must be treated in a reconstruction under s. 192 [see *Sandwell Park Colliery Co.* (1914), 1 Ch. 589; *General Motor Cab Co.* (1913), 1 Ch. 377], whilst a reorganisation of capital under s. 45 of the Act is available as an alternative plan, at all events, in some cases.

Dissentients. In a reconstruction under s. 192 the matter of dissentients is important. The number of dissentients might be more than a quarter of the shareholders, since the meeting at which the special resolution was passed might not be representative. However, where there is likely to be any considerable amount of dissent, the precaution will, in general, be taken of circularising the shareholders in advance to ascertain their views on the proposed reconstruction, and, if there appears to be a preponderance of dissent, the scheme will, of course, be abandoned. The position of a shareholder in the old company is this: he may either (1) assent to the reconstruction and claim the shares to which he is entitled; or (2) dissent as provided by the section; or (3) he may do neither. To entitle him to dissent he must not have voted in favour of the resolution at either the first or the confirmatory meeting, and within seven days of the latter he must leave at the registered office of the company a written notice expressing his dissent and requiring the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest as provided by the Act. Two decisions as to the notice of dissent should be observed. One is to the effect that the liquidator may waive a benefit arising from a condition of the section which was inserted for the benefit of the dissentient: thus, a notice, if not left at the registered office, may be accepted by the liquidator [*Brailey* v. *Rhodesia Consolidated* (1910), 2 Ch. 95]. The other (following an earlier decision) lays down that the notice must state both the alternatives, the option being the liquidator's and not the dissentient's. It is not for the dissentient to require the liquidator to take one and only one of the two alternative courses and frame his notice accordingly [*Demerara Rubber Co.* (1913), 1 Ch. 331]. Since the notice of dissent must be given within seven days after the confirmation of the resolution, it obviously should not be given before the confirmation, especially as no liquidator may then have been appointed.

If a shareholder of the old company neither assents nor dissents, and does not claim the shares to which he is entitled under the scheme, he then loses his rights in the company, unless any have been reserved to him by the particular scheme: frequently, for example, the scheme provides that he is to be entitled to the proceeds of sale of the shares which he might have claimed. Buckley L.J., in his judgment in the case of *Bisgood* v. *Henderson's Transvaal Estates* (1908, 1 Ch. 793) thus conveniently summarises the provisions in the scheme which may properly be made without the dissentient being entitled to complain: 'There is no hardship upon him in any of the following arrangements within reasonable limits: (1) That the shares for distribution be partly-paid shares, or (2) that if he wants the shares he must apply for them within a limited time, or (3) that shares unapplied for are to be at the disposal of the new company, or (4) that shares unapplied for may be sold and the member who does not assent shall take the proceeds (for this is giving him something more than that to which he would be otherwise entitled), or (5) that the shares shall not go to the company and be assets of the company, but shall go direct to the members.'

If a shareholder effectually dissents, as provided by s. 192, the price at which his shares are to be purchased must be ascertained in accordance with the provisions of the section, that is to say, the parties may agree, or, failing agreement, the price is settled by arbitration, pursuant to the Companies Clauses Consolidation Act, 1845. That Act provides for a single arbitrator to be agreed upon, or for an arbitrator to be nominated by each party and an umpire to be agreed upon. The Arbitration Act of 1889 also applies where it is not inconsistent with the Companies Clauses Consolidation Act, 1845. But where the company's articles make other provisions for arbitration, they may be followed, to the exclusion of the Act [*De Rosaz* v. *Anglo-Italian Bank* (1869), L.R. 4 Q.B. 462]. The value must be determined by the arbitrator, who will often rely on the evidence of experts. He should not assume that the shares which form the purchase consideration are worth par, nor should he assume that the market price of the shares represents their true value. The value of the selling company's business as a going concern, taking all the circumstances into consideration, will be an important element in enabling him to come to a conclusion.

In framing the scheme care should be taken to provide a fund sufficient to purchase the interests of dissentients. This may be done by the exclusion from the sale of a sufficient

portion of the assets of the old company, but it is more usual for the whole of the assets to be sold and the new company to undertake to provide the necessary money. This they may do by borrowing, or, if their shares are partly paid, out of the funds obtained by making a call thereon. If the interests of the dissentients are not adequately protected by the scheme, by the provision of adequate funds, the liquidator may be restrained from parting with the assets. The rights of dissentients are statutory rights, and members cannot be deprived of them by provisions in the articles; any such provisions are wholly invalid [*Baring-Gould* v. *Sharpington Syndicate* (1899), 2 Ch. 90].

Creditors. A scheme under s. 192 is, as has been stated, binding on the shareholders, but the rights of creditors are protected; for the section provides as follows: '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.' There is, accordingly, for the space of a year, a danger of the scheme becoming inoperative; but at the expiration of a year, if no winding-up order or supervision order is made, the scheme is binding upon creditors as well as shareholders. There is a method of insuring the scheme against becoming inoperative which has sometimes been adopted; this is to procure a friendly creditor to petition for a supervision order, and afterwards to obtain the sanction of the Court to the scheme. However, it is usual for the matter of the creditors to be dealt with when the scheme is first mooted. Debenture holders are asked to agree to accept debentures in the new company in lieu of their existing debentures, and arrangements can be made for a sufficient amount of debentures of the new company to be underwritten to pay off those who object. As regards unsecured creditors, they may be asked to accept the liability of the new company instead of that of the old company. As a rule the scheme will provide for the new company taking over the liabilities of the old company, and any creditors who do not accept the new company as their debtor, will be paid.

A shareholder who is injured may apply for an injunction to restrain the carrying out of the scheme [*Clinch* v. *Financial Corporation* (1868), 4 Ch. App. 117]; but when the agreement has been executed he may not petition for a winding-up order [*Imperial Bank of China* (1866), 1 Ch. App. 339]. If, however, the agreement has not been executed and the scheme is unfair, a compulsory order may be made [*Consolidated South Rand Mines Deep* (1909), 1 Ch. 491].

In a reconstruction under s. 192, a practical difficulty arises where the shares, or some of them, upon which it is desired to make an assessment, are represented by warrants to bearer. In a case of this kind, extensive advertisement is necessary, and a much longer period must be allowed, during which a shareholder is to be entitled to claim his allotment, than where the shares are all registered.

Seeing that a reconstruction of this kind almost invariably involves the allotment of shares, either wholly or partly paid, the provisions of s. 88 of the Act must be complied with, and within one month after the allotment the written contract constituting the title of the allottee to the allotment must be filed with the Registrar, and the other returns prescribed by the section made. This appears to necessitate the execution of a contract between the new company and a trustee for the allottees, which, together with the reconstruction agreement, will have to be filed. If, however, the reconstruction agreement provides for the allotment to the liquidator of the shares in the new company, no supplementary contract will be necessary.

Underwriting on Reconstruction.

Where the object of the reconstruction is to obtain fresh working capital, it is frequently necessary to resort to underwriting. To take a concrete case: if in a scheme of reconstruction it is proposed to transfer the assets of the old company to a new company for £1 shares, credited as 15*s.* paid, subject to proper disclosure being made, the whole 15*s.* can be treated as commission, and the partly-paid shares offered to any one. Or arrangements may be made with underwriters to take up at a commission of 15*s.*, or, if necessary, more, any shares not taken by the shareholders in the old company.

The usual practice as regards underwriting is for a preliminary underwriting agreement to be entered into between the board of the old company and the underwriters or guarantors, and for that agreement to have scheduled to it the detailed agreement, which the old company and its liquidator will enter into with the new company, when the former has gone into liquidation and the latter is registered. The shareholders of the old company approve the preliminary agreement and schedule at the liquidation meeting. This preliminary agreement usually provides that if a certain percentage of shareholders effectively dissent, the underwriters shall be allowed to cancel the agreement. It is therefore usual to take no further steps until after the seven days allowed for dissents, but immediately that period has expired, the new company will be registered, and the board

will enter into the contract scheduled to the preliminary agreement and also an agreement for sale. The liquidator will then send out his circular to the shareholders of the old company and tell them how many shares they are entitled to apply for in the new company, giving particulars as to payment of the balance, names of the directors of the new company, their interest in the company, and the amount of commission payable to the underwriters, etc., and will state that the applications for shares must be accompanied by certificates for shares in the old company. The bankers of the company, to whom applications are sent, should be instructed to receive no applications unless accompanied by relative share certificates.

The agreement usually provides that the shareholders of the old company shall be entitled, on the nomination of the liquidator, to a pro rata number of shares in the new company, credited with so much per share paid up. A method of avoiding considerable work is, for the liquidator to write out the allotment sheets as applications for shares in the new company are received, and to sign those allotment sheets for the purpose of nominating the shareholders of the old company for allotment of shares in the new company. This saves the new company writing out fresh allotment sheets. Then when the new company has allotted, and proposes to file the return as to allotments, the contract, which in ordinary circumstances, would have to set out the names and particulars of the allottees, can be made with a trustee, and can state that the shares were allotted to the parties and in the proportions set out on the return as to allotments 'presented for filing herewith.' This course results in a considerable saving in labour.

If, as is usual, the liquidator has to sell all the shares not taken up by shareholders in the old company, he will, when sending out his circular, send out also a form of tender and application form combined, for such shares as are not taken up, and it is desirable to have this form of tender printed on a different coloured paper, so as to avoid confusion. He should also advertise the fact that such shares are for sale, and that forms of tender can be obtained at his office. It will be necessary to fix a time within which shareholders can claim their shares in the new company, but it will also be found desirable considerably to extend this time in the case of shareholders resident abroad.

After the time within which shareholders can apply has expired, the new company will allot the shares on the nomination of the liquidator, but the liquidator should not

definitely accept tenders for excess shares until after the expiry of the time allowed within which foreign applications can be received. The agreement will usually provide that the premium received on sale of shares not taken up by shareholders, shall be divided amongst the shareholders (other than dissentients) who do not come into the scheme, but the expenses of advertising the shares for sale will first be deducted.

Amalgamations.

As regards amalgamations, it is only necessary to state that they are in general effected by means of proceedings under s. 192. The process where Company A is absorbed by Company B will be a single sale; or where a new company acquires the undertakings of both Company A and Company B, there will, of course, be an independent sale by each. The law is the same, and the difficulties are the same as in simple reconstructions, and need not be further commented on.

As regards reconstruction under the powers in the memorandum of association, this method of reconstruction, which was formerly common, has become practically impossible, owing to the decision of the Court of Appeal in *Bisgood* v. *Henderson's Transvaal Estates* [(1908), 1 Ch. 793].

The effect of that decision, as stated in the head-note in the *Law Reports*, is this: 'The sale of all a company's assets, and all its undertaking, and the distribution of the proceeds, cannot be a corporate object, so that, under a clause for that purpose introduced into the memorandum of association, such a sale and distribution can be made without regard to the provisions of s. 161 of the Companies Act, 1862' (now, of course, s. 192 of the Consolidation Act). 'A company limited by shares cannot by its memorandum and articles of association provide as part of its constitution that in an event the corporator shall either submit to a liability in excess of the limit of liability on his shares, or shall be dispossessed of his status as corporator.'

The practical result is that, as regards sales under a power in the memorandum, they appear to be legal, provided liquidation is neither contemplated nor in progress; but inasmuch as a scheme of reconstruction by sale to a new company necessarily involves liquidation, there is not much use in attempting to effect it for that purpose. The only possible procedure appears to be to effect an out-and-out sale for shares, and, subsequently, as a wholly independent transaction, to resolve upon liquidation with the object of distributing the proceeds. This would mean that the selling company would for a time become simply an assets-holding company. Some colour is lent to this view by the

decision of Buckley J. (as he then was) in *Mason* v. *Motor Traction Co.* (1905, 1 Ch. 419), which, though mentioned in argument in *Bisgood's Case* was not overruled, but apparently approved by Buckley L.J., himself. But the decision of Joyce J., in *Etheridge* v. *Central Uruguay Railway* (1913, 1 Ch. 425) appears to negative this view, although perhaps too much importance need not be attached to that case. It need scarcely be pointed out that any attempt to evade the effect of *Bisgood's Case* by these means would be very carefully scrutinised, and very slight evidence indeed of an ultimate intention to go into liquidation for the purpose of distributing the proceeds of sale would probably be sufficient to wreck the scheme. The conclusion is that for most purposes, at all events, schemes of reconstruction by means of a sale under the powers in the memorandum have become impracticable and are best left alone. This, however, is subject to the important proviso that, in cases where there is complete unanimity amongst the shareholders, there is nothing to prevent such a scheme going through, illegal though it may be, and plenty of such schemes have been carried out even since *Bisgood's Case*.

Schemes of Arrangements under s. 120.

Turning now to the other common form of reconstruction, more properly described as a scheme of arrangement, s. 120 of the Act, stated shortly, provides that when a compromise or arrangement is proposed between a company and its creditors, or any class of creditors, or between the company and its members, or any class of members, the Court may, on the application of the company, or any creditor or member, or, in the case of winding up, of the liquidator, direct that a meeting of creditors or class of creditors, or members or class of members, as the case may be, be convened, and if a majority representing three-fourths in value of those present agrees to the compromise it is, when sanctioned by the Court, to be binding on the creditors or class of creditors, or the members or class of members, as well as on the company, or, if there is a liquidation, then on the liquidator and the contributories. The chief advantages of a scheme of arrangement are that a majority of creditors may bind the minority, by, for example, accepting debentures or shares in lieu of cash, or foregoing arrears of interest; that a majority of shareholders of a class may bind the minority without the necessity for purchasing the interests of dissentients, as when proceeding under s. 192; and that (unless as part of the scheme a new company is formed to purchase the undertaking) the expense of registration and the stamp duty on the transfer of assets is avoided. It will be remembered

that under s. 192 creditors are not bound until a year has elapsed from the passing (*i.e.* the confirmation) of the special resolution.

Form of Schemes.

The jurisdiction of the Court in sanctioning the scheme is unlimited, and it may sanction any form of scheme which is within the ambit of the section and is not within s. 192. In general, if the provisions of the Act have been complied with, and the scheme is reasonable, and no injustice has been done to any class, and if satisfied that the majority supporting the scheme are acting *bonâ fide*, the Court will not withhold its sanction. The Court may, however, require modifications of the scheme as approved by the classes interested, or may attach conditions; and, in order to avoid the necessity for summoning fresh meetings to approve the scheme as modified by the Court, it is usual to insert a clause in the scheme authorising the applicant to assent to any modifications or conditions in the scheme which the Court may think fit to require or impose. In one case, for instance, the Court attached the condition that a minority of shareholders who disapproved the scheme should have the rights of dissentients under s. 192, *i.e.* should be entitled to require the liquidator to purchase their interests in the company [*Canning Jarrah Timber Company* (1900), 1 Ch. 708].

The schemes which have from time to time been sanctioned by the Court are of the most varied description. Thus, debenture holders and creditors have accepted shares for their debts; existing debenture holders have been postponed to new debentures to be created; creditors have received part cash and part debentures, or part cash and part shares, in satisfaction of their debts; one creditor has taken over all the assets, and paid the costs of the winding up and a composition to the other creditors; shares or debentures have been accepted in lieu of arrears of debenture interest; debenture interest has been reduced, future profits to be devoted to the redemption of the debentures. The scheme may, and often does, involve the formation of a new company to acquire all or part of the assets; or, if a liquidation is in progress, it may provide for a stay of the liquidation and the continuance of the old business. It may also involve the reduction, unification, consolidation or reorganisation of the capital of the company, or the modification of the rights of a class of shareholders.

In carrying out any scheme of reconstruction, whether under s. 192, or under s. 120, or otherwise, legal advice is almost invariably necessary.

CHAPTER XIX

WINDING UP

COMPANIES may be wound up by three distinct methods. The winding up may be (1) compulsory, or by the Court; (2) subject to the supervision of the Court; (3) voluntary. Of these by far the commonest is voluntary winding up, and it is proposed in this chapter to deal mainly with that method, only mentioning a few salient features of the others.

By the Court. Compulsory liquidation is brought about by order of the Court on petition, and is carried out under the direction of the Court, the sections of the Act exclusively applicable beeing ss. 129 to 181. The circumstances in which a company may be wound up by the Court are enumerated in s. 129 of the Act as follows:—

(i) If the company has by special resolution resolved that the company be wound up by the court:

(ii) if default is made in filing the statutory report or in holding the statutory meeting:

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(v) if the company is unable to pay its debts:

(vi) if the court is of opinion that it is just and equitable that the company should be wound up.

And s. 130 provides that a company shall be deemed to be unable to pay its debts—

(i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand

under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(iv) if it is proved to the 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 shall take into account the contingent and prospective liabilities of the company.

A petition may, subject to certain restrictions (see s. 137) be presented by the company itself, by one or more creditors, or by one or more shareholders, or by all or any of those parties, together or separately. Upon an order for winding up being made, the proceedings in the liquidation are conducted temporarily by the official receiver, as provisional liquidator, and subsequently by one or more liquidators appointed by the Court.

The commencement of the winding up (a date of considerable importance) is deemed to be the date of the presentation of the petition (s. 139), and the order is thus retrospective. Even where a compulsory winding up supersedes a voluntary winding up, the date of the presentation of the petition marks the commencement of the winding up. And the Court cannot, under s. 198 of the Act, adopt the winding up resolution as the commencement of the winding up, although it may adopt any of the proceedings in the voluntary winding up. Failing such adoption, many things already done will have to be repeated, *e.g.* the meeting of creditors.

The liquidator, who is generally assisted and partly controlled by a committee of inspection, composed of creditors and contributories, takes the necessary steps to collect and realise the assets, to settle the lists of creditors and contributories, and to pay the debts, and then to adjust the rights of the contributories, distributing amongst them any surplus. Upon the completion of the winding up, he

obtains his release from the Board of Trade (s. 157), and the Court makes an order for the dissolution of the company (s. 172).

Subject to Supervision. Winding up, subject to the supervision of the Court, is brought about by order of the Court (s. 199), on petition presented when a voluntary winding up is already in progress, by one or more of the parties who may petition for a compulsory order (see above). The date which was the commencement of the voluntary winding up which it supersedes (*i.e.* the date of the passing or confirmation of the winding up resolution) is not altered and becomes the date of the commencement of the winding up under supervision. By the supervision order the Court may appoint liquidators either in substitution for or in addition to those already appointed by the company.

The liquidators' powers, unless restricted by the Court, are identical with those possessed by a liquidator in voluntary winding up, and the liquidation proceeds generally as in a voluntary winding up, and the company is ultimately dissolved in the same way as in a voluntary winding up (see p. 212).

Having regard to the practically unlimited powers of application to the Court under s. 193 of the Act, there is seldom any great advantage in obtaining a supervision order, and such orders are rare.

Voluntary. Voluntary winding up and the position of the liquidators therein require much more detailed treatment, since the office of liquidator is frequently undertaken by a company's secretary.

S. 182 of the Act enumerates the circumstances in which a company may be wound up voluntarily. These are as follows:—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up 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.

Of the above, (1), which, it will be observed, requires

only an ordinary resolution, is seldom met in practice. In the case of an insolvent company, (3) is appropriate, and an extraordinary resolution will suffice. In any other case, *e.g.* if the winding up is for the purpose of reconstruction, (2) is applicable, and a special resolution is necessary. It need hardly be pointed out that, if a valid voluntary winding up is to be set on foot, extreme care must be taken in every detail connected with the convening and holding of the meeting or meetings.

Assuming that a valid resolution for voluntary winding up, whether ordinary, special or extraordinary, has been passed, and that the winding up has been brought about for the purpose of liquidation only, and not for the purpose of reconstruction, it is proposed now to deal with the course of the liquidation.

The statutory law as to voluntary winding up is to be found, of course, in the Consolidation Act, whilst practice rules are to be found in the Winding Up Rules of 1909 and 1921. Part IV. of the Act, which is headed 'Winding Up,' includes ss. 122 to 242 inclusive. S. 122 states that the provisions of the Act with respect to winding up apply, unless the contrary appears, to all the three kinds of winding up, *i.e.* compulsory, voluntary, and subject to supervision. The following portions of Part IV. are accordingly applicable to voluntary winding up:—Ss. 123 to 128 (which deal with contributories and their liability); ss. 182 to 198 (which are headed 'Voluntary Winding Up'); and such of the sections contained in the group headed 'Supplemental Provisions,' which includes ss. 205 to 242, as are not expressly made applicable exclusively to either or both of the other kinds of winding up. Many of these sections, however, which are applicable to voluntary winding up deal with matters with which the English liquidator has little concern. The important sections are ss. 205 (1), 206, 207, 209, 210, 211, 212, 214, 215, 217, 220, 222, 223, and 224. As regards the Winding Up Rules of 1909, Rule 1 provides in effect that the Rules are to be applicable to every form of winding up, unless, from their nature or subject matter, or by the headlines above the group in which they are contained, or by their terms, they are, or are made, applicable only to compulsory winding up. But Rule 2 of 1921 makes Rules 123 to 132, 134 and 138 to 149, which applied only to winding up by the Court, apply also to creditors' meetings in voluntary liquidation under s. 188 of the Act. There is thus no serious difficulty in discovering what rules are and what are not appropriate.

Commencement and Effect.

The date of the commencement of a voluntary winding up is the date of the passing of the winding up resolution. This, in the case of a special resolution, means the date of the confirmatory resolution. The date of the commencement is chiefly material in regard to the liability of past members as contributories and to the matter of fraudulent preference, as well as in regard to some other matters noticed later.

The immediate effect of a voluntary winding up upon a company should be carefully grasped. The first point to be observed is that the company must cease to trade, except for the purpose of beneficial winding up (s. 184). As will be seen, the liquidator is the proper person to carry on the business for this purpose. It is only for the purposes of administration and realisation that the business may be carried on: it is not competent for the liquidator to carry it on indefinitely with the object of gradually increasing its value. It is, no doubt, difficult at times to determine whether a new contract entered into by the liquidator is required for the purpose of beneficial winding up, but the liquidator has this advantage, that it lies upon the person who alleges that it was not required to prove his case. Then it is to be observed that all transfers, unless made to the liquidator or with his sanction, or alteration in the status of the members of the company, shall be void [sect. 205 (1)]. But none the less—and this is the important point to remember—the corporate state of the company and all its corporate powers continue until the dissolution of the company, in spite of anything to the contrary in the articles (sect. 184). The company accordingly still exists as a legal entity, and its powers as such continue, although there may be a difference in the manner in which they are exercised. For sect. 186 (3) provides that 'on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.' It is accordingly open to the liquidator, or to the company, to sanction the continuance by the directors of the exercise of such of their powers as is thought fit, and this is sometimes done, especially for the purpose of making calls. Failing such an arrangement, the liquidator will in general be able to exercise the powers of the directors, so far as it is necessary for the purpose of the beneficial winding up of the company.

Although in a compulsory liquidation the books of a company close at once, it may be, and often is, otherwise in a voluntary liquidation.

A negative effect of a voluntary winding up is that it does

not operate to stay actions, as a compulsory order or a supervision order does, nor does it prevent actions being brought against the company after the commencement of the voluntary liquidation. It is, however, always open to the liquidator to apply to the Court for a stay, and it used to be the practice for a stay to be granted, except in the case of actions by secured creditors to enforce their security. The plaintiff would then, the stay having been granted, prove in the liquidation, and where the liquidator did not admit the claim he would himself apply to the Court, under sect. 138 of the Act of 1862 (now sect. 193), to have the matter in dispute decided. But in *Currie* v. *Consolidated Kent Collieries* [(1906) 1 K.B. 134)] it was held that the onus is upon the liquidator in applying for a stay to show that an order should be made, and that in case of a real dispute a stay should not be granted, and that, so far from a stay being a convenience, it would in such cases be an unnecessary waste of time and money. But in a case where liability is substantially admitted, and the question is really one of amount, the matter is one which may properly be dealt with in the liquidation, and accordingly a stay should be granted. The matter is in each case one for the discretion of the Court.

A voluntary winding up will in some cases operate to dismiss the servants of the company, but whether or not it has this effect depends on the facts in each particular case [*Reigate* v. *Union Manufacturing Co.* (1918), 1 K.B. 592; and see *Midland Counties Bank* v. *Atwood* (1905), 1 Ch. 357].

Appointment of Liquidator.

It now becomes necessary to consider the position of the liquidator, upon whose shoulders the burden of the winding up will fall.

As regards the appointment of liquidators it is to be observed that sect. 186 says that amongst the consequences which shall ensue upon the voluntary winding up of a company is this—that the company shall appoint one or more liquidators. The intention, therefore, appears to be—first, wind up; then, appoint liquidators. None the less it is much more usual for liquidators to be appointed at one or other of the winding-up meetings, and there is no objection to this. A liquidator need not be appointed by special resolution, nor need he be named in the notice of resolution for his appointment.

In the vast majority of cases one liquidator is appointed, and it is the more convenient course in most instances. Sometimes, however, more than one is appointed, *e.g.* one to represent the creditors and one to represent the contributories. The effect is naturally to increase the expense; and, further,

since two liquidators at least must concur in every act, subject, however, to sect. 186 (vii.), speedy dealings are not facilitated. Further, if one of two liquidators dies, a successor must be appointed, since the survivor cannot act alone, unless so authorised by the resolution of appointment. The matter, however, is one for the company, subject to application to the Court by anyone aggrieved.

His Position. It is not easy to define accurately the status of the liquidator. It is to be gathered from the following statutory provisions, some of which have already been mentioned:—That liquidators are appointed for the purpose of winding up the affairs of the company and distributing its property; that they shall pay the debts of the company and adjust the rights of the contributories amongst themselves; that upon their appointment all the powers of the directors cease, except so far as the company in general meeting or the liquidators sanction their continuance; and that until the winding up is complete the corporate state and all the corporate powers of the company continue. The company then continues to exist, but the directors (subject to the exceptions mentioned) cannot act, whilst the liquidator has the duty of winding up the company's affairs. The liquidator steps into the shoes of the directors, not for carrying the company's business on, but for winding it up; and his status resembles in many ways the former position of the board. Now, directors, as is well known, have a dual capacity—they are both agents and trustees. The liquidator is to some extent a trustee. He may be said to hold the assets of the company in trust for the creditors and then for the shareholders. But his primary duty being to realise and distribute, he is, perhaps, rather the company's agent for certain specified purposes. A contract, for example, made by him for the purpose of realising some of the company's assets is made by the company through him, the common form of the statement of parties being: 'Between the——Company, Limited, by J—— S——, of——, &c., the liquidator thereof, of the one part, and A—— B——, of——, &c., of the other part.' It may, further, be observed that the voluntary liquidator, being appointed by the shareholders, is not an officer of the Court, although he has certain duties imposed on him by statute, and if he neglects those duties the parties injured, whether creditors or contributories, may be able by action to make him personally liable in damages, even after dissolution [see *Pulsford* v. *Devenish* (1903), 2 Ch. 625].

His Remuneration. The amount of the liquidator's remuneration, by s. 186 (ii.) of the Act, is left for the company to fix. It may be, and

sometimes is, fixed by the resolution appointing him, and in small companies, where the amount of labour involved may be fairly estimated at once, this course has its advantages. The sum may be a lump sum, or a percentage on the assets realised, or may be at the rate of a certain sum per day while the liquidator is exclusively employed on the business of the winding up; or other methods of remuneration may be adopted. It is, however, generally speaking, better for the liquidator's remuneration to be fixed later by a general meeting. If a sum be fixed which appears to the creditors to be unduly large, having regard to the amount of the company's assets and liabilities, application may be made to the Court to determine the amount of the remuneration under s. 193 of the Act. It is often better, in the case of an insolvent company, to get the remuneration fixed by the Court in the first instance, thereby avoiding the possibility of subsequent complaint. Instances are on record of the Court, on application duly made, increasing the remuneration which had been fixed by the company in general meeting. A course sometimes adopted is for the liquidator to take what he considers reasonable remuneration, and then, when his final accounts are passed at the final meeting before dissolution, that sum is, by the vote of the company, appropriated to him.

His Powers.

As regards the powers of the liquidator in voluntary winding up, it will be sufficient to enumerate them. They are, in general, so inextricably involved with his duties that comment on them may be reserved until his duties are more fully dealt with. By s. 186 (iv.) the liquidator has power, without the sanction of the Court, to exercise all the powers given to a liquidator in compulsory winding up. He may, accordingly, under s. 150 take all the property of the company into his custody; under s. 151 bring or defend any action in the name of the company; carry on the business of the company, so far as may be necessary for its beneficial winding up; sell the whole of its real and personal property; execute deeds and other documents, and use the company's seal; prove as creditor in the bankruptcy of any contributory; draw bills and raise money upon the security of the assets of the company; take out letters of administration to any deceased contributory; do all such other things as may be necessary for winding up the affairs of the company and distributing its assets. Under s. 186 he may distribute the company's property among the members; settle the list of contributories; make calls, pay debts, and adjust the rights of the contributories amongst themselves; under s. 193

apply to the Court; under s. 194 call a general meeting; and under s. 215 institute misfeasance proceedings. He also has power, under s. 214, with the sanction of an extraordinary resolution of the company, to compromise with creditors, debtors, and contributories all questions in any way affecting the assets or the winding up of the company. It is to be noted, however, that a compromise with a creditor under this section, unless set aside, is binding even though the sanction of an extraordinary resolution has not been obtained [*Cycle-makers Company* v. *Sims* (1903), 1 K.B. 477]. He also has power, under s. 214, with the sanction of the Court, to prosecute delinquent directors and others.

The above are the principal powers expressly conferred by statute upon the liquidator, but it will be found that incidentally the wide powers expressly specified by the legislature include numerous minor auxiliary powers.

His Duties. A liquidator should enter upon his duties at the earliest possible moment after his appointment. His primary duties are realisation and distribution of assets, and all that he does will be directed towards these two ends.

Two of his earliest duties are prescribed by ss. 187 and 188 of the Consolidation Act. By s. 187 he is bound, under a penalty of £5 per day, within twenty-one days of his appointment to file a notice thereof with the Registrar in the form prescribed by the Board of Trade. The provisions of s. 188, as extended by the Winding Up Rules of 1921, may be thus summarised. The liquidator must:—

(1) Ascertain who appear to be creditors of the company;

(2) Within seven days from his appointment, and not less than seven days before the meeting, send notice by post to all such persons of a creditors' meeting to be held on a specified date, not less than fourteen nor more than twenty-one days after his appointment, at a specified place and hour;

(3) Enclose general and special forms of proxy with the notice sent to creditors, and state in the notice the time by which such proxies must be lodged;

(4) Advertise notice of the meeting once in the *Gazette*, and once at least in two local newspapers circulating in the district where either the registered office, or the company's principal place of business, was situate. The advertisement must constitute a seven days' notice of the time and place of meeting.

The matters to be determined at the creditors' meeting are:—

(1) Whether application shall be made to the Court for the appointment of a liquidator, to act either in place of or with the liquidator appointed by the company;
(2) Whether application shall be made to the Court for the appointment of a committee of inspection;
(3) If any such application is to be made to the Court, then to appoint a creditor to make it.

The application must be made not later than fourteen days after the meeting, and upon the hearing of it the Court may make any of the following orders:—

(1) That the liquidator be removed and another substituted;
(2) That the liquidator be retained and another appointed to act with him;
(3) That a committee of inspection be appointed;
(4 Such other order as, having regard to the interests of creditors and contributories, may seem just.

Order (3) may be made either separately or combined with (1) or (2).

Minutes of the proceedings at the creditors' meeting must be entered in a book provided for the purpose, and copies of all resolutions passed at the meeting must be filed with the Registrar in Companies (Winding Up).

It may be pointed out that, seeing that upon the appointment of a liquidator all the powers of the directors cease, the liquidator should see to it that the winding up resolution, whether special or extraordinary, is duly registered under s. 70, and that notice of the resolution is advertised in the *Gazette* under s. 185.

Taking Possession of Property.

The liquidator, after his appointment, will immediately proceed to take possession of the company's books and documents, If he is the secretary, he will, probably, have no difficulty in doing this, as, so far as the books kept at the registered office of the company are concerned, they will be ready to hand, whilst, if the company is a trading company, the ordinary business books will be available at the place where the company's business has actually been carried on. If the liquidator is unconnected with the company, *e.g.* a chartered accountant, his labour in ascertaining that he has control of all the books and documents of the company, whether at the registered office or elsewhere, will

usually be greater. It is the duty of the liquidator, if he finds any book or document missing, to ascertain its whereabouts, or, if he fails to discover books or documents that he would expect to find, to make inquiries and satisfy himself as to their existence or non-existence. Practically all of the company's books will be of assistance to the liquidator in the discharge of his duties. For example, the Seal Book, if one be kept, should contain particulars of documents to which the common seal has been attached, and will be of use in enabling the liquidator to ascertain what documents of importance are in existence.

In taking possession of the books and documents of the company, the liquidator may find that some are in the possession of a solicitor or other person who claims a lien upon them for money due. The liquidator will then proceed to inquire whether this lien is valid. If it is obviously invalid, *e.g.* if it is upon certain books which are, by statute, required to be kept at the registered office of the company—the Register of Members, for instance—the liquidator must insist upon the delivery up to him of the books or documents in question. If the validity of the lien be doubtful, and no reasonable compromise can be arrived at, the question will have to be decided, the obvious course being for the liquidator to apply to the Court, under s. 193 of the Act, for an order for the delivery up to him of the documents, when the Court will adjudicate upon the matter. But in the meantime, if the possession of the documents is necessary for the purposes of the winding up, it is advisable for the liquidator to pay the amount claimed to an independent third party, or to a joint account, pending the decision of the question, and thus to obtain delivery. If the lien appears, on due examination, to be valid, and the documents are necessary, the liquidator should if possible pay the amount due, or undertake to do so, out of the first available assets. If the lien is claimed by a solicitor, it may be desirable to have the bill taxed, delivery being generally obtained by paying the money claimed into Court, pending the taxation.

After taking possession, or taking all needful and possible steps towards taking possession, of the company's books and documents, the liquidator will then obtain possession, as far as he can, of the other property of the company. This does not mean, of course, that he is to have the land and buildings (if any) of the company conveyed to him, or any of the chattels of the company formally made over to him. He will take possession by assuming the control over them. For example, he will assume the control of the company's

business, putting himself into the position formerly occupied by the company. He will assume the control of the company's stock and other assets of its business, thus virtually stepping into the shoes of the company. It must never be forgotten that the corporate state and all the corporate powers of the company still continue, the liquidator being, as stated before, the company's agent for the purpose of winding up its affairs.

The liquidator, however, cannot assume the control of some of the company's property, or in any way obtain physical possession of it. He can, *e.g.* have no control over the book debts of the company, or of any property of the company which has been taken possession of, as is frequently the case, by mortgagees, or by a receiver on their behalf. His duty in these cases is to give notice to the debtors, or the mortgagees, or receiver, as the case may be, of the fact that the company is in voluntary liquidation, and that he is the liquidator.

In taking possession, special care is necessary in the case of leasehold property. If the company is insolvent, it is necessary to inquire whether the retention of the leaseholds is for the benefit of the winding up. This will depend very largely upon the nature of the covenants in the lease. If the rent is high and the covenants onerous, the value may be small, and on the property being retained the landlord will be entitled to be paid rent in full during the liquidation. But if the liquidator notifies the landlord of his intention to abandon the premises, which he is at liberty to do, although he has not expressly given to him the power which a trustee in bankruptcy possesses of disclaiming them, the landlord can only prove in the liquidation with the other creditors for rent accruing during the liquidation.

Keeping Accounts.

An important duty of the liquidator is the duty of keeping proper accounts. It is nowhere laid down that a liquidator in voluntary winding up must keep accounts, although the matter is provided for in the case of a compulsory winding up by the Rules of 1909. However, it is perfectly obvious that a liquidator cannot adequately perform his duties without keeping accounts, and it may here be observed that when the winding up is complete and he summons the final meeting, it is his duty to lay before that meeting an account 'showing how the winding up has been conducted, and the property of the company disposed of' (s. 195). This he could not satisfactorily do without having kept thorough and systematic accounts throughout the liquidation. It is also desirable for the liquidator, in order that

he may be able to give an account of his stewardship, to keep the Record Book which is prescribed by Rule 166 of 1909 in the case of compulsory winding up. In this he will enter notes of all his transactions in conducting the winding up. The book may conveniently take the form of a diary.

Carrying on Business. In realising the assets the liquidator should act with all convenient speed, remembering that the longer the liquidation is protracted, the greater is the expense of the mere administration likely to be. However, in the case of a trading company with outstanding trade contracts, it will frequently be of advantage to the assets to carry out the contracts and receive the agreed payments for them. This will be carrying on the business so far as may be necessary for the beneficial winding up of the company. And in all cases where, for whatever reason, the liquidator considers it desirable to carry on the business of the company for anything more than a very short time, it is advisable for application to be made to the Court, under s. 193, for liberty to do so, or at all events for the sanction of the creditors to be obtained. The Court, in granting leave to carry on the business, usually imposes a limit to the time during which this may be done, *e.g.* three months. In the event of an extension being required, a further application must be made to the Court.

The right to carry on the business involves the right to do everything incidental thereto: contracts may be made, the trade generally may be continued, bills of exchange may be drawn or accepted, and even, in a proper case, money may be borrowed for the purposes of the company, upon such security as the company is able to offer. It is generally advisable to obtain the sanction of the Court before borrowing money. It is hardly necessary to point out that any security given by the liquidator for loans ranks after all existing securities. The liquidator will, of course, make it clear to all persons with whom business is done that the company is in voluntary liquidation.

With reference to debts incurred by the liquidator in the course of carrying on the business of the company, it must be clearly borne in mind that these must be paid in priority to debts and liabilities incurred before the commencement of the liquidation. They are, in reality, provided they are properly incurred, part of the costs of the administration of the company's affairs, which, as will be seen hereafter, have a priority over the ordinary liabilities.

Collecting Debts. In getting in the debts due to the company, the liquidator will make written demands upon the debtors, and if all

other means fail he will, if he considers it desirable take, proceedings for recovering debts outstanding. It is necessary, however, to consider carefully whether the proceedings are likely to be productive of any adequate result. A liquidator would not be justified in suing a debtor when he knew the debtor could in no circumstances pay. Proceedings would, in such a case, be merely a waste of the company's money. The liquidator has also, as has been stated, power to compromise.

We have seen that a liquidator can sell all or any of the company's property, taking care to do so to the best advantage. Thus, he may, if he thinks it advantageous, sell the book debts instead of realising them himself. It may here be remarked that, speaking generally, the liquidator may employ agents to act for him in cases where the skill and experience of a professional man is desirable in the interests of the company. Perhaps a fair statement is that in all cases where an ordinarily capable and reasonable individual would employ an agent, *e.g.* an auctioneer, or a broker, or a solicitor, the liquidator may do the same. And he may pay them reasonable remuneration for their services. It is in the case of sales of the company's more important assets that professional services are most likely to be required; but the advice of a solicitor may often be properly sought in almost every phase of a winding up.

Private Examinations.

In connection with the realisation of the company's assets, the important powers conferred upon the liquidator by the combined effect of ss. 174 and 193 of the Act must be noticed. S. 174 empowers the Court to 'summon before it any officer of the company or person known or suspected to have in his possession any of the 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 any person so summoned may be required to produce books, &c. In a proper case, therefore, if the liquidator suspects that any of the company's property is being kept back, whether by the company's officials or other persons, or if he has reason to suppose that there has been fraud in the promotion of the company, and that certain persons have received moneys which really belong to the company, he will make application to the Court, under s. 193, for an order for the examination (called private examination, in contradistinction to the public examination in winding up by the Court) of any one who will voluntarily give, or from whom can be extracted, information as to the existence

of assets, or information on which to ground misfeasance proceedings.

With reference to misfeasance proceedings, these are provided for by s. 215, their object being to compel any delinquent promoter or officer of a company to make restitution of any money or property of the company improperly applied or retained, or to make good any default. If misfeasance proceedings require to be taken, the liquidator will invariably employ a solicitor, as indeed he will generally properly do in case of any application under s. 193. With reference to such applications, it must not be forgotten that, although in the majority of instances they are made by the liquidator, yet any contributory or any creditor may similarly apply.

Fraudulent Preference.

One other matter must be noticed affecting the getting in of the assets of the company. S. 210 of the Act provides that where a company is being wound up, any act which would have been a fraudulent preference had the company been an individual trader in bankruptcy is an undue or fraudulent preference of the creditors of the company and is invalid. The effect of this provision is to make the bankruptcy law for the time being as to fraudulent preference applicable *mutatis mutandis* to companies in liquidation. In bankruptcy, by virtue of s. 44 of the Bankruptcy Act, 1914, any conveyance or transfer of property, or any payment made by a person unable to pay his debts to any creditor, with a view to preferring that creditor to other creditors, is void if made within three months before the bankruptcy. In the case of voluntary winding up, the period of three months dates backwards from the resolution for winding up. It is incumbent upon the liquidator if, on examination of the company's affairs, it appears that any such fraudulent preference has taken place, to take steps, by application to the Court, under s. 193, if necessary, to have the transaction set aside and get back the money or property.

The question as to whether a particular transaction does or does not constitute a fraudulent preference is often a difficult one. As was stated by Lord Esher in *New's Trustees* v. *Hunting* [(1897), 2 Q.B. 27], 'the question whether there has been a fraudulent preference depends not upon the mere fact that there has been a preference, but also on the state of mind of the person who made it. It must be shown, not only that he has preferred a creditor, but that he has fraudulently done so.' It has been held that the preferring the creditor must be the dominant view with which the

preference was made, but not necessarily the sole view. A payment made *bonâ fide* under pressure will not be a fraudulent preference. The burden is on the liquidator, who seeks to set aside a transaction as being a fraudulent preference, of showing the insolvency of the company—not as a rule a difficult task—as well as of showing the intention to prefer.

Proof of Debts.

The liquidator will take steps, as soon as possible, to ascertain the extent of the company's liabilities. In most cases the books of the company, assuming them to have been properly kept, will disclose the bulk of these, and if the liabilities have been incurred in the ordinary course of the company's business, probably most of them can be admitted without demur. In a voluntary winding up only those creditors need prove their debts whose claims have not been admitted. The liquidator will accordingly make out a list of the claims he admits, *i.e.* of all the known and undisputed liabilities of the company, whether they be trade liabilities, or office expenses, or directors' fees, or anything else. His duty is then laid down by Rule 102 of the Winding Up Rules of 1909, which requires him to fix a day, not less than fourteen days after the date of the notice, mentioned presently, on or before which creditors (*i.e.* in voluntary winding up, creditors whose claims have not been admitted) are to prove their debts or claims, or be excluded from the benefit of any distribution of assets made before their debts are proved; he is to give notice of the day fixed by advertisement in a newspaper, and, further, by sending notice in writing to each person who to his knowledge claims to be a creditor and whose claim has not been admitted. The notice is ordinarily inserted in the *Gazette*, and in one or more newspapers circulating in the district where the registered office of the company is. One or more repetitions of the newspaper advertisement is often advisable.

Rule 89 of the Rules of 1909 provides for the proof of debts by affidavit, and by Rule 92 the affidavit is required to state whether the creditor is or is not a secured creditor. Most of the Rules from 89 to 106 contain further regulations as to the proof of debts which are applicable to voluntary winding up. When the proofs have all been lodged, the liquidator must examine them, and in writing admit or reject each, either in whole or in part, or he may require further evidence in support of it. If he rejects a proof he must notify to the creditor in writing the grounds of his rejection (Rule 103). Any creditor dissatisfied with the decision of the liquidator may apply to the Court within twenty-one days, and the Court may reverse or vary the decision (Rule 104). Should

the liquidator himself, after admitting a proof, consider that it has been improperly admitted, he may apply to the Court, after notice to the creditor, to expunge the proof or reduce its amount (Rule 105). A similar application may be made by any creditor or contributory (Rule 106).

In due course the liquidator will have a complete list of claims, of which some may be disputed. Disputed claims may be dealt with by the liquidator in various ways. He may compromise any claim, or he may apply to the Court, under sect. 193, to adjudicate upon any disputed claim. Or he may leave the creditor to apply to the Court to adjudicate, or to bring an action to enforce the claim. The position of the liquidator in the matter of applying for a stay of any such action has already been dealt with (see p. 187.) In exceptional cases, where the disputed claims are likely to be numerous, the method of procedure is open to the liquidator of applying to the Court, under s. 193, for an order for an inquiry as to who are the creditors of the company. The effect of such an order is that all claims are formally proved in chambers, and disputed claims adjudicated upon where necessary by the Court.

Secured Creditors.

The position of secured creditors requires some explanation. By s. 207 of the Act, the provisions of the bankruptcy law as to secured creditors are applied to insolvent companies in winding up. The result is that a secured creditor of an insolvent company in liquidation may adopt one of four courses: (1) he may rely on his security and not prove at all; although, of course, should his security on realisation prove to exceed the amount of his debt, he must hand over the surplus to the liquidator; (2) he may realise his security, and if it shows a deficit, he may prove for the balance; (3) he may give up his security to the liquidator and prove for the whole debt; (4) he may assess the value of his security, and, after deducting the assessed value, prove for the balance of his debt.

An important duty of the liquidator arises in connection with secured creditors. The bulk of secured creditors of a company are ordinarily debenture holders, that is to say, creditors of the company whose debts are secured in most instances by a mortgage or charge upon the whole undertaking of the company, including, generally, its uncalled capital. The liquidator must ascertain whether the debentures were validly issued, and whether they are duly registered in cases where registration is required, remembering that, should the security turn out to be invalid, the unsecured creditors will receive the benefit of it with the debenture

holders, who in such a case would be themselves, really, unsecured creditors. The question of what is the best policy for the liquidator to adopt, where the whole of the company's assets are mortgaged to debenture holders, is often one of extreme difficulty, and sometimes it happens that a Scheme of Arrangement, under s. 120, (see p. 180) is the best solution. The validity or otherwise of any security held by any secured creditor other than debenture holders it is also within the province of the liquidator to investigate. In this connection s. 212 must not be overlooked. By that section a floating charge, given within three months before the commencement of the winding up, is invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, with interest at 5 p.c. on that amount, unless it be proved that the company was solvent immediately after the creation of the charge. This the person claiming under the charge must prove. The liquidator must carefully investigate the circumstances in the event of his finding that such recent charges exist.

Lists of Contributories.

Assuming that the liquidator has at length ascertained the extent of the company's liabilities and of its assets, he will be able to determine what further steps are necessary in the winding up. If the assets exceed the liabilities and the costs of winding up, he will be able to pay the debts and expenses of winding up, and will then distribute any surplus assets amongst the shareholders in accordance with their rights. But if the company is insolvent, or if the liabilities, including the costs of the liquidation, exceed the assets, it will be his duty to increase the assets, if possible, by calling up the whole or part of the unpaid capital. If the whole of the capital is fully paid, no further sum can be raised from the shareholders, except in cases where the articles of association of a company provide for such further payments, *e.g.* in companies limited by guarantee. But if the capital is not fully paid, the duties of the liquidator as regards settling lists of contributories and making calls must be undertaken.

It must not be assumed that the liquidator will take no steps towards settling the lists of contributories until he has accurately ascertained the amount of both assets and liabilities. In many cases he will be able to determine whether or not calls upon the contributories will be required long before he knows the precise financial position of the company, although he will generally not proceed actually to make calls until he knows approximately how much is required to be called up. It may in some cases be obvious at the outset

that every farthing of unpaid capital will be wanted, and in these cases the work of settling the list of contributories and making calls can be taken in hand at once.

S. 186 gives the liquidator in voluntary winding up the same powers as the Court in the matter, and provides that 'any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories.' A contributory is defined by s. 124 of the Act as a person liable to contribute to the assets of a company in the event of its being wound up. The term also includes any person alleged to be a contributory before his liability as such is finally determined. It has been held that the very wide words 'person liable to contribute to the assets of a company, &c.,' do not include debtors to the company, but only past and present members who are liable to contribute. On the other hand, the word contributory includes a fully paid shareholder, although he cannot be placed on the list of contributories against his will. And it may be stated that the term contributory is used in winding up, broadly but inaccurately, as being synonymous with shareholder.

There are two lists of contributories, commonly called the 'A List' and 'B List.' The 'A' list contains the names of existing members of the company who are liable to contribute, and the 'B' list the names of such past members as are liable to contribute. The liabilities of both classes are regulated by s. 123 of the Act, the effect of which may be summarised as follows: Existing members are primarily liable to contribute to the extent of the amount unpaid on their shares; if the amount is insufficient, then, and only then, are past members liable to contribute, but subject to the restrictions that a member who has ceased to be a member for a year or more before the commencement of the winding up cannot be made liable, that no past member is liable to contribute in respect of debts incurred after he ceased to be a member, and that his liability is limited to the amount unpaid on the shares he held. It often happens that it is unnecessary to settle the 'B' list at all. The liquidator is not bound by Rules 77 to 82, since they apply only to compulsory winding up, but in practice he will generally follow the procedure there indicated. His 'A' list will be in two parts, the first part containing contributories in their own right, *i.e.* the beneficial holders of shares in the company, and the second part containing contributories other than in their own right, *e.g.* as executors or administrators of deceased shareholders, or as trustees of a bankrupt shareholder. The 'B' list, if any, will similarly be in two parts.

After making out the lists, the liquidator will fix a day for settling them, giving notice to each person whose name has been inserted therein of the time and place and of the particulars in the list referring to such person, and stating that if no sufficient cause is shown to the contrary, the list will be settled to include him therein. At the time fixed the liquidator will hear objections and either decide them on the spot or hold them over for further consideration. As regards objections, legal advice is commonly indispensable. The liquidator may either, after due consideration of the case, place the name of the objector on the list as settled, and leave him to apply to the Court under s. 193 as a contributory for rectification of the list or of the register, or he may himself apply to the Court for a declaration of liability. The usual course is for the liquidator to settle the name on the list and leave the contributory to his remedy. Having settled the lists, the liquidator will proceed to make such calls as may be necessary.

Here may conveniently be noticed the power which the liquidator has of enforcing the payment by contributories of sums due from them before the winding up, whether in respect of calls or other matters. By the combined effect of s. 165 and s. 193 of the Act, he may apply to the Court for an order upon contributories to pay any such sums due from them. Orders of this kind are called balance orders. Balance orders may be enforced by writ of execution by virtue of s. 178 of the Act. A balance order is, however, not a judgment, and accordingly does not extinguish the right of action for calls. Nor can an action be brought upon the order, as upon a judgment, nor a bankruptcy notice be issued in respect of it. In practice, orders are sometimes made for payment, not only of calls made before the winding up, but also of calls made during the winding up.

Set-off.

The doctrine of set-off in winding up must be briefly dealt with at this point. A set-off is a placing a debt against a credit, and striking a balance, the payment of which balance will settle both transactions. It is an ordinary reasonable business transaction to simplify the adjustment of mutual accounts. Thus, if A owes B £15, and B owes A £10, obviously both debts can be adjusted by A paying B £5. So, in the case of a company not being wound up, if there is due from a shareholder to the company £100 in respect of calls, while the company owes the shareholder £75 for goods supplied, both transactions may properly be closed by the shareholder paying £25 to the company. But in winding up the rule is different. A contributory cannot set off a debt due

to him from the company against money due from him to the company in his capacity of contributory, *e.g.* for calls. He must first pay what, as a contributory, he owes the company, since the company's assets must be realised, and then his position will be that of a creditor of the company who is entitled to be paid with the other creditors, in full if funds permit, but otherwise to receive a dividend. Any other rule would give preferential treatment to the contributory who, by the accident of circumstances, is also a creditor of the company. However, when the contributory is a bankrupt, set-off is allowed. Thus, the liquidator, seeking to prove in the bankruptcy for calls due, must first deduct from the amount of the calls the amount owing from the company, and prove for the balance. And conversely, where the debt due from the company exceeds the amount of the calls, set-off is allowed and the balance due to the bankrupt's estate may be proved for in the winding up. But when all the creditors of a company are paid in full, any sum due to a contributory from the company on any account whatever may be allowed to him by way of set-off against any subsequent call or calls (s. 165).

Meetings in Liquidation.

Some of the incidental duties of the liquidator, which he may have been called upon to perform before all the assets have been realised, require a passing notice. It may be necessary or desirable for him to summon general meetings of the company from time to time. S. 194 of the Act empowers him to do so for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose he may think fit. There may often be important steps in the winding up upon which the liquidator may deem it advisable to take the opinion of the company before acting. When a meeting is to be called, the liquidator will summon it in the usual way, by notices in writing stating the objects of the meeting. S. 195 makes it incumbent upon the liquidator, in all cases where the winding up continues for more than a year, to summon a general meeting of the company at the end of the first and of every subsequent year from the commencement of the winding up; and at every such meeting he must lay before the shareholders 'an account of his acts and dealings, and of the conduct of the winding up during the preceding year.' An annual meeting of creditors is also frequently called for the same purpose, though there is no obligation upon the liquidator to call it. In addition to the meetings already mentioned, which are summoned by the liquidator, the Court may, by virtue of ss. 219 and 193 of the Act,

direct meetings of creditors or contributories to be summoned, with the object of ascertaining their wishes in any matter.

The liquidator is bound, by s. 224, in all cases where the liquidation is not concluded within a year, to send periodical statements to the Registrar of Joint Stock Companies in the form presented by the Board of Trade.

Liquidators in voluntary winding up have the power, with the sanction of the Court, to prosecute any past or present director, manager, officer, or member of the company where it appears to them that any such person has been guilty of any criminal offence in relation to the company (s. 217).

Distribution of Assets.

The duty of the liquidator in distributing the assets may now be considered. Where the assets are insufficient to pay in full the liabilities of the company and the costs of the liquidation, the liquidator must be careful to observe the legal priorities. The first payments to be made are payments of the expenses of the liquidation, for s. 196 of the Act enacts that 'all costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.' The expenses will, of course, include legal expenses properly incurred. Whether or not a solicitor's bill should be taxed is a matter for the liquidator to consider; if he requires it to be taxed he must apply to the Court, as usual, under s. 193. It will be noticed that the liquidator's own remuneration is expressly included amongst the expenses. Payments on account of expenses may be made by the liquidator from time to time out of any funds in his hands. The costs of the prosecution of delinquent directors and others, mentioned above, are by s. 217 to be paid in priority to all other liabilities. This would appear to put the costs of such prosecutions on the same footing as the costs and expenses of the liquidation.

Preferential Payments.

After the expenses, the company's debts must be paid, and, first, it is to be observed that, by a recent decision, the right of the Crown, by virtue of its prerogatives, to be paid in priority to all other creditors, has been held to have been superseded by legislation, and its only existing right to priority is that conferred by s. 209 (1) (*a*) (see below) [*In re H. J. Webb & Co. (Smithfield, London)*, 1922, W.N. 135]. Hence the first creditors to be paid are now those to whom priority is given by s. 209, which section is as follows:—

209.—(1) In a winding up there shall be paid in priority to all other debts—

(*a*) All parochial or other local rates due from the company at the date hereinafter mentioned, 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 fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any

floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(*b*) in any other case, the date of the commencement of the winding up.

The date referred to above is, therefore, in a voluntary winding up, the date of the passing, or confirmation, as the case may be, of the winding up resolution.

The above list of preferential payments has been supplemented by the National Insurance Act, 1911, s. 110 of which adds to the list contributions payable by the company in respect of employed contributors or workmen in an insured trade during four months from the commencement of the winding up. All these debts are to rank equally among themselves. Accordingly, if the assets are insufficient to pay them in full, they must abate rateably.

With reference to the priority of salaries and wages of clerks and servants, it has been held that a managing director is not a clerk or servant within the meaning of the section [re *Newspaper Proprietary Syndicate* (1900), 2 Ch. 349]. And it has been held that a company's secretary who does not give the whole of his time to the service of the company, but pays a clerk to do the bulk of the work, is not a servant so as to be entitled to priority, although in

other cases he may be [*Cairney* v. *Back* (1906), 2 K.B. 746]. And there have been other decisions on particular facts.

Surplus Assets.

After the above debts have been paid, the liquidator will then proceed to pay the other creditors as far as possible, by means of one or more dividends, all being treated alike and receiving a proportionate amount of their respective debts. If all creditors have been paid in full and assets still remain, then it is the duty of the liquidator, under s. 186, unless it is otherwise provided by the articles of the company, to distribute the money in hand among the members, according to their rights and interests in the company. The same section provides that the liquidator shall adjust the rights of the contributories among themselves, and empowers him to make calls for the purpose. The rights of the members must be ascertained from the memorandum and articles, and the available assets distributed in accordance therewith. Very difficult questions frequently arise as to how, in the particular circumstances, having regard to the provisions of the memorandum and articles, the assets should be distributed, and legal advice is often sought by the liquidator as to how he should proceed, or he not infrequently applies to the Court under s. 193.

A few general principles may, however, be noticed. If the memorandum and articles are wholly silent as to the rights of members on a winding up, the liquidator's first duty is to pay off the paid-up capital. If the assets do not allow the whole of the paid-up capital to be paid off, the liquidator must first repay those shareholders who have paid up a larger amount than others, in proportion to the number of shares held by them, the excess which they have so paid, and, if necessary, he must make a call upon those who have paid the lesser amount, so as to equalise matters. To take a simple concrete instance, suppose that in a company with an issued capital of 3,000 shares of £1 each, of which 2,000 are paid up to the extent of 10s. and 1,000 to the extent of 5*s*., the liquidator, after paying all expenses and all creditors, has a sum of £50 in hand. If this were returned to the holders of the 2,000 shares, 10*s*. paid up, the result would be merely to return 6*d*. per share, and these shareholders would be at a disadvantage. The liquidator's duty, accordingly, is to make on the holders of the 1,000 shares, 5*s*. paid, a call of 3*s*. per share, which will enable him to return an additional 1*s*. 6*d*. per share to the holders of the 2,000 shares, thus leaving every share 8*s*. paid. If, after all the paid-up capital has been returned, there is still a surplus, it is, in the absence of special provision to the contrary, returnable to

all the shareholders alike in proportion to the number of shares held by each [re *Bridgwater Navigation Company* (1889), A.C. 525].

But the memorandum or articles of a company commonly make some provision as to the distribution of what are called 'surplus assets' in a winding up, *e.g.* preference shareholders with priority as to capital are entitled to be repaid in full before ordinary shareholders receive anything. The term 'surplus assets' in articles of association often gives rise to difficulty. It may have one of two distinct meanings, according to the context, and according to the interpretation of the memorandum and articles as a whole. Sometimes it means the assets remaining after paying the expenses of the liquidation and the creditors, and sometimes the assets remaining after returning paid-up capital also. And, according to its meaning, which it is often hard to determine, must the assets remaining be distributed. It is to be observed that the holders of preference shares have no priority in the matter of the return of capital unless it is so provided. Their preference is a preference as regards dividends alone. It is impossible here to go into the widely varying clauses in articles of association as to the distribution of surplus assets.

Applications to the Court.

It seems advisable here to deal more systematically with a subject which has already several times been mentioned. This is the matter of applications to the Court. S. 193 of the Act enables the liquidator, or any contributory, or any creditor, to make application to the Court in practically any matter of difficulty or dispute. S. 193 is as follows: 'Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. The Court, if satisfied that the determination of the question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to the application, on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.' It is to be observed that the words of the section are very wide; application may be made to the Court to determine *any* question arising in the winding up, or to exercise any of the powers exercisable in compulsory winding up; and, further, the Court may, upon application, make *any* order—even an order totally different from what is asked for.

A number of cases in which application to the Court is sometimes made have already been noticed. Applications by the liquidator may be of almost any kind, but they may be roughly divided into three classes, namely, applications made with the object of obtaining a decision on a disputed point, applications to the Court to exercise its statutory powers to permit acts which may not be done except with the leave of the Court, and applications made with the object of obtaining the sanction of the Court to a proposed step or arrangement. In the third class of case, the liquidator may, generally, if he thinks fit, take the proposed step without any application to the Court, and his object in applying is to protect himself. Just as trustees are empowered to apply to the Court for directions in cases of doubt or difficulty, so the liquidator may, in order to safeguard himself, apply under s. 193. In case of any matter involving a large amount of money, or any specially important or unusual act, he may properly take steps to protect himself. It would be prudent, for example, to apply to the Court for its sanction before taking proceedings in a matter of magnitude, or before borrowing more than a small amount of money. Applications by contributories are generally made when they are dissatisfied with the decision of the liquidator on their rights or liabilities, *e.g.* when they consider themselves improperly settled on a list of contributories. Creditors' applications are generally of one of two kinds, that is to say, applications made in consequence of decisions of the liquidator adverse to their interests in individual cases, and applications made when they are dissatisfied with any matter in the liquidation as being disadvantageous to them generally, as, for example, if they consider the liquidator's remuneration too high; or if, in their opinion, a proposed compromise is not sufficiently in the interests of the company.

Liability of Liquidator.

With reference to the liability of the liquidator in voluntary winding up, it seems unnecessary to deal with his criminal liability, or with his liability to penalties in case of certain defaults. As regards his civil liability, his position is simple. He is the agent of the company, and is not under the same liability as a trustee for negligence in the performance of his duties, but only for misfeasance or breach of trust. The negligence, which consists in an error of judgment, is not sufficient upon which to charge a liquidator, but, of course, personal misconduct, *e.g.* by failure to perform his statutory duties, will always render him responsible. When he employs a solicitor in the course of the

liquidation, he is not, in the absence of an express bargain, personally liable for the solicitor's costs. When he contracts he should, of course, be careful to make it clear that he contracts on behalf of the company and not personally; otherwise, it is possible that he might, as between himself and the other party to the contract, inadvertently assume a personal liability.

A few matters in which it behoves the liquidator to be specially careful may be noticed. In carrying on the business of the company for the purposes of its beneficial winding up, he will do well to consider carefully the precise effect of any proposed step, for a new contract might, in many instances, be made in excess of his duties; in case of doubt, application to the Court may often be desirable. Again, he should hesitate before embarking on costly litigation; for although in general an unsuccessful liquidator will be allowed his costs out of the assets of the company, yet it has been held that the Court has jurisdiction to order him to pay them personally, and, in case of an action being improperly or recklessly brought, he may find himself ordered to pay the costs out of his own pocket. Too much care cannot be exercised by the liquidator in avoiding all payments or dealings with the company's assets which are not expressly or obviously authorised.

Removal of Liquidator.

In certain circumstances a liquidator may be removed from his position. It is not open to the shareholders themselves to remove a liquidator; the power of removal lies in the Court alone. S. 186 of the Act provides that 'the Court may, on cause shown, remove a liquidator, and appoint another liquidator.' Contributories or creditors may apply for the removal of a liquidator, and the matter is one for the discretion of the Court, which, however, can only act 'on cause shown.' It is impossible to predicate with certainty what circumstances will, or what will not, amount to 'cause.' It may, however, be safely assumed that gross misconduct, such as wrongful dealing with the company's assets, will constitute sufficient cause; but pecuniary interest in the winding up, apart from the liquidator's remuneration, will not be sufficient unless it is calculated to interfere with the proper performance of his duties. Gross immorality is a factor to be considered, but in many cases it would not alone be sufficient to warrant a liquidator's removal. The dominant principle on which the Court acts in this, as in all matters connected with the winding up, is that the benefit of the company and the wishes of the shareholders are to be first considered; and, unless the facts

proved upon the application are sufficient to show that the continuance of the liquidator in office will be prejudicial to the company's welfare, that is, to the creditors and the contributories, or is for adequate reasons distasteful to the shareholders, the liquidator will not be removed.

As regards vacancies occurring in the office of liquidator, this is provided for by ss. 186 and 189 of the Act of 1908. Under s. 186, when no liquidator is acting, the Court, upon the application of a contributory, may appoint a liquidator; and, as has already been seen, the Court may, on the removal of a liquidator, appoint another. Further, it has been held that the Court may, if an additional liquidator is required, appoint him, and that an application to the Court for the appointment of an additional liquidator may be made by an existing liquidator [re *Sunlight Incandescent Gas Lamp Company* (1900), 2 Ch. 728]. Under s. 189, on the occurrence of a vacancy in the office of liquidator appointed by the company, by death, resignation, or otherwise, the company may in general meeting, subject to any arrangement they may have entered into with their creditors, fill up the vacancy; if more than one liquidator was originally appointed, the remaining liquidator or liquidators, or any contributory, may convene the meeting; if the sole liquidator has vacated his office, any contributory may convene it; it must be convened and held according to the provisions of the articles, or as the Court upon application may direct.

The Final Meeting.

The duties of the liquidator upon the conclusion of the winding up may now be considered. These are laid down by s. 195 of the Act. The first step in the final proceedings is for the liquidator to make up an account, showing how the winding up has been conducted and the property of the company disposed of. With reference to the form of the account, none is prescribed by the rules; the liquidator will accordingly prepare it in such form as he thinks best. It may, however, conveniently take the general form of the periodical accounts which the liquidator is required to furnish to the Registrar under s. 224 in the case of companies the winding up of which is not concluded within a year, with the necessary difference that it will be a complete, and not an incomplete, account, and certain statements required in the periodical account will be inappropriate in the case of a final account. Having regard to the fact that the account is required to show 'how the winding up has been conducted and the property of the company disposed of,' it appears to be necessary that considerable detail should be shown. Or, if the transactions are summarised, reference should be

made to the books or documents whence the summaries are derived.

The account being prepared, the next step is to convene a general meeting of the company. S. 195 requires the meeting to be summoned by advertisement. The advertisement is to be published in the *Gazette* one month, *i.e.* one calendar month, at least, before the day fixed for the meeting. But even although no extraordinary resolution of the kind to be mentioned presently is required to be passed, few liquidators will be content merely with the notice by advertisement in the *Gazette*, but will send notices to the shareholders in the manner prescribed by the articles. An advertisement in the *Gazette* only might result in no one being present at the meeting except the liquidator or, at all events, no quorum of shareholders. But in the great majority of cases advantage will be taken by the liquidator of the provisions of s. 222 of the Act as to disposing of the company's books. This section empowers a company which has been wound up voluntarily, and is about to be dissolved, to dispose of the books in such way as it by extraordinary resolution directs. And, since an extraordinary resolution is necessary for the purpose, notice of the intention to propose such resolution must, by s. 69, be duly given to all the members. A single notice will suffice for both purposes: it will intimate to the shareholders that the meeting is to be held for the purpose of having the liquidator's account laid before them, showing the manner in which the winding up has been conducted and the property of the company disposed of, and of hearing any explanation that may be given by the liquidator, and also for the purpose of determining by extraordinary resolution how the books and papers of the company and of the liquidator are to be disposed of.

At the meeting the liquidator will lay his account before the shareholders, and should have ready for inspection, if required, the books and other documents from which it is compiled. His record book, or diary, should also be before him for reference if necessary. He will, in general, explain in such detail as he considers necessary, the steps which have been taken in the liquidation, drawing attention to any matters of more than ordinary importance, and will answer such questions or give such explanations as the shareholders may ask. It is not necessary for the meeting to pass any resolution adopting the liquidator's account, although this is sometimes done, but the question of the disposal of the books must be dealt with by resolution. Frequently it is resolved to destroy the books, but, seeing that the dissolution

of the company does not take place for three months from the registration of the liquidator's return as to the holding of the meeting, it is obviously inadvisable, and even improper, to authorise the immediate destruction of the books. Where destruction is resolved upon, the resolution should authorise the liquidator to retain the books until the dissolution of the company and then to destroy them. If it is inadvisable for any reason to destroy the books, the liquidator, or any one else, may be required to keep them for a stated period. Or, if the business of the company has been sold as a going concern, the meeting may resolve that the trading books of the company be handed over to the purchaser, and the remainder destroyed or retained for a time. It lies with the meeting entirely to determine the fate of the books and papers of the company and of the liquidator, but in most cases it will be guided by the liquidator in deciding upon the desirability or otherwise of retaining them. There is no responsibility on any one for the custody of the books after five years from dissolution (s. 222).

Dissolution. Within one week after the meeting the liquidator must make a return to the Registrar of the holding of the meeting and of the date on which it was held. If he fails to do so, he is liable to a penalty of £5 per day during default. The company is deemed to be dissolved at the expiration of three months from the registration of the return. The dissolution may, however, be deferred by order of the Court for any length of time, on the application of the liquidator or any person appearing to the Court to be interested (s. 195); or it may, on a similar application within two years from dissolution, be set aside (s. 223).

Until dissolution the company continues to exist, and the result of this is that proceedings may still be taken, or claims made against the company; or assets may be discovered which it would be the duty of the liquidator to distribute. Should a liability be discovered, which the creditor was not by his own default precluded from pursuing, an order might be obtained from the Court that a call be made to meet it. And the existence of the company is revived, with similar results, if the dissolution is set aside.

CHAPTER XX

POWERS OF ATTORNEY[1]

Preliminary.

THE law and practice relating to powers of attorney will be affected as from 1st January, 1925, by the Law of Property Act, 1922, which comes into force on that date; and the modifications effected by this legislation are noted below. The two most important provisions, so far as secretaries of companies are concerned, are, first, the protection afforded to third parties by making the statutory declaration of an attorney conclusive evidence of the non-revocation of his power; and secondly, the requirement that powers of attorney covering dealings with land shall be filed at the Central Office or the Land Registry, which may lead to a more general filing of powers of attorney in other cases.

The Right to appoint an Attorney.

The law gives to every man, not under any incapacity, the right to do through another that which he may legally do himself. He may, therefore, when appointing another to act for him in the conduct of his affairs, set forth the terms of the appointment in writing, and, when he does so, the document is known as a power of attorney, and the agent himself is described as the attorney or donee of the authority. Thus, a power of attorney may be defined as a written authority to one person to act in the place of another who gives it. For the complete recognition of this legal right to delegate one's authority there must be a correlative duty resting upon third parties, that is to say, the law must insist that, when a man deputes his authority to another by power of attorney, that instrument must be recognised and acted upon by those with whom the principal has business relations.

Capacity.

The capacity to appoint an agent is practically co-extensive with the capacity to contract. Thus a power of attorney given by an infant is void [*Zouch* v. *Parsons* (1765) 3 Burr:], unless for the purpose of doing acts by which the infant himself could be legally bound. There is an important exception in the case of a delegation of duties involving discretion and confidence; for it is generally held that trustees cannot, at

[1] All the statutory provisions mentioned in this chapter will be re-enacted in the new consolidating Conveyancing Act, which is to be passed shortly, and references to such new Act must then be substituted for those in the text.

any rate without the consent of their beneficiaries, delegate their discretionary powers. It was for this reason that a special Act was passed during the recent war enabling a trustee to delegate his powers while engaged on war service, 'notwithstanding any rule of law or equity to the contrary' [Execution of Trusts (War Facilities) Act 1914]. Nevertheless it has been held that in 'some circumstances a trustee might appoint an attorney to exercise a discretion in matters of the trust in a colony or foreign country' [*Stuart* v. *Norton* (1860) 9 W. R. 320]; and the Law of Property Act (s. 125) now gives statutory recognition to this principle.

Sealing. The instrument appointing the agent must be in writing and must be signed by the principal. It should always be under seal, for the cases in which a seal is not necessary are few and technical, and a power of attorney, which, as is nearly always the case, confers authority to execute a deed, must itself be in the form of a deed. Certain foreign companies, however, do not possess a Common Seal, and sealing is then impossible. A case of this kind came under judicial notice in *Colonial Gold Reef Ltd.* v. *Free State Rand Ltd.* (1914) 1 Ch. 382, where the articles of association of an English company provided that 'the instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in that behalf, or, if such appointor is a corporation, under its Common Seal.' A South African company having no Common Seal and not required to have one was a shareholder, and by writing under the hands of two directors appointed an attorney in England to vote on its behalf, with power of substitution; it was held that the requirement of a Common Seal in the Article only applied to corporations having a Common Seal according to English law and that the instrument in question could be recognised as valid and effective.

Attestation. Next, the instrument should be witnessed by at least one person as evidence that the signature to the instrument is that of the alleged donor, although, as we shall point out later, it is part of the responsibility imposed on the person who deals with an attorney to be cautious lest he act upon a spurious document.

Designation of Attorney. A power of attorney may be granted to a person designated by occupation and not by name, such as the Secretary for the time being of a specified company. In such cases it is sometimes advisable to provide for the identification of the donee by adding after the designation words to the following effect, 'of whose appointment a certificate signed by (*e.g.* two Directors of the company) shall be conclusive evidence.'

A power of attorney should be stamped in the country in which it is to be used with the appropriate duty imposed by the laws of that country. **Stamp.**

The third party will continue his inspection of the document with a view to ascertaining its scope. Here it will be convenient to remember the principle of law, that the apparent authority is the real authority, *i.e.* the third party who is called upon to act under a power of attorney is not asked to go behind the express written authority that has been laid before him and to inquire whether the attorney is really acting in his own interests or in those of the donor of the power. **Scope of the Document.**

To say, however, that the apparent authority is the real authority is not to say that the third party must not be on his guard. If a person is acting *ex mandato*, those who are about to have dealings with him must look to his authority and assure themselves of its genuineness, its legal form and its limitations. There are two divisions of powers of attorney—general and special. A general power of attorney authorises the lawful holder of it to deal either with the entire business or with some complete branch of the business of the donor. A special power enables the lawful holder of it to do only some particular act or class of acts. The distinction is really a matter of interpretation. Where special powers are conferred by the instrument, there are usually clauses of a general nature which must not be dissociated from the particular clauses. In these cases general expressions do not give the attorney powers at large; they merely confer on him the authority to do any unspecified acts which may become necessary for the proper fulfilment of the purpose for which the instrument was primarily granted [*Attwood* v. *Munnings* (1827), 7 B. & C. 278]. No expanded interpretation of the general words is permitted beyond what is essential to the carrying out of the principal's intentions.

The strictness with which the Courts observe this rule of interpretation makes it incumbent on third parties to exercise scrupulous care in dealing with an attorney who produces to them an instrument created with an express purpose but filled with a mass of general language. The case of *Attwood* v. *Munnings* (above) well illustrates the point. A letter of attorney, giving power (among other things) to indorse, negotiate and discount or acquit and discharge bills of exchange, promissory notes, or other negotiable securities which were, or should be, payable to the principal, or should need indorsement; to buy, sell, barter, and exchange and import all goods, wares and merchandise, and to trade and

deal in the same and in such manner as should be deemed most for his interest; and generally to make, do and execute, transact, perform, and accomplish all and singular such further and other acts, matters and things, as should be requisite, expedient and advisable to be done in and about the premises and all other his affairs and concerns, as he might or could do, if personally acting therein—has been *held* not to authorise the attorney to accept a bill in the name of the principal, especially if drawn in relation to concerns in which he had a partnership interest only. Here it will be seen that a special power was given to indorse bills but not to accept them, and the words 'generally to make, do and execute,' &c., were not permitted to expand the meaning of the operative clause.

Power to Borrow.

In construing a power of attorney the Courts are jealous of the donor's interests, and they decline to read into an instrument through the medium of general clauses the delegation of authority to the attorney to do some act which might place the donor's estate in a less favourable position than that in which it stood when the instrument was executed. As it was expressed in an old case [*Henley* v. *Sloper* (1828), 8 B. & C. 16], the power of attorney is construed more readily into an authority to take on behalf of the donor than to bind him. Thus, power to borrow must be found indisputably expressed in the instrument if a third party wishes to lend to the attorney without risk [*Bryant* v. *La Banque du Peuple* (1893), A.C. 170].

'Delegatus non Potest Delegare.'

An attorney cannot delegate his powers to a substitute, unless there is an express provision to this effect; and, similarly, a power of substitution does not, in the absence of a special provision, include a power of sub-delegation by the substitute.

Custom.

External circumstances, such as a custom of trade, may be used for the interpretation of the powers granted by the principal, but a usage or custom—if it was unknown to the principal—must be shown to be reasonable [*Hay* v. *Goldsmidt* (1804), 1 Taunt. 349]. For example, when a man, unaware of the usages of a market, engages a broker on that market, he authorises that broker to contract on the footing of such usages as are reasonable and do not alter the nature of the contract [*Perry* v. *Barnett* (1885), 15 Q.B.D. 388].

Application of Local Laws.

A power of attorney is generally construed according to the law of the country in which the instrument was executed, unless there is evidence in the instrument itself that it is the intention of the parties to it that the law of the country where the contract is to be performed should prevail. Here

also it will be seen that the Courts do their best to carry out the intention of the donor of the power [*Pattison* v. *Mills* (1828), 1 Dow. & Cl. 342; *Chatenay* v. *Brazilian Telegraph Company* (1891), 1 Q.B. 79]. Thus, if a power of attorney be granted abroad to take effect in this country, it may be construed in accordance with English law, even though it be written in a foreign language and drafted in foreign form. And where a power admits of two different interpretations, the attorney is within his right to adopt consistently the interpretation which to him seems best. But where there is a choice between a definite and an indefinite construction of the instrument, the attorney is bound to act upon the definite construction [*Bertram* v. *Godfray* (1830), 1 Knapp, 381].

Alternative Interpretations.

The Conveyancing Act, 1881, section 46, sub-section (1), declares that 'the donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument or thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.' The words 'by the authority of the donor of the power' have led to the contention that the section can only apply to an instrument in which the principal has expressly stated that the donee may execute in his own name. The section is purely permissive, and, as there is still much doubt and no decision on the question, the attorney should sign all documents in the name of the principal, lest he may make himself a party to any covenant.

Attorney's Signature.

The form of words is immaterial; it does not make any difference whether the name of the attorney appears before or after that of the principal, provided it is made clear that the attorney is acting solely as the agent of the principal [*McArdle* v. *Irish Iodine Company* (1864), 15 Ir.C.L.R. 146]. It is a duty imposed on those who have dealings with an attorney that they shall require a signature that is valid in law, just as they are expected to have proof that the signature to the power of attorney itself is that of the principal [*Bank of England* v. *Davis* (1826), 5 B. & C. 185].

As regards the authenticity of the attorney's signature, a form (see Form 41, p. 396) is sometimes presented to the donor for signature, and in this he provides a specimen of the attorney's signature and a guarantee that the power is still in force. Where the signature of the donor is unobtainable,

Form 42 (see p. 397) may be used. Form 45 (p. 401) provides for a specimen signature of the donee. While Form 41 goes no further than to declare that the power was current at the date on which the guarantee was given, it affords the third party a sense of security, in that it might well be held by the Court that the donor had acted unreasonably, if he revoked the authority without communicating with the person to whom he gave such a warranty. It must be understood that there are no legal means of compelling the donor to provide such a security.

Production of Power.

It may be well to state here also that the third party need have no fear that his recognition of the authority for one purpose which is clearly defined, will bind him to recognise it for all the powers which it purports to convey, but which may not be unambiguously set forth in its clauses. He has the unchallengable right to call for the production of the power every time the attorney desires to exercise the authority delegated to him.

Deposit of the Power.

It has been held that 'the power of attorney is the deed of the attorney to whom it was given, and he is to keep it and under it to show that he has authority for what he has done' [*Hibberd* v. *Knight* (1848), 2 Exch. 11, per Baron Parke]. In addition to this right on the part of the attorney, it appears that there is a right on the part of the principal to demand the return of the instrument after it has been revoked. The only course at present left to the third party is to obtain a copy of the instrument.

The Conveyancing Act, 1881, s. 48, referring to instruments creating powers of attorney executed either before or after the commencement of the Act, makes the following provisions:

(1) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2) A separate file of instruments so deposited shall be kept, and any person may search that file and inspect every instrument so deposited, and an office copy shall be delivered out to him on request.

(3) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4) An office copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5) General rules may be made for the purposes of this section, regulating the practice of the Central Office and prescribing, with the concurrence of the Commissioners of her Majesty's Treasury, the fees to be taken therein.

The above enactment does not create any obligation to deposit the instrument at the Central Office. Powers of attorney relating to land have, however, been placed on a new basis in this respect by the Law of Property Act 1922, s. 80 of which is as follows:—

(1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certificate thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to s. 48 of the Conveyancing Act 1881, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction; Provided that if the instrument relates to land or a charge registered under the Land Transfer Acts 1875 and 1897, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Central Office and an office copy shall be filed at the Registry.

(2) Notwithstanding any stipulation to the contrary a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof or of the material portion thereof delivered to him free of expense.

(3) This section only applies to instruments created after the commencement of this Act. [It should be noted that by virtue of ss. 108 and 188 of the

Act 'land' in the above section includes land of any tenure, mines and minerals, and buildings or parts of buildings.]

In all other cases a third party has therefore no power to insist upon registration; and, while the law remains as it is, the only alternative would seem to be the possession by the third party of a copy of the power carefully collated by him. Such a copy would, of course, be of little more value than a private memorandum, as it would not be admissible in evidence. Therefore, it has become the practice of some firms to obtain a written undertaking from the attorney that he will not part with or destroy the instrument without communicating with the holder of the copy.

Statutory Protection.

Certain safeguards are, however, provided by Statute. S. 47, of the Conveyancing Act, 1881, reads as follows:—

(1) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation, was not at the time of the payment or act known to the person making or doing the same.

A statutory declaration by an Attorney that he has not received any notice or information of the revocation of such power of attorney by death or otherwise, shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

(2) But this section shall not affect any right against the payee or any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3) This section applies only to payments and acts made and done after the commencement of this Act.

The last sentence in sub-section (1) was added by the Law of Property Act 1922, on the recommendation of the Institute, and will be discussed below.

The third party is placed on still firmer ground so far as regards one class of powers referred to in s. 9 of the Conveyancing Act of 1882, which reads:

(1) If a power of attorney, *whether given for valuable consideration or not,* is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and—

(ii) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power had not been done or happened; and—

(iii) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2) The section applies only to powers of attorney created by instruments executed after the commencement of the Act.

Revocation.

A power of this nature, of course, places the third party in a position of complete safety as regards revocation for any period up to twelve months. For example, a power of attorney, which is made irrevocable for a year, authorising the donee to sell land and give receipts for the purchase money, is not avoided by the donor subsequently becoming an enemy [*Tingley* v. *Muller* (1917), 2 Ch. 144]. In the case of powers given for a greater period, where they are not coupled with an interest of the attorney, the amendment

of the Act of 1881 (printed above in italics) enables the third party to protect himself by requiring a statutory declaration as to non-revocation. But it is clearly desirable that third parties should not make this requirement capriciously, and we have, therefore, to consider in what circumstances they run a risk in not having this protection. The common law of agency was laid down by Lord Blackburn in *Debenham* v. *Mellon* (1880), 6 A.C. 24, at p. 36: 'Where an agent is clothed with an authority and afterwards that authority is revoked, unless the revocation has been made known to those who have dealt with him, they would be entitled to say: "The principal is precluded from denying that the authority continued to exist, which he had led us to believe, as reasonable people, did formerly exist." ' So in a later case [*Scarf* v. *Jardine* (1882), 7 A.C. 345] it was decided that notice of determination of the power is necessary in all instances in which a third person has been induced to believe, through the act of the principal, that the agent had authority. Here the principle of estoppel comes into play. In such cases, in the absence of actual or constructive notice, by lapse of time or other indications, the principal will remain liable to those who dealt in good faith with the agent on the assumption that his authority still continued.

Thus, revocation does not become operative until it is made known. 'The holding out of another person as agent is a representation on which, at the time when it was made, third parties had a right to act, and the principal cannot escape from the consequences of the representation which he made. He cannot withdraw the agent's authority as to third persons without giving them notice of withdrawal. The principal is bound, although he retracts the agent's authority, if he has not given notice and the latter wrongfully enters into a contract on his behalf. Where one of two persons, both innocent, must suffer by the wrongful act of a third person, that person making the representation which, between the two, was the original cause of the mischief, must be the sufferer and must bear the loss' [Lord Justice Brett in *Drew* v. *Nunn* (1879), 4 Q.B.D. 661, at p. 667].

Implied Revocation.

But there is left the problem which dwells in those words in Lord Blackburn's judgment (above)—'as reasonable people.' The expression suggests at once that there is such a thing as implied revocation, and in that direction, as the law now stands, there is a thorny path for the third party. There are innumerable sets of circumstances which would be held to amount to such an implication, *e.g.* the appointment by the principal of another attorney—especially if

the second attorney were invested with powers, the exercise of which would clash with the authority of the first; a lapse of time since the creation of the power such as would lead any ordinary man to doubt the probability of its continued currency; the intervention of the principal himself in the conduct of the business for which the power had been originally granted. Similarly, if a donor says that the attorney is to act only when he is himself prevented from acting, a third party may be at his wits' end to know what to do. In all such cases the third party would be justified in requiring proof of the continuing validity of the power of attorney.

Death of Principal.

There is still the question of the death of the principal. According to the common law, the death of the grantor of a power was a revocation of the authority, but it has been pointed out how this principle has been modified by statute. What then must be the practice of the third party in cases which do not come within those irrevocable powers mentioned in s. 9 of the Conveyancing Act of 1882? It is his troublesome duty to ascertain whether the principal is alive at the time that the attorney desires to act under the power. The representatives of a dead principal, it is true, may ratify, at their discretion, a contract made by the attorney in the name of the principal after his death, but in the absence of ratification they are not bound by it [*Foster* v. *Bates* (1843), 12 M. & W. 226]. Similarly, on the death of the attorney his representatives have no authority to exercise the power, and the death of the attorney revokes the appointment by him of a substitute [*Gee* v. *Lane* (1812), 15 East. 592], for it is assumed in law that the attorney had been chosen by the principal because of his possessing some qualities of mind which fitted him peculiarly either for the conduct or supervision of the principal's affairs.

Form of Statutory Declaration.

A form of statutory declaration will be found on p. 400, Form 44. Presumably the declaration would only give protection so far as regards revocation by the means specified in s. 47 (1) of the Act of 1881, and would not cover a case such as occurred in the *Russian Commercial and Industrial Bank* v. *Comptoir d'Escompte de Mulhouse* [28 T.L.R. (1922), p. 414], where an attorney appointed by a Russian bank in 1914 sought to act under his power in 1919, after the Russian revolution had taken place and the Soviet Government had passed decrees to nationalize all banks in Russia and to confiscate their property. 'In my view,' said Sankey J., 'a power of attorney given to a manager under entirely

different circumstances cannot remain valid after such profound changes and alterations: such a power must be construed as containing an implied condition that it was only valid so long as the same state of affairs existed in Russia with regard to the Government and the status of the Bank as existed at the time when the power was given.'

Power Coupled with Interest.

Where a power of attorney is coupled with an interest in the subject-matter of the power, the instrument is irrevocable until the interest of the attorney has been satisfied or waived. Powers given for valuable consideration are governed by s. 8 of the Conveyancing Act of 1882—an enactment which is sometimes found useful in permitting a power of attorney to be given as security for an advance of money. The section runs:

(1) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(i) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Where, however, the power, though not expressed to be irrevocable, is coupled with an interest, it cannot be recalled until that interest has been satisfied, or abandoned. In such a case it must be clear that the interest—if it is to keep the power alive after the death of the donor of the instrument—must be an interest in the thing itself; the power and the interest must be united in the same person. The interest must be given to secure some claims of the attorney; a power would not be irrevocable under this doctrine merely because the attorney happened to have some lien upon the estate in respect of which the power was granted [*Taplin* v. *Florence* (1851), 10 C.B. 744]. For example, a commission is not such an interest in the power as to make the instru ment irrevocable [*Doward Dickson & Co.* v. *Williams & Co.* (1890), 6 T. L. R. 316]. At one time it was held that even a power coupled with an interest was determined by the death of the grantor; but it was soon decided in equity that where a principal gave an attorney not only an authority to act on his behalf but also an interest in the execution of the power, he conveyed to him an estate which could not fairly be deemed to be destroyed by the principal's death.

Powers Partly Exercised.

Should the authority be but partly exercised when revocation takes place, it is understood that the revocation will be effective as to the part of the authority which has not been executed, but not as to the part already executed, if the authority permits such a distinction. Also, a third party may permit the attorney to complete a transaction which had been begun before the death of the principal. But a third party must not allow an attorney, after notice of the donor's death, to continue to carry out transactions of a nature similar to those already carried out under the power, with the contention that the transactions after the donor's death are but part of a continuous series, constituting in reality the execution of but one uniform commission. Where, for instance, a stockbroker, having a continuation account with a client, instead of closing the account on the death of the client, enters at once on his own authority into a fresh continuation and ultimately makes a sale of the securities at a loss, he has been held liable for the loss incurred [in *re Overweg, Haas* v. *Durant* (1900), 1 Ch. 209].

Joint and Several Powers.

Where there are two or more joint principals, the death of one of them will generally revoke the power as to the other or others [*Gee* v. *Lane* (1812), 15 East 592]. The Courts nowadays, however, do not insist upon observing

the old technical strictness as regards joint powers, and it is conceivable that special circumstances might be found in which the death of a joint principal would not be permitted to revoke the power completely. Meanwhile the third party would be acting with judgment if he did not place faith in speculation, but acted rather as if the old rule were still valid, though it has been relaxed where the exercise of a joint power is concerned. Where a power of attorney was given to fifteen persons jointly and severally to execute such policies as they or any of them should jointly or severally think proper, it was held that the execution of the power by four of the donees was sufficient [*Guthrie* v. *Armstrong* (1822), 5 B. & Ald. 628]. Formerly, the Courts declined to allow the exercise by one person of a power which had been given jointly to two persons, even though the other had died or had declined to act.

Fraud. Where an attorney acting within the scope of his authority commits a fraud, the person who has been defrauded may hold the principal responsible, even in cases where the principal has not derived any benefit from the fraudulent activities of his attorney [*Lloyd* v. *Grace Smith* (1912), A.C. 716]. 'It would be impossible for the business of a mercantile community to be carried on if a person dealing with an agent was bound to go behind the authority of the agent in each case and inquire whether his motives did or did not involve the application of the authority for his own private interests' [Collins, M.R., in *Hambro* v. *Burnand* (1904), 2 K.B. 10]. Further, on this point the law as given in the American case of *Westfield Bank* v. *Cornen* [37 N.Y. 10 Tiff. 320] was quoted in *Bryant* v. *La Banque du Peuple* [(1893), A.C. 170] by Lord Macnaghten as follows: 'Wherever the very act of the agent is authorised by the terms of the power, that is, wherever, by comparing the act done by the agent with the words of the power, the act is in itself warranted by the terms used, such act is binding on the constituent as to all persons dealing in good faith with the agent. Such persons are not bound to inquire into the facts *aliunde*.'

Fraud does not render the contract void; it only makes it voidable. The contract remains valid until the person who has been defrauded has decided whether he will treat it as binding or will disavow it [*Clough* v. *London and North-Western Rly.* (1871), L. R. 7 Ex. 26]. The misrepresentation on which the third party relies to institute his action must be concerned with a material fact in the contract and must have been made before or at the time of the contract. It is

sufficient if it can be shown that the misrepresentation formed one operative element in bringing the third party to his decision to contract with the attorney [*Edgington* v. *Fitzmaurice* (1885), 29 Ch. D. 459].

Forgery.

Where a forged instrument induces contractual relations between parties ignorant of the forgery, and acting in an honest belief as to the genuineness of the document, it is the person that set the negotiations in motion by the introduction of the forged instrument who must bear the loss. Thus, where it became necessary to decide whether a bank or a stockbroker was to lose the value of stock improperly transferred through a forged power of attorney presented by the stockbroker, when both parties had acted in ignorance of any defect in the instrument, it was held that a person professing to contract as agent for another impliedly, if not expressly, undertakes to, or promises, the person who enters into such a contract upon the faith of the professed agent being duly authorised, that the authority which he professed to have does in fact exist. Therefore the professed attorney would be liable to indemnify the innocent third party [*Oliver* v. *Bank of England* (1902), 18 T. L. R. 341; *Starkey* v. *Bank of England* (1903), A. C. 114; *Sheffield Corporation* v. *Barclay* (1905), A. C. 392. It makes no difference that the professed attorney honestly thought he had a genuine authority to act [*Collen* v. *Wright* (1857), 8 E. & B. 647]. He is held to warrant impliedly the authenticity of the document which he exhibits to a third party as evidence of his authority [*Oliver* v. *Bank of England* (above)]. So the signature of the attorney is tantamount to an affirmation that he is invested with a lawful authority to do the act which made the signature necessary [*Sheffield Corporation* v. *Barclay* (above), where Lord Davey said: 'I dissent from the proposition that a person who brings a transfer to the registering authority and requests him to register it makes no representation that it is a genuine document'].

There is, moreover, a degree of protection afforded by the Forged Transfers Act, 1891, to those who have dealings with attorneys. That measure permits a company to place any reasonable restrictions upon the transfer of its shares and to make any reasonable conditions with respect to powers of attorney. But it must be remembered that in these circumstances the person imposing those restrictions should be in a position to show that they were reasonable, and that he was not hindering captiously and unnecessarily the right of the principal to be represented by an agent in the management of his own affairs.

Form. There would seem to be no good reason why a common form of power should not receive currency and recognition for a number of the purposes for which such a document is daily needed in business circles. The Chartered Institute of Secretaries has approved such a form (Form 43), and it is printed in the Appendix (see pp. 398-9). It can be adapted to suit the specific requirements of the principal by the insertion of additional clauses, or the withdrawal of those clauses which exceed in scope the authority intended to be delegated.

CHAPTER XXI

PRIVATE COMPANIES

THE expression 'private company,' until the Companies Act, 1907, came into force, was commonly used amongst the business community to denote a limited liability company in which no capital was raised by appeals to the public and in which the shares were in a few hands. A private company generally resulted from the transformation of an existing business into a company, the shares being held by the former partners, with such other persons as they chose to admit.

Private companies, as described above, differ not at all in law from other incorporated companies; they must register with seven subscribers, make all the returns required in the case of other companies, and otherwise comply with the provisions of the Companies Acts.

But the Companies Act, 1907, which came into force on July 1, 1908, gave a new and technical meaning to the expression 'private company.' That Act, in fact, created the private company, properly so called. No alteration was made in the law as to private companies by the Companies (Consolidation) Act, 1908, but, in consequence of the decision in *Park* v. *Royalties Syndicate* (1912, 1 K.B. 330), to the effect that, provided the articles contain the three necessary provisions prescribed by s. 121 of the Act of 1908, the company does not cease to be a private company, although in fact the provisions are not complied with, the Companies Act, 1913, which is to be construed as one with the Act of 1908, was passed. Accordingly the statute law on the subject is now to be ascertained from s. 121 of the Act of 1908, from the references to private companies contained elsewhere in that Act, and from the Companies Act, 1913.

Definition.

By s. 121 of the Companies Consolidation Act, 1908, a private company was defined as 'a company which by its articles:

'(*a*) restricts the right to transfer its shares; and

'(*b*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and

'(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.'

S. 1 (2) of the Act of 1913 substitutes the following for (*b*): 'Limits the number of its members (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company) to fifty.' But it does not appear that a company registered before the Act of 1913 came into force, which has failed to alter its articles so as to exclude ex-employees, as well as employees, from the fifty, has ceased in consequence to be a private company. The provisions as to the certificate mentioned below, required in certain cases by s. 1 (3) of the Act of 1913, seem to support this view.

On the registration of a private company the memorandum and the articles need only be subscribed by two persons (s. 2), although there is no objection to a larger number of signatories, subject, of course, to the limit of fifty members. A private company may register as a company limited by shares, or a company limited by guarantee with a share capital, or an unlimited company with a share capital. It would seem that it cannot register without a share capital, having regard to the restrictions (*a*) and (*c*) (above), which must appear in its articles.

On registration, care must be taken to ensure that the articles contain the three necessary provisions set out above. Further, the articles should contain no power to issue share warrants to bearer, inasmuch as the Registrar not unnaturally takes the view that their issue is inconsistent with the status of a private company, since the transfer of the shares specified in warrants could not be restricted.

As regards the restriction on transfers, the provision will be complied with by an article, or set of articles, giving to existing members the right of pre-emption. Such provisions were common in the articles of the old private companies. Or a provision will suffice and will be accepted at Somerset House, which gives to the directors the right at their absolute discretion to refuse to register any transfer of shares. To this, however, it is as well to add words requiring them to refuse any transfers, the registration of which would cause the number of members to exceed fifty. The Registrar requires the restrictions to apply to the transfer of all the shares of the company.

As to the limit of members, the articles may contain words excluding employees or ex-employees of the company from the limit of fifty, or may limit the number of members to fifty, in which case, if employees or ex-employees hold shares,

they will count in the fifty. Joint holders rank as a single member [s. 121 (3)].

As to persons who are in the employment of the company, the ordinary subordinates, *e.g.* clerks and workmen of all kinds, are clearly included, and it is equally clear that directors are not. As regards managing directors, it has been held that a managing director is not a clerk or servant within the meaning of s. 1 (1) of the Preferential Payments in Bankruptcy Act, 1888, now s. 209 of the Act of 1908, [*Newspaper Proprietary Syndicate* (1900), 2 Ch. 349]; but a secretary may be, although, if he does not give his whole time to the service of the company, but pays a clerk to do the bulk of his work, he is not [*Cairney* v. *Back* (1906), 2 K.B. 746]. And it has been held that neither directors nor managing directors are 'persons in the employment of the company' within the meaning of a clause in the memorandum empowering the company to provide for the welfare of such persons by granting them money or pensions [*Normandy* v. *Ind, Coope & Co.* (1908), 1 Ch. 84].

The provision prohibiting public issues, whether of shares or debentures, presents no difficulty. As to public issues, see p. 37.

Privileges.

The privileges to which private companies are entitled under the Act are as follows:

(1) They may register with a minimum of two members (s. 2). This also involves the right to trade with a minimum of two members. By s. 115 of the Act, if the number of members of a private company is reduced below two, or the number of members of any other company below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is so carrying on business, is severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same. This leads to the curious result, in the case of a private company, that an individual may carry on business for six months with limited liability, although after that time his liability becomes unlimited.

(2) They are not required to include in the annual summary the statement in the form of a balance sheet [s. 26 (3), and see p. 85].

(3) They need not file, nor forward to their members, the statutory report before the statutory meeting [s. 65 (10), and see p. 106]. They must, however, hold the statutory meeting.

(4) Persons may be appointed directors by the articles of a private company, without first signing or filing consents to act, or signing the memorandum for qualification shares [s. 72 (3), and see p. 7]. They may, in fact, be so appointed without any formalities whatever.

(5) They need not file a statement in lieu of prospectus before allotting shares or debentures [s. 82 (2), and see p. 41]. They need not, indeed, file any statement in lieu of prospectus at all.

(6) They need have no regard to a minimum subscription, but may make their first allotment of shares irrespective of it [s. 85 (7), and see p. 42].

(7) They may commence business without any restriction and require no certificate entitling them to do so [s. 87 (6), and see p. 40].

(8) Holders of preference shares and debentures of a private company have no statutory right to possess the same privileges as the ordinary shareholders, in respect of the receipt and inspection of the balance sheets and the reports of the auditors and other reports [s. 114 (2)].

By s. 1 (1) of the Act of 1913, if default is made by a private company in complying with any of the provisions required to be contained in its articles (see above), it ceases to be entitled to four of the privileges and exemptions conferred on private companies, and accordingly:

(*a*) It must include in its annual summary the statement in the form of a balance sheet;

(*b*) It must send and produce to preference shareholders and debenture holders all balance sheets and reports which ordinary shareholders are entitled to receive and inspect;

(*c*) Its numbers must not fall below seven; otherwise, after six months, all its members are faced with unlimited liability;

(*d*) If its numbers fall below seven, it is liable to be wound up by the Court.

The other privileges of a private company are not taken away, but since they relate to the initial stages of its existence they are regarded by the legislature as immaterial for this purpose.

Relief from the consequences of default may be granted by the Court upon grounds set out in the proviso to s. 1 (1) of the Act of 1913.

By s. 1 (3) of the Act of 1913, a private company is required to send with the annual summary:—(*a*) A certificate signed by a director or the secretary that the company has

not, since the date of the last return, or in the case of a first return since the incorporation of the company, issued any invitation to the public to subscribe for shares or debentures of the company; and (*b*) if the list of members exceeds fifty, a similar certificate that the excess consists wholly of employees or ex-employees. The object of this provision is that the authorities may be satisfied that the company is still entitled to the privileges of a private company.

The reduction of the number of members of a private company below two is a ground for the company being wound up by the Court (s. 129).

Commissi

It has been expressly decided that a private company, like any other company, may pay commissions for subscriptions, or procuring subscriptions for its capital, subject to the provisions of s. 89 of the Act [*Dominion of Canada Trading Syndicate* v. *Brigstocke* (1911), 2 K.B. 648]. The conditions to be complied with are as follows:

(1) The payment must be authorised by the articles;

(2) The amount or rate must be disclosed in a statement in the form prescribed (*i.e.* by the Board of Trade), signed in the same manner as a statement in lieu of prospectus (*i.e.* by the directors, or their agents authorised in writing), and filed with the Registrar;

(3) The amount or rate must be disclosed in any circular or notice, not being a prospectus, inviting subscriptions.

Duties of Secretary.

The secretary of a private company, apart from the matters specified above, will have the same duties to perform as the secretary of any other company, for apart from these matters a private company may do whatever any other company may, and must do whatever any other company must. His work will obviously be lighter in many respects, *e.g.* in keeping the register posted, in making out the annual summary, and in the matter of transfers.

There is nothing in the Act to prevent a company, which is not a private company, making in its articles such alterations as are necessary to constitute itself a private company, *i.e.* by deleting inappropriate provisions, such as provisions relating to share warrants, provisions relating to public issues, and unsuitable provisions relating to transfers, and inserting the provisions required by s. 121 (1), as altered by the Act of 1913, and thereafter claiming the privileges of a private company.

Private Company becoming Public.

The converse case of the transformation of a private company into a public company is expressly provided for by s. 121 (2) of the Act, which is as follows:

A private company may, subject to anything contained

in the memorandum or articles, turn itself into a public company by passing a special resolution and by filing with the Registrar of Companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business.

The procedure to enable a private company to become a public company, where the memorandum or articles do not forbid it, is accordingly:

(1) To pass and file a special resolution;

(2) To file a statement in lieu of prospectus (s. 82, and see p. 41).

(3) To file the statutory declaration required by s. 87 (1) (see p. 42).

In order to enable the statutory declaration to be made it would appear that, if the whole amount of the authorised capital other than shares, issued as fully or partly paid, has not been subscribed, the articles will have to be altered so as to include an appropriate provision as to minimum subscription (see p. 40). The question of the precise form which the new article should take is not free from difficulty, but it is suggested that the amount should be fixed at the amount actually allotted at the first allotment of shares in the company.

As regards the special resolution required to be passed by the company for the purpose of turning itself into a public company, the Act is silent as to its nature, and accordingly it will be as well in drafting the resolution to follow the somewhat inartistic wording of the sub-section, and let the resolution be simply, 'That the company do turn itself into a public company.' At the same time, in the cases where it is necessary, a special resolution may also be passed in the following form: 'That the articles of association of the company be altered by inserting the following new article, to be numbered [17]A, after article [17]: "[17]A. That for the purposes of the Companies (Consolidation) Act, 1908, the minimum subscription upon which the directors may proceed to allotment be fixed at £ "'; and resolutions can be added specifically cancelling the clauses in the articles only required for private companies.

CHAPTER XXII

STATUTORY COMPANIES

THE name 'Statutory Companies' is frequently used to describe that large and important class of companies which are incorporated by special Acts of Parliament for certain specific purposes. The objects of these companies are to work undertakings of a public nature, such as are calculated to be of benefit to the public at large, or to a section of the public; and whilst there is also the intention to make profits for the shareholders in these undertakings, yet so largely are the public interested in the proper working of them, that the legislature has assumed the right to restrict and limit their powers and to impose upon them conditions intended to be for the general welfare of the community, to whom the proper working of these undertakings is a matter of grave concern.

Among the companies of this class are railway companies, gas companies, water companies, dock and harbour companies and many others; in fact, it is not too much to assert that the companies in question are, from the public point of view, the most important in existence, and some of them are perhaps also the largest commercial undertakings in the country.

Special Act. As stated above, each of this class of companies owes its existence to a special Act of Parliament whereby its powers are carefully defined. It is, as Bowen, L. J., has said, 'a simple statutory creature' (see p. 12), and in this respect it resembles a company incorporated under the Companies Acts. 'It is made up of persons who can act within certain limits, but, in order to ascertain what are the limits, we must look to the statute. The corporation cannot go beyond the statute.'

In the case of a company incorporated under the Companies Acts, the memorandum of association, together with the Companies (Consolidation) Act, 1908, must be looked at to ascertain its powers. In the case of a statutory company its

special Act must alone be looked at. And whilst in the case of a company incorporated under the Companies Acts its articles of association must be examined in order to ascertain by what regulations it is governed, in the case of a statutory company its special Act expressly or by reference contains also its code of regulations.

Companies Clauses Act, 1845.

As long ago as 1845 the Companies Clauses Consolidation Act (8 & 9 Vict, c. 16) was passed, the object of which is well expressed in its preamble (repealed by the Statute Law Revision Act, 1891): 'Whereas it is expedient to comprise in one General Act sundry provisions relating to the constitution and management of Joint Stock Companies, usually introduced into Acts of Parliament authorising the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for securing greater uniformity in the provisions themselves.'

The full title of the Act is, 'An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature.' It has been added to in subsequent years, the principal addition being the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), but no substantial amendment has taken place in the original great piece of legislation relating to statutory companies.

There also the Companies Clauses Act 1869, and the Companies Clauses Consolidation Acts of 1888 and 1889.

The advantages of these Acts, which are always incorporated in special Acts, occasionally with slight alterations, additions or omissions, are obvious. They secure practical uniformity in the internal management of statutory companies. The enormous differences in matters of detailed management, which constantly appear when the articles of association of companies incorporated under the Companies Acts are compared, are thus almost entirely eliminated. One important result of this uniformity is the diminution of litigation.

Applications for special Acts, whether in the case of new companies, or in the case of existing companies seeking extended powers, involve many formalities. Besides the preliminary advertisements in the *London Gazette* and local newspapers, the deposit of the Bill in Parliament, the appearance by counsel with witnesses before Committees of both Houses of Parliament, to meet and deal with the opposition of local authorities and other more or less interested persons

or bodies, there are numerous other matters to be dealt with. In the case of applications by existing companies as well as new companies, close attention to the Standing Orders of Parliament relating to Private Bills is essential. These matters are generally attended to by Parliamentary Agents, but the secretary of an existing company is required to give notices calling a special meeting (sometimes called a Wharncliffe Meeting), when the shareholders consider the Bill deposited, and he will be required to prove by affidavit the due and proper summoning of the meeting and the result of the voting thereat.

All applications for special Acts are most carefully scrutinised in Committee. Involving, as they may do, the compulsory acquisition of land, and interference with existing rights of all kinds, they will not be granted without adequate examination and consideration, and without the insertion in the Bills of clauses of all kinds ensuring the due protection of the rights of others and adequate benefit to the public.

Besides the Companies Clauses Acts, the Special Act usually incorporates the Lands Clauses Consolidation Acts, and the appropriate general Acts relating to particular undertakings, *e.g.* the Railways Clauses Acts, the Waterworks Clauses Act, the Gasworks Clauses Acts, &c. Furthermore the clauses from time to time appearing in the Model Bills will in general be incorporated. Examples of the scope of the Model clauses is seen in the Railway section, dealing with payment of interest out of capital, additional capital, borrowing powers, &c.; in the Tramway section, as to fares, rates and charges; in the Gas section, as to capital and the sale of it by auction or tender, the limitation of profits, &c.

The secretary of a statutory company will necessarily be fully acquainted with the provisions of his company's special Act or Acts, and the incorporated Acts.

Provisions of Companies Clauses Acts.

The matters which are provided for in the Companies Clauses Acts for the most part cover the same ground as the articles of association of a company incorporated under the Companies Acts. They include detailed provisions for the general management of the company.

Statutory Companies (Redeemable Stock) Act, 1915.

The full title of this Act is 'An Act to enable certain Statutory Companies to create and issue Preference Shares or Stock, and Debentures or Debenture Stock, so as in each case to be redeemable.' It applies to 'any railway company, canal company, dock company, water company or other company incorporated by special Act, who are for the time

being authorised under such an Act to construct, work, own, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised.' The debenture stock of such companies has always, by reason of their constitution, been irredeemable, and the right of the holder is a right to a perpetual annuity. Preference shares or stock have also, of course, been irredeemable. The Act, which came into force on May 19th, 1915, enables statutory companies, which are authorised to raise preference or debenture stock, to create and issue it so as to be redeemable upon such terms and conditions as may be specified by resolution of a special meeting of the company. The resolution may provide for the stock being redeemed at any time before the fixed date of redemption, and for the redemption being effected either by payment off, or by the issue of substituted stock, or by the purchase and cancellation of stock, and for the establishment of a sinking fund out of revenue.

There are important limitations upon the exercise of the powers conferred by the Act, which should be carefully noticed. It only applies to stock, the creation or issue of which was authorised before the Act came into force; but where the authority existed before May 19th, 1915, the powers conferred by the Act may be exercised at any time afterwards, subject, however, to the consent of the Treasury being obtained to the creation or issue of the stock up to twelve months after the war. It is also provided that where a statutory company has, between the outbreak of war (4th August, 1914) and the commencement of the Act, passed a resolution for the creation or issue of redeemable stock, such resolution shall be as effective as if the Act had been in force when the resolution was passed. The power to create irredeemable debenture stock brings statutory companies into line in this respect with limited companies; but the power to issue preference shares or stock which are to be redeemable, of course, effects what is impossible in the case of a limited company. The result of the exercise of the power of redemption in the case of shares or stock will be to reduce the capital of the company at the discretion of the directors, and without any application to the Court.

A perusal of the statutory provisions, of which mention is made above, will make it appear that whilst the resemblance between the requirements of these Acts and of the Companies (Consolidation) Act, 1908, is in many cases so strongly marked as to indicate that the framers of the Companies Acts borrowed largely from the law already existing and

applicable to statutory companies, yet in many other cases the divergence is equally strongly marked (see, *e.g.* s. 18 of the Act of 1845, as to transmission, referred to on p. 243). For this reason very great care is necessary in seeking to apply to statutory companies decisions of the Courts given in regard to companies under the Companies Acts. They may or may not be applicable, according as the wording of one section, or of an article, sufficiently resembles or materially differs from the wording of another section. Very many of the decisions are in point and of value; others are irrelevant and useless, and misleading to the secretary of a statutory company.

In considering in any particular case the provisions of the Companies Clauses Acts, the special Act must always be consulted, as some of the clauses in the general Acts are often disallowed.

In regard to the holding of general meetings, only such business shall be transacted at an ordinary meeting as the 1845 Act or the Company's Special Act appoints, unless special notice has been given in the advertisement convening it. Every general meeting of shareholders other than an ordinary meeting is an extraordinary meeting (s. 68 of the 1845 Act). Fourteen clear days' notice must be given of all meetings, and the quorum is, if not prescribed, an aggregate holding of not less than one-twentieth of the capital (s. 72). When the shareholder is a body corporate a voting proxy may be any member of the body, though not personally a shareholder in the company (s. 2 of the Companies Clauses Consolidation Act, 1888).

Statutory companies are not required to use the word 'Limited' as part of their name, nor are they registered.

A point of considerable interest to the secretary of a statutory company is that his remuneration is fixed by a general meeting of the company (s. 91 of the Act of 1845).

The duties of a secretary of a statutory company are necessarily of the same kind as fall to the lot of secretaries of other companies, and need not be repeated here. In the case of statutory undertakings, however, such matters as assessments, and the continuous growth of legislative enactments (*e.g.* those dealing with workmen's compensation and national insurance) and departmental regulations, are probably in general more before his notice than in the case of many registered companies.

There are numerous differences between a Statutory Company and a company under the Companies Acts, and the more important of these are noticed below.

S. 9 of the Companies Clauses Consolidation Act, 1845, requires a statutory company to keep a register of shareholders. The section is as follows:—

> The Company shall keep a book to be called the 'register of shareholders'; and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

It will be noticed that there is no right of inspection given of the register of shareholders; there is, however, a right to require a copy [*Mutter* v. *Eastern and Midlands Railway* (1888), 38 Ch. D. 92].

In addition, by s. 10, a 'shareholders' address book' is required to be kept. This must contain the names in alphabetical order, places of abode and descriptions of the shareholders, so far as known to the company, but particulars of their holdings are not required to be stated. It is open to the inspection of shareholders gratis, and copies may be required on payment.

Further, when shares have been consolidated into stock, pursuant to s. 61 of the Act, the company shall, by s. 63, 'from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock"; and such book shall be accessible at all reasonable times to the several holders of shares or stock in the undertaking.'

Trusts should not be recognised by a statutory company, whether by any entry in the register or in any other manner (see s. 20).

As regards transfers, shareholders have an absolute right of transfer (s. 14), subject to all calls due on the shares

having been paid, and subject also to the restriction that, when a call has been made, the shares cannot be transferred until it has been paid (s. 16).

Transfers must be by deed; the deed must be duly stamped and the consideration truly stated (s. 14). Although a statutory form of transfer is scheduled to the Act, the common form of transfer (Form No. 15) is generally used and invariably accepted. There is thus practical uniformity in the form of transfers whether a company be a statutory company or not.

As to debenture bonds, the Companies Clauses Act, 1845, authorises the borrowing of money on mortgage or bond (s. 38), and the succeeding clauses define the form of the bond and register and also define the form of transfer, which differs from the common form used for stocks and shares.

> I, A. B., of in consideration of the sum of paid by G. H., of do hereby transfer to the said G. H. his executors administrators and assigns a certain bond number made by the Company to bearing date the day of for securing the sum of and interest (or if such transfer be by endorsement 'the within security') and all my right estate and interest in and to the money thereby secured. In witness whereof I have hereunto set my hand and seal, &c., &c.

The creation of debenture stock in place of the borrowing by mortgage or bond was allowed by the Companies Clauses Act, 1863 (Part III.).

A good many companies still exercise their borrowing powers by the issue of debenture bonds, and it should be particularly noted that the common form of transfer does not apply to these.

The duties of the secretary, upon a duly executed deed of transfer being delivered to him, are prescribed by s. 15, and are as follows:—

1. He must keep the transfer;
2. He must enter a memorial thereof in a book to be called the 'register of transfers';
3. He must endorse such entry on the deed of transfer;
4. He must, on demand, deliver a new certificate to the purchaser;

5. He may, for every such entry, together with the endorsement and certificate, demand a sum not exceeding the prescribed amount, or if no amount be prescribed [*i.e.* by the company's special Act] a sum not exceeding 2*s.* 6*d.*;

6. He must, if the purchaser requires it, instead of giving a new certificate, make and sign an endorsement of the transfer on the old certificate; the old certificate with the signed endorsement is equivalent to a new certificate.

As regards the above, the duty of endorsing the deed of transfer seems hardly necessary in the days of certificates, and it has been suggested that it was inserted inadvertently in the Act of 1845. A private Act of 1801, authorising the construction of a railway from Wandsworth to Croydon (41 Geo. III. c. xxxiii.) required the endorsement on 'deeds of conveyance' of shares in the undertaking, which deed was to be kept by the purchaser 'as his security,' certificates not having then been introduced. It is the modern practice to issue a new certificate and not to endorse the old certificate.

The legal interest in the shares transferred passes to the purchaser upon the delivery of the transfer, duly executed, to the secretary. The duties of the secretary as regards certification, scrutiny of the transfer, and of any power of attorney lodged, will be substantially the same as in the case of a company under the Companies Acts. He must, in short, satisfy himself that the deed of transfer is 'duly executed' and in order in every detail.

There are, however, some special points in which, owing to the provisions of the Companies Clauses Act, 1845, the secretary of a statutory company cannot follow the practice of the secretary of a registered company. Thus, if a transfer be lodged for registration after the death of the transferor and after probate or letters of administration have been exhibited, it cannot be acted on, since (as appears below) the names of the personal representatives of the deceased transferor would already be on the register in their individual capacities, and they alone would be entitled to deal with the shares. And if the legal personal representatives of a deceased proprietor have been duly registered, a transfer by them should not be accepted if they are described as executors or administrators, athough in the case of fully paid shares or of stock the fact that they are so described seems immaterial.

It does not appear to be competent for a statutory company to make regulations as to such matters as allowing more than one account on the same transfer form, or limiting the number of holders on a joint account, or permitting more than one account in the same name or names, or allowing transfers of more than one class of stock on the same deed. None the less there seems to be no reason why a statutory company should not have its own practice in such respects, and adhere to it until forced in individual cases to abandon it.

There is an important difference in the matter of transmission between statutory companies and companies under the Companies Acts. By s. 18 of the Companies Clauses Consolidation Act it is the duty of a secretary upon proof of the transmission of interest of a proprietor, to enter the name of his representative on the register. Such representative therefore becomes a shareholder in his personal capacity, with all the consequent rights and liabilities. It appears that it is not necessary for the secretary to have the consent of his board before performing this statutory duty, but that he ought to perform it at once.

There is thus a *primâ facie* right in the company to register the representative in his personal capacity, upon the necessary formalities being complied with. But if the representative does not desire to have the shares registered in his name, he ought to be allowed a reasonable time to sell the shares, and to produce a purchaser who will take a transfer of them [*Buchan's Case*, (1879,) 4 A.C. 549].

S. 18 provides for transmission 'in consequence of the death or bankruptcy or insolvency of any shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special Act.' The transmission is to be authenticated by a declaration in writing of a formal character, '*or in such other manner as the directors shall require.*' S. 19 requires the declaration, in the case of transmission by will or on intestacy to be produced to the secretary, together with probate or letters of administration, or an official extract therefrom. Upon the declaration being left with the secretary, he is to enter the name of the person entitled by transmission on the register of shareholders (s. 18). It is incorrect and contrary to the Act for any mention of a representative capacity to appear on the register of a statutory company, or for the company to recognise the representative capacity in any way. Upon production of probate or letters of administration, the secretary is to make an entry of the declaration in the register of transfers. In

the absence of a declaration, it appears that a form of request by the executors or administrators to be entered on the register should be required [*Buchan's Case* (1879), 4 A.C. 549; and see Form 27]. The declaration itself, if produced, is probably sufficient evidence of a request.

The practical result of the words, 'or in such other manner as the directors shall require,' seems to be that the secretary of a statutory company in satisfying himself as to the right of a representative, shall require the same evidence as is required by the secretary of a company under the Companies Acts.

If probate be granted to the attorney of an executor, he should be registered as the holder of the stock in his personal capacity, without any reference to his capacity as an attorney or executor.

It follows from the fact that a person entitled by transmission is, upon proper evidence being furnished, entitled to be registered, that if an executor or administrator is also the beneficiary, he can be registered without a transfer being executed.

Since executors, when entered upon the register, pursuant to s. 18, become joint shareholders in their individual capacities, a transfer by them must be executed by all the executors [*Barton* v. *London & North Western Railway* (1889), 24 Q.B.D. 77].

Should the register of a statutory company require to be altered in consequence of a change of name, whether by marriage, acquisition of title or otherwise, similar evidence should be required as in the case of an ordinary limited company.

The fee which a statutory company may demand upon transmission is, in the absence of any prescribed amount, a sum not exceeding 5*s*. (s. 18). As already stated, a fee of 2*s*. 6*d*. may be demanded on every transfer. Apart from these two fees, it does not appear that a statutory company has any power to charge any other fees in respect of matters connected with transfers and transmission; but it is usual for a similar fee to be charged on registration of probate or letters of administration, on proof of marriage or death, and on registration of powers of attorney; and until the right to demand these fees is challenged, there seems no reason why the practice should not be continued.

CHAPTER XXIII

SCOTTISH COMPANIES

THE Companies Acts, 1908 to 1917, apply generally to all parts of Great Britain and Ireland. Certain parts of the Acts are expressly limited to companies registered in England and Ireland, whilst in some cases provisions applicable only to companies registered in Scotland appear. It is proposed in this chapter to point out and consider the principal portions of the Acts relating to companies before liquidation which are limited to Scottish companies, and those from the operation of which Scottish companies are excluded, and to indicate the principal points of difference between Scottish and English business practice in connexion with these statutory provisions.

Trusts.

The most important differences appear in the matter of the recognition of trusts and the practice as to transfers, &c., and in the law as to debentures. S. 27 of the Act of 1908 prohibits the recognition of trusts on the registers of companies registered in England or Ireland (see p. 50). The existence of a trust is recognised by Scottish companies, and persons may be registered in any representative capacity, *e.g.* as executors, or trustees, of a deceased person; 'curator bonis for . . .'; 'factor loco tutoris to . . .'; 'in trust for . . .'; 'for behoof of . . .'; 'for and on behalf of . . .'; or as office-bearers. A majority of the accepting and acting trustees or executors usually form a quorum and can act so as to bind the estate under their charge, and a transfer signed by such quorum is therefore quite in order. When changes take place in the personnel of the trustees or executors by death, resignation, or the assumption of new trustees, effect is given in the register to such changes on production to the company of an extract from the Register of Deaths, the Minute of Resignation, or the Deed of Assumption, as the case may be.

Where buyers are described in a transfer as office-bearers, *e.g.* president, secretary, and treasurer, it is usual to add the words 'and their successors in office' after the words 'do

hereby bargain, sell, assign, and transfer to the said transferees.' When that is done, all that is usually required, before substituting in the register the name of any new office-bearer for that of an office-bearer who may have died or demitted office, is the production of a certified extract from the minutes of meeting of the company, institution, or society at which such new appointment is made, in some cases supported by a statutory declaration by a responsible person conversant with the facts.

Married Women.

The Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict., c. 21), entitled 'An Act for the Amendment of the Law regarding Property of Married Women in Scotland,' enacted that where a marriage is contracted after the passing of the Act, and the husband should at the time of the marriage have his domicile in Scotland, the whole moveable or personal estate of the wife, whether acquired before or during the marriage, should by operation of law, be vested in the wife as her separate estate, and should not be subject to the *jus mariti*. Any income of such estate was to be payable to the wife on her individual receipt or to her order, and to this extent the husband's right of administration was excluded, but the wife was not entitled to assign the prospective income thereof, or, unless with the husband's consent, to dispose of such estate. The husband's right of administration is now however entirely abolished as explained below.

S. 4 enacted that it should be competent to all persons married before the passing of the Act to declare by mutual deed that the wife's whole estate, including such as might have previously come to the husband in right of his wife, should be regulated by the Act. The deed must be registered in the register of deeds at Edinburgh, or in the Sheriff Court register of the county or counties in which the parties reside, and be advertised in the appended form in the *Edinburgh Gazette* and three times in two local newspapers circulating in such county or counties:

'Notice is hereby given that, on the day of a deed by *A.B.*, of *C.* [designation], and *E.F.*, his wife, has been registered in the Register of in terms of the Married Women's Property (Scotland) Act, 1881.'

So far as it affects the subject now dealt with, the effect of this enactment was that a woman married subsequently to the passing of the Act (July 18, 1881) had power to accept shares or stock in her own name, whereas a woman married before July 18, 1881, had not that power without her

husband's consent. Unfortunately, there was a great want of uniformity amongst Scottish companies in their interpretation of the Act as affecting transfers. The practice on the purchase of stock by a married woman domiciled in Scotland was as follows: A transfer to her of fully paid shares or of stock required her husband's signature. Where the transfer showed that the consideration money was advanced by the wife out of her own proper funds exclusive of her husband's *jus mariti* and right of administration, the husband had to sign to show that he had given consent to the exclusion of his rights, unless, of course, the renunciation of his rights had been made in legal form and intimated to the company. The *jus mariti* clause was usually inserted in a transfer thus: 'I, &c., do hereby bargain, sell, assign, and transfer to the said *A.B.* exclusive of the *jus mariti* and right of administration of her husband, *C.D.* . . . shares of, &c., to be held by the said *A.B.* exclusive as aforesaid.'

The following was the practice usually observed on the sale of stock by a married woman: (1) If she was simply registered as '*A.B.*, wife of *C.D.*,' and her husband was a domiciled Scotsman, the husband's concurrence was required to the transfer. (2) If she was registered as '*A.B.*, wife of *C.D.*, exclusive of *jus mariti* and right of administration of her said husband,' the woman's signature was sufficient. (3) If she was described on the transfer as wife of a domiciled Englishman, the husband was not required to concur.

The Married Women's Property (Scotland) Act, 1920, which came into force on 23rd December, 1920, has brought about an important change in the law. It is now enacted that after that date the property of a married woman is not to be subject to the right of administration of her husband, which right is by the Act wholly abolished, and a married woman is, with regard to her estate, to have the same powers of disposal as if she were unmarried. It is also provided that any deed or writing executed by her with reference to her heritable estate in Scotland, or to her moveable (*i.e.* personal) estate, is to be as valid and effectual as if executed by her with consent of her husband according to the former law and practice. It is therefore now unnecessary for a husband to execute a transfer of shares or stock belonging to his wife whether the wife's name appears as transferor or as transferee. The Act also provides that a married woman shall be capable of entering into contracts, of incurring obligations and of suing and being sued, as if she were not married, and that her husband shall not be liable

in respect of any contract she may enter into or obligation she may incur on her own behalf. This would cover the case of a wife granting a Letter of Indemnity to a company in respect of a lost share certificate and the issue of a new one in lieu thereof.

Survivorship in Joint Accounts. Where it is intended to register shares or stock of a Scottish company in the names of two or more persons with a destination to the survivor, words to that effect must be inserted in the transfer, as survivorship is not implied under Scottish law. The words necessary are 'and the Survivor of them,' or 'and the Survivors or Survivor of them' placed after the words 'do hereby bargain, sell, assign, and transfer to the said *A.B.*,' although some companies pass transfers with the words written immediately after the names and addresses of the buyers. Failing the inclusion in a transfer in favour of, say, *A.* and *B.* of the clause referred to, they would be held to have an equal and separate interest in the shares or stock, and, on the death of one of them, his confirmation or probate would require to be exhibited and his executors' names would be noted in the register in respect of his share, and, in the event of a sale, the transfer would require to be executed by the survivor and by the executors of the deceased. Of course, where the survivorship clause is registered, and one of the holders dies, production of evidence of death is all that is necessary to enable a company to remove his name. In any subsequent transfer by the survivor he should be described as 'Survivor in a joint account with deceased.'

It may be mentioned here that shares or stock of Scottish companies may also be registered in joint names so that a quorum only of the holders require to sign. This method of registration has been adopted by the nominees of some of the banks in Scotland who are described in transfers as, say, '*A.B.*, *C.D.*, and *E.F.*, all of the Bank, Limited, Glasgow, and the survivors or survivor of them, any two being a quorum.'

Partnerships. It should be noted that although under the law of Scotland partnerships may own property and may quite competently be registered as stock or share holders and act as transferors or transferees thereof, there are obvious objections to registering a firm as such, and the practice should be discouraged.

Execution by Mark. The execution of a deed by a mark is not valid in Scotland. The deed must be executed for the person unable to write by a Justice of the Peace or Notary Public in the presence of two witnesses in the following terms, which must be

actually written by the Justice of the Peace or Notary Public himself:

> By authority of the above-named and designed , who declares that he cannot write on account of , I, Notary Public (*or*, Justice of the Peace of the County of) subscribe these presents for him, he having authorised me for that purpose and the same having been previously read over to him all in presence of the witnesses hereto subscribing who subscribe this docquet in testimony of their having heard and seen authority given to me as aforesaid and heard these presents read over to the said .
>
> [*Signed*]
>
> Notary Public
>
> (*or*, Justice of the Peace).
>
> (Two witnesses.)

Testing Clause.

Although the use of the common form of transfer (see p. 370) is now practically universal in Scotland, it may prove interesting to secretaries to give the following clause (called the testing clause), whereby certain special forms of transfer require to be authenticated, if executed in Scotland:

> In witness whereof, these presents, consisting of this and the preceding pages written by on pages duly stamped, are subscribed by the said *A.B.* (the party) at the day of One thousand nine hundred and year, in presence of these witnesses, *C.D.* and *E.F.* (designing them).
>
> [*Signed*] *A.B.*
>
> *C.D.*, witness.
>
> *E.F.*, witness.

Registration of Documents.

Powers of attorney and other Scottish legal documents may be registered in the Books of Council and Session in Edinburgh, where the originals are preserved. The production of an 'Extract Registered' copy from the books mentioned of a power of attorney, a deed of assumption, or a minute of resignation, or other legal instrument, is equivalent to the exhibition of the deed itself.

Debentures.

The Scottish law as to debentures requires special attention in view of the great differences which exist between the laws of England and Scotland in this respect.

According to the common law of Scotland no security can be effectively created over moveables or personal property *retentâ possessione*. This general rule has been to some extent modified by statute, but broadly speaking the law remains as stated. In order, therefore, to create an effective charge or security of such property, delivery, either express or constructive, must have been given to the creditor and retained by him. In the case of moveables, such as stock-in-trade, &c., actual delivery or transfer to the creditor—an operation, however, which, consistently with the proper carrying on of business, is usually found to be more or less impracticable—leaves no room for doubt, but the same result may be achieved constructively, *e.g.* by the transfer of goods in store from the name of the owner and borrower into that of the lender. Similarly, if obligations are assigned, the assignment must be intimated to the obligant; *e.g.* the assignment of uncalled capital by intimation to the shareholders who are liable.

Floating Charge.

One result of the rule referred to is to render the existence of the floating charge known to English law (see p. 160) impossible in the case of a company registered in Scotland over Scottish assets [see *Clark* v. *West Calder Oil Company* (1882), 9 R. 1017; *Ballachulish Slate Quarries* v. *Menzies* (1908), 45 S. L. R. 667].

Accordingly, in Scotland, debentures issued under the Companies Acts are confined to three classes: (1) naked debentures, which are no more than a personal obligation by the company for repayment of money advanced on loan; (2) debentures secured over moveable or personal rights or property by actual or constructive delivery or transfer to the lenders or trustees for lenders; and (3) mortgage debentures secured over heritable or real property.

Naked Debentures.

As to (1), naked debentures, the lender is, subject to the variation in procedure in the matter of enforcing recovery, practically in the same position as a lender under a naked debenture of an English company (see p. 161). The rights of debentures of this class are now not infrequently regulated by the terms of a separate deed of trust, under which trustees are appointed, instead of being expressed in the debenture itself. The advantages of such an arrangement in case of default lie chiefly in the convenience by which the claims of the debenture holders in case of liquidation are advanced and controlled by the trustees in the general interest in terms of the provisions of the trust deed. But the existence of such trusts, of which there are now many, does not carry the actual rights of the debenture holders as regards security

any further than is the case with the holders of ordinary naked debentures.

Security over Moveable Property.

As to (2) debentures secured over moveable or personal property, either by delivery or transfer to the actual lenders or trustees for their behoof, these are, if shipping property be excepted, of comparatively rare occurrence. Many debentures are, however, effectively charged over ships by mortgage, or by transfer of the vessels themselves, or in some cases, of the shares of the limited companies owning them, to the lenders or trustees on their account. In the former case the mortgage or bills of sale must be recorded on the ship's register, and in the latter a transfer of the shares must be registered by the company. In such cases the trust deed usually makes provision for the changing of the security according to the exigencies of business, but so that the value will always be maintained. There are other cases of debentures in which shares or stocks of ordinary limited companies are impledged in security, but as already indicated, these are of comparatively rare occurrence.

Security over Heritage.

As to (3) debentures secured over heritage, the system of land registration in Scotland lends itself very readily to the creation of effective securities over land and buildings by mortgage debentures, the registration of the necessary deed in the Register of Sasines, assuming its validity on other grounds, creating a preference in favour of the grantees. This security is usually created by an *ex facie* absolute conveyance to trustees for the debenture holders, on registration of which these trustees, subject to the provisions of the separate deed of trust, become vested in the property as if they were absolute owners. Under the deed of trust provision is made for the administration of the trust, the use by the company of the subjects conveyed so long as there is no default, the enforcement of the debenture holders' rights in case of default, &c., and as a rule the trustees are entitled, though not bound, to satisfy themselves that the security subjects are being duly maintained and kept insured against loss by fire. The deed of trust, as a matter of fact, runs largely on the lines of similar deeds by English companies securing mortgage debentures over property there (see p. 159).

Long Leases.

It may be worth noticing that certain leases which, in the ordinary case, could not be effectively charged, may be made the subject of a good security. By the Registration of Long Leases Act of 1857 it was made lawful to record in the Register of Sasines any lease of heritage in Scotland for a period of thirty-one years or upwards, and any assignations

of such leases, the effect of which was to make such leases and assignations during their subsistence as effective against singular successors as if they were ordinary feudal conveyances of land. Accordingly, it is not uncommon, particularly in the case of coal and mineral companies, to have leases answering the requirements of the Act as to duration, such leases then becoming susceptible to being charged or mortgaged by the company, if it desires to borrow, as security for debenture holders or other lenders, without the necessity of actual possession by the security holders.

The question has been canvassed as to whether a floating charge of a company registered in England would be effective over moveables in Scotland, and, on the other hand, whether a floating charge purporting to be given by a company registered in Scotland over moveables in England would be valid. The question raises an interesting argument as to whether the law of the domicile of the company, or the law of the place where the moveables are situated, should prevail, but so far there does not appear to be any authoritative decision on the subject.

Registration of Mortgages

Note should be taken of the fact that the provisions of the Companies Act of 1908, s. 93, as to registration of mortgages, &c., with the Registrar of Companies, do not apply to companies registered in Scotland. It is essential, nevertheless, that particulars of charges given by companies registered in England or Ireland over property situated in Scotland, should be duly filed with the Registrar of the country where the company is itself registered, and the deed containing the charge delivered to him within twenty-one days after the date of the creation of the charge. In actual practice difficulty has been found as regards bonds or charges over Scotch heritage, in giving effect to the terms of this section with reference to the exhibition of the deed, since its registration in the Register of Sasines invariably takes considerably more than the limit of twenty-one days provided by the Act. On the other hand, until registration has been effected, the charge is not legally complete according to Scottish law. In that position of matters it is understood that the difficulty has been tentatively met by furnishing the particulars of the charge, and exhibiting the deed to the Registrar before actual registration, as being the only possible method of complying with the provisions of the section. It is obvious, however, that some Government regulation on the point should be passed, as the present condition of matters is clearly not satisfactory.

In order to prevent the possibility of misapprehension, it

may be added that the provisions of s. 100 of the 1908 Act as to the keeping by the company itself of a Register of Mortgages (see p. 162), in which are to be entered all mortgages and charges specifically affecting the property of the company, are applicable to companies registered in Scotland as well as to those registered in England. Further, the annual summary which a company must file under s. 26 of the 1908 Act (see p. 85) must include, in the case of companies registered in Scotland as well as those registered in England, a statement of the total amount due by the company in respect of all mortgages and charges.

Debentures to Bearer.

It may be interesting to note that a question about which considerable doubt existed for some time, namely, the validity of debentures to bearer in Scotland, has been set at rest by s. 106 of the 1908 Act, which declares such debentures to be valid and binding according to their terms. The difficulty arose because of the provisions of an old Scottish Act making invalid all deeds issued blank as to the name of the creditor.

Statutory Companies.

Bonds and debenture stock may also be issued under the Companies Clauses Acts of 1845 and 1863, which, along with certain other Acts, regulate the share and loan capital of railway companies and other similar public undertakings (see Chapter XXII). The bonds contemplated by the first Act are naked debentures, though the word 'debenture' does not itself appear, but if a mortgage deed be also granted, the assignment of the company's undertaking, &c., to the creditor in security of his debt, is declared to have the full effect of an assignation duly completed. This, it will be seen, is an exception to the common rule already mentioned, and its effect is to create a valid statutory security on the property assigned, very much in the nature of a floating charge in England. It must be noted, however, that this is inapplicable to companies registered under the Companies Acts.

In the same way debenture stock issued under the Companies Clauses Act, 1863, is a statutory charge in the nature of a perpetual annuity upon the undertaking preferable in character to all stocks or shares, and it may in case of default be enforced by application for the appointment of a Judicial Factor. Again, that is a provision peculiarly applicable to companies incorporated under these special Acts and not to ordinary limited liability companies.

Other Point under 1908 Act.

A few other points as to companies registered in Scotland may be noticed. By ss. 6 and 12 of the 1908 Act, it is expressly provided that the attestation of the signatures to

the memorandum and articles is sufficient in Scotland, as well as in England and Ireland, if made by one witness.

By s. 30 of the 1908 Act a judge of the High Court may, in the case of companies registered in England and Ireland, make an order compelling immediate inspection of the register of members, where it has been refused; and by s. 101 a similar power exists in the case of the register of mortgages kept by a company. Probably by an oversight, no similar power exists in the case of Scottish companies.

S. 76 (3) of the 1908 Act provides that any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of the Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested or not. This section incorporates s. 56 of the Conveyancing (Scotland) Act, 1874. It is customary for the signatures of the directors and secretary to be attested by witnesses.

CHAPTER XXIV

INCOME TAX AND CORPORATION PROFITS TAX IN THEIR APPLICATION TO TRADING COMPANIES

THE law, administration, and practice of the Income Tax Acts are, despite the valuable Consolidation Act of 1918, of so extensive and complicated a character that it is only possible within the limits of this chapter to treat of a few of the general principles involved, the knowledge of which is absolutely essential to a secretary of a Joint Stock Company engaged in trading, in order that he may be enabled to draw up the necessary returns and put forward such claims for relief as either the Acts, the practice of Commissioners in their discretion, or recent decisions in the Courts, afford him the opportunity of pursuing. Accordingly this chapter deals with Income Tax Assessments under the following heads:

(1) How profits and salaries are returnable for assessment;

(2) The chief points upon which difficulties may arise in computing liability;

(3) The question of deduction of income tax from dividends, etc.

Procedure.

While the statement on Form I. or IA. (corresponding to the old Form 11 or 11*a*) is the return for assessment of profits under Schedule D required by statute, the real work in connection with the liability is done by correspondence and interviews with H.M. Inspectors upon the annual accounts, sometimes conducted by the company's auditors, or by their own chief accountant, but also frequently by the secretary, according to the organisation of the company and the complexity of the matters involved. It is now almost the invariable practice for the annual report, profit and loss account and balance sheet to be submitted for this purpose, and the inspector's name and address should be carefully noted on the list of those to whom such accounts are sent, in order that they may reach him automatically,

and save both sides the trouble of special applications. They should be accompanied or followed by statements showing how the amount proposed to be 'returned' as the liability is computed, and by any subsidiary accounts or statements which have been found necessary in past experience. In the alternative the inspector, on receipt of the accounts, will send in a number of 'queries' and further requirements, and when these have been satisfactorily replied to he may forward a computation of liability and ask whether the company is in agreement. On agreement the secretary will be in a position to complete the formal return when Form I. or Form IA. is received. It is not much use completing this form until the figures are actually agreed, except in the case where the computation is being contested on appeal, when the liability as desired by the company should be shown on this form. The Revenue looks to the completion of this statutory return as the formal act of responsibility by the company, notwithstanding all the anterior or auxiliary correspondence that may have taken place.

Period of Accounts. For computing liability in established businesses for any financial year beginning on the 6th April, the last completed accounts prior to that date (*e.g.* 31st March or 31st December) are taken, and sufficient earlier accounts to make up in all three years (except for mines where a five years' basis, and railways and other specified concerns where one year, is adopted). The liability is the average for one year of the adjusted profits of the whole period.

Where the periods of accounts have been broken, so that they do not make an exact 36 months, it is usual to 'split' the earliest one *pro rata*; and include only a sufficient proportion of it to make up a 36 months' total. The practice of taking, say $\frac{1}{40}$ths of the combined aggregate periods of accounts amounting to 40 months, is not now followed.

For new businesses, an average is taken of the whole period (of less than three years) of accounts ending before the year of assessment, subject to special adjustments in the event of the realised profits of the year of assessment being *less* than the amount of the assessment.

Computation of Income Tax Profit. In computing liability it is convenient to commence with the net profit carried into the balance sheet, and to go through the expenditure and add back all sums not allowable, and then make deductions for items allowable but not already charged in the accounts in getting at the net profit adopted as the starting point.

ADDITIONS TO TRADING PROFIT.

(1) All book-keeping 'rents' for premises occupied for the business and owned by the company, all ground rent, lease rents and other charges issuing out of such property. [The deductions include a special allowance, which is generally to the greater advantage of the company—*vide* Deductions (1).]

(2) Rates, repairs and insurance of properties in the United Kingdom let to tenants of the company.

(3) All royalties on patents, mortgage, debenture and other annual interest and annuities charged. The company has the right of deduction of tax therefrom, and in having this included in its liability is acting, so to speak, as the agent of the revenue. (But special considerations arise on Interest Accounts dealt with later on.)

(4) All reserves for leasehold redemption, debenture redemption, preliminary expenses and anything of the nature of the gradual amortisation of capital.

(5) Provision for wear and tear of plant, etc. (specially dealt with as a deduction from the assessment itself, see below.) Renewals of plant and machinery and capital assets (see Depreciation or Wear and Tear Allowance).

(6) Income tax and corporation profits tax, charged as an expense in the accounts. But the amount of the excess profit duty and corporation profits tax payable for any accounting period is allowed in computing the income tax profit of that period.

(7) All sums employed as capital, or capital withdrawn or lost.

(8) Any sums expended in improvements of premises or written off as depreciation of land, buildings, or leases.

(9) Any losses not connected with, or arising out of, the trade. These are discussed at greater length below.

DEDUCTIONS FROM TRADING PROFIT.

(1) The net Schedule A assessment on all property owned and occupied for the purposes of the business (in lieu of No. 1 above) because duty has already been paid upon this sum. In the case of mills, factories, or similar premises, the deduction allowed is the gross and not the net assessment —so that the company gets, in addition to any actual repairs charged in the accounts, the one-sixth of the

Schedule A (upon which no duty has been paid) to allow for depreciation and obsolescence.

In the case of premises abroad no duty has been paid under Schedule A, and so no deduction is allowable for a Schedule A assessment, but for mills, factories, etc., a sum is deductible equivalent to one-sixth of the annual value arrived at as though a Schedule A assessment could be or had been made.

(2) In the case of obsolete machinery which is disposed of and other machinery acquired in its place, a deduction may be made from the profits of the year in which the replacement is made, for the depreciation not yet allowed, *i.e.* the difference between the written-down value and what is realised as the scrap value. In this way, by the time a given machine is disposed of, the whole of the capital invested in it will have been allowed for against profits. This allowance for obsolete machinery is not however to exceed the cost of the new machinery less the scrap value of the old. (Special conditions relate to wear and tear of plant rented, to plant on hire-purchase agreements, to ships, etc., details of which would be out of place in a general work, but which can be found in technical taxation manuals.)

(3) Interest received which has been subjected to British income tax, including mortgage and debenture interest, and all dividends. The amount to be deducted is either the gross or the net sum, whichever has been brought to credit of the account. If the gross sum has been brought in as a receipt, and the tax thereon charged as an expense, the disallowance of both will give the same effect. Bank deposit interest and other untaxed interest are often deducted also, and separately charged under Case III. of Schedule D, but it is not uncommon to let them remain in the general liability of the business. If there is a general interest account it will require scrutiny. Theoretically, the balance of the account should be brought into the computation, to be deducted from profit if the receipts are greater than the payments of interest in the year, and *vice versa* if they are less. This assumes that all the interest is annual and consequently paid or received under deduction of tax. As the account commonly consists in the main of non-annual interest (*e.g.* trade interest, interest to or from bankers, or on bills), which is paid in full, and is therefore assessable on the recipient, it is necessary to analyse the interest account to ascertain the true liability or claim to relief.

The well-known case of *Goslings and Sharp* v. *Blake* (1889, 23, Q.B.D. 324) sought to define 'annual interest.' In general it may be said that interest at varying rates and for periods less than a year is to be returned for tax by the banker, broker, or other lender, and not by the company, and that if evidence be produced to the surveyor in support of the claim allowance will generally be made. It follows that if any interest upon trade accounts, foreign investments, &c., has been received without deduction of British tax such part of the revenue must not be deducted in computing the assessable profits.

(4) *Depreciation or wear and tear allowance.* This is not taken off the profits, but is an allowance from the assessment after the average is struck. It represents the diminished value during the year of assessment itself, but the usual practice is to take the value of the machinery and plant as existing at the last balance sheet, and to calculate the allowance at the rate agreed, for a year, as equivalent to the allowance for the exact year of assessment, without, generally speaking, any addition or deduction for plant acquired or given up during the year of assessment. With most companies allowances are computed on the 'written down' value of the asset, all pure renewals, as distinct from repairs, being added to the capital value and not charged against revenue. If the assessment in a given year is not large enough to cover the whole allowance due, the balance can be carried forward into a future year.

As a general rule, if renewals are allowed to be charged against revenue (*vide* 5 above) no wear and tear allowances are given in respect of that class of plant.

There remain some further matters likely to cause discussion:—

Other Adjustments

1. *Profit on Realisation of Assets.* Profits of a capital nature need not be brought into the liability, just as, in the same way, expenses of a capital nature are not allowed as an expense, but in the case of a company with wide articles of association there may be some difficulty in establishing that particular profits are of a capital nature, although as regards an occasional realisation of investments for an ordinary trading company the claim would be admitted without question.

2. *Charities and Donations.* While a large amount of money is often given in charity by the directors of a limited liability company (especially where the capital, or in particular, the ordinary shares are held privately) which it

must be admitted is not a proper charge against the business, there are other donations and subscriptions to which the same considerations do not apply, as for example, subscriptions to a charity or hospital, to which the company's employees are admitted if in ill-health. As a general rule any expenses which benefit the workpeople and may be regarded as a general addition to wages are allowed.

3. *Trade subscriptions.* Subscriptions to trade associations are now admitted if, as is usual, associations have entered into an arrangement to pay tax direct on any excess of their receipts over their admissible expenses. The net effect of this arrangement is that tax on that part of the subscriptions which represent expenditure not admissible is collected in one sum from each association instead of from the individual members.

4. *Law Charges* incurred otherwise than in the collection of trade debts, are frequently challenged, and where they are actually incurred for the purpose of acquiring assets they are not allowed. The expense of issuing debentures is not allowable [*Texas Land and Mortgage Co.* v. *Holtham* (1894), 10, T.L.R. 337], and a bonus payable on a repayment of borrowed money is also not allowed [*Arizona Copper Co.* v. *Smiles* (1891), 29 Sc. L.R. 134]. Legal expenses incurred in defence of existing rights are admitted.

5. *Losses on Closing Factories* and removal expenses are not allowable according to High Court decisions, but as a matter of practice, where removal expenses are compulsory no objection is usually raised to the cost of removal. In any case the expenses of removing trading stock are allowed.

6. *Bad Debts* in respect of cash advances which have not been made for trade purposes, are not allowed. It is obvious that the question of what are 'trade purposes' must be decided in each case.

7. *Exhaustion of Nitrate Grounds.* The exhaustion of natural assets like nitrate deposits, mineral seams and so on, is not recognised.

8. *Foreign Taxation* is allowable as a deduction [*Stevens* v. *The Durban & Roodeport Gold Mining Co. Ltd.* (1909), 40, Acct., L.R. 35]. Dominion taxation is allowable except in so far as it is repaid under the Dominion income tax relief provisions.

9. *Sums allocated to reserve funds* generally are not allowed, whatever the object may be, for they are considered

simply as an appropriation of profits. Generally speaking, the contingency provided against will be allowed as and when it arises if it comes within the provisions of the Acts. For example, amounts set to a bad debt reserve would not be allowed, but the actual sums charged to that account during the year would be allowed instead. There is a provision for allowing an estimate for specific doubtful debts, but in practice this is frequently not claimed. In the long run it makes no difference, as debts are fully allowed to the extent to which they become bad.

10. The question of the liability of profits made abroad and the allowances for 'double taxation' are too intricate to be dealt with in a small space, and reference should therefore be made to specialised manuals.

Appeals. If a liability has not been agreed with the inspector and a return has been made in accordance with the company's views, it will generally be found that an assessment will be made on the larger figure in accordance with the inspector's contention. Upon receipt of the Notice of Charge the secretary should give in writing the necessary notice of appeal, stating the grounds of appeal quite generally, and whether the appeal is to the General or Special Commissioners. It is desirable to register this communication, which should be made within 21 days. As it has been assumed that all necessary documents are already before the Revenue nothing further remains to be done until the case is brought before the Commissioners.

Reliefs. Where a company has been in existence for less than three years, it is provided that if the profits of a particular year fall short of the average that has been adopted, the taxpayer shall be entitled to be charged on the actual amount of the profits for the financial year. Similarly, where a business ceases, the liability for the broken period at the end may be reduced to the actual profits for that period, and provision is also made for repaying tax paid on the assessments of the three last complete years, in excess of the tax payable on the actual profits for those years.

Salaries. Under Schedule E, the secretary has an important function to discharge—making a statutory return of salaries on the prescribed form [No. 46 or 46(a)]. It should be noted that this Return should include the directors, all the staff whose whole-time remuneration brings them over the limit of liability, and also pensioners and any who receive fees of any kind, whatever the amount, for part-time work, as distinct from payments for specific tasks, *e.g.* solicitors and

architects' fees. Round sums paid annually for expenses, bonuses, etc., should be specified.

The form of return (No. 46 or 46a) requires the amount of salary, &c., for the year of assessment and the amount of commission and other variable emoluments for the previous year. The statutory basis of liability is the amount of the total remuneration for the year of assessment, but it is a common and convenient practice to assess on the basis of the fixed salary of the year plus the variable emolument of the preceding year.

So far as concerns cases where income tax is paid by the company, the amount so paid is regarded as additional income and assessable to tax. The total sum to be charged is, therefore, a little difficult to calculate; the exact mathematical course is not followed, but in practice the following is approved:

> For the first year the assessment is upon a salary plus the tax thereon; for the second year, upon the salary plus the tax on the assessment of the previous year, and so on. So that for some years the taxpayer has a slight advantage, and where the salary is an increasing one this advantage is more marked.

Generally speaking, the tax paid by the employer is the duty charged on the remuneration after allowance of any abatements or relief granted to the employee, and is not calculated at the full rate on the salary paid.

Such income tax paid on salaries and assessed under Schedule E should be claimed as a deduction under Schedule D, and does not come within the general rule as to disallowance of income tax.

In completing the return under Schedule E it is well to compare the details with those sent in in the previous year, and wherever remuneration has increased, to give a note showing the rate of change, *e.g.* £300 to £350, and the date from which it operates. Similarly, in the case of new names for employees who were engaged during the preceding year, and since the former return was made, it is convenient to give the date of engagement and rate of salary, and, if possible, the address of previous employment from which the employee came. In the case of those who have disappeared from the list, the date when they went, and, if possible, where they have gone, should be entered.

This may seem to involve a great deal of work that is not actually called for, but it will be generally found that

it is less trouble to do it while the main question is under consideration, and that a good deal of miscellaneous correspondence between the Revenue and the secretary at odd times during the year will be saved. The secretary should take care to see that the return is comprehensive, as the responsibility is upon him, and bonuses, overtime and fixed all-round figure payments for expenses should be included.

Deduction of Tax from Dividends.

In the ordinary course dividends are payable 'out of profits or gains brought into charge,' and in this case the rate of tax to be deducted is the average rate in force over the period in respect of which the dividend is paid. Generally the nearest convenient fraction is adopted (*e.g.* if the standard rate of tax were changed from 6*s.* to 5*s.* in the £ for the year beginning 5th April, 1922, a half year dividend to 30th June, 1922, would suffer deduction at 5*s.* 6*d.* in the £. On individual repayment claims the Revenue will repay at the rate deducted, if it is reasonably approximate to this average rate. Where arrears of preference dividend are paid for previous years, the rate of deduction is the average in force over the period during which the profits were made out of which the dividend is paid. Where payments of debenture interest are made that cannot be said to be out of profits or gains brought into charge, owing, for instance, to a series of trading losses, and such interest is separately assessed [under Rule 21 (2) of the General Rules applicable to all Schedules, Income Tax Act, 1918], then the tax deducted should be at the rate in force at the time of payment. Unless there are good reasons to the contrary, the convenient practice of showing the gross dividend, the rate of tax and amount of tax deducted, as well as the net dividend, upon the warrant, should be followed.

Corporation Profits Tax.

The duties which fall upon the secretary in regard to Corporation Profits Tax fit in so closely with the income tax procedure that very little needs to be said. The profits as ascertained from income tax purposes for any given period of account are adopted for the other tax also with certain adjustments, viz.:

1. The Sch. A assessments deducted for income tax purposes are added back to profits, but in their place is deducted all mortgage interests, ground rents, etc.
2. The dividend income from other concerns which is deducted from profits for income tax purposes because it has been taxed by deduction, is not deducted for Corporation Profits Tax unless it

comes from companies liable to assessment to the latter tax. The gross amount of such dividends, before deduction of income tax, has to be added.

3. Payments of interest in general, royalties, and other payments from which income tax is deducted, not being payments of dividends or payments for the distribution of profit, are allowable as expenses.
4. Remuneration to any director, manager, etc., with a controlling interest is not allowed to a greater extent than £1000 per annum.

No deduction is allowed in assessing Corporation Profits Tax for sums paid or payable for Corporation Profits Tax or income tax.

There is an exempt allowance for each company at the rate of £500 per annum, and the main charge of five per cent. on the whole profits may be cut down so that it does not exceed ten per cent. on the balance of the profits available for the ordinary shareholders after payment of fixed charges on debentures, preference shares, and permanent loans issued before the commencement of the duty. If one company holds all the ordinary shares in another, the whole profits of the subsidiary may, if desired, be included in the profits and liability of the former as though it were a branch business, but in this case any payments under (3) above are not allowed as deductions. It is the secretary's duty to make the return, but in general the liability will be agreed with the Inspector at the same time as the income tax computation, and the exact result can then be shown in the official form.

Whatever may be said about the right of the Revenue to ask for balance sheets, except on appeal, for income tax purposes, there can be no question as to the right under Corporation Profits Tax, as the company must give, in addition to the return 'such other particulars . . . as the Commissioners may require.' The procedure for appeals is set out in the official notice of charges to duty.

Building societies and public utility companies with statutory limitations are outside the duty for the present.

CHAPTER XXV

AGENDA AND MINUTES

ONE of the principal parts of a secretary's duties is the preparation of agenda for board meetings, the attendance at such meetings, and the drafting of the minutes to record the decisions arrived at.

In the case of a company the necessity for keeping minutes is imposed by s. 71 of the Companies (Consolidation) Act, 1908, which provides that every company shall record minutes of all proceedings of general meetings and of its directors or managers to be entered in books kept for that purpose. The same Section provides that minutes, when signed by the chairman of the meeting at which they were passed, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

The reading of the minutes of one meeting at the next meeting, when they are commonly signed, is not infrequently a matter which degenerates into a mere formality; and, accordingly, very great care should be taken to write them both accurately and with sufficient fulness. It is often found in legal proceedings that a company's minute book contains no record of matters which individual directors know have occurred, and the difficulties of satisfying a Court in these circumstances sometimes prove insuperable. What the secretary is really doing when he prepares the minutes is to make a permanent record of the transactions of the board, or of the company, which may very possibly, in the future, be absolutely the only evidence of those transactions which it is possible to produce. It is quite impossible to forecast what will or what will not be required in future contingencies, and the only safe plan is to make the record both accurate and complete.

In case, upon the reading of the minutes of one meeting at the succeeding meeting, inaccuracies are noticed and alterations made, the chairman upon signing the minutes should initial all the alterations. But no alterations should be made in the minutes except in these circumstances, and then only such alterations as are necessary to ensure an

accurate record of the proceedings. Except as just mentioned, a secretary should never, whether acting under the express instructions of a director or directors, or on his own initiative, alter minutes of meetings, either by striking out anything or adding anything [*Cawley & Co.* (1889), 42 Ch. D., at p. 226].

In the case just cited Lord Esher said: 'Minutes of board meetings are kept in order that the shareholders may know exactly what their directors have been doing, why it was done, and when it was done.' None the less, it is both unusual and undesirable for the minute book of board meetings to be accessible to shareholders, although the minute book of shareholders' meetings may be, and generally is, open to their inspection.

Formerly it was customary to keep an agenda book, but that course has disadvantages, and it is preferable to have the agenda prepared on separate sheets of paper, with the various items for consideration appearing on the left-hand side, leaving a large right-hand margin upon which the chairman may write any notes he desires of the decisions arrived at.

Agenda Paper.

It is the secretary's duty to prepare the agenda paper, and he will keep a file in which he will put all letters and other documents coming into his possession between meetings which require the attention of the board.

The secretary should also read through the minutes of the last meeting to see whether any matters which were then discussed were ordered to stand over until the next meeting. He should also read through the agenda paper of the last meeting to see whether any matter was mentioned thereon, but was not incorporated in the minutes.

The order of business is often prescribed by rules, but in all cases (unless it is necessary to elect a chairman of the meeting) the first item on the agenda should be to read and sign the minutes of the previous meeting. It will generally be found advisable at a board meeting of a company to consider the cash position next subject to any prescribed order. The company's cash book or a statement of the cash position should be produced together with the pass book, and a certificate should be obtained from the bankers, made up to the close of business on the preceding day, showing the balance on deposit and current accounts.

Continuing with the board meeting example, the routine business, such as the passing of share transfers (unless the secretary has authority to pass transfers), the consideration of departmental reports and other matters which are not

likely to give rise to much discussion, should be taken as a rule at the commencement of the proceedings.

It will generally be found expedient, with a view to saving time, to circulate the agenda paper among the directors a day or two before the meeting, with explanatory memoranda by the secretary on any matters which are not self-explanatory, together with copies of any important letters which require consideration. If any of the matters to be considered are of a specially confidential nature, the authority of the chairman should be obtained before the agenda is circulated.

In the case of municipal authorities and other public bodies the minutes are usually circulated among the members prior to the meeting, and are not therefore read at the following meeting. In the case of board meetings, the secretary should, on reading the minutes of the preceding meeting, hand the chairman the agenda of the preceding meeting, so that the latter may check the minutes as they are read by the secretary with his own notes on the agenda, and immediately the chairman has signed the minutes as a correct record, the agenda paper should be torn up. The objection to keeping it is, that there then exist two records of the same transaction, one, the rough notes often made hurriedly and not always with exactness by the chairman on the agenda paper, and secondly, the more careful minutes written out in detail by the secretary and signed by the chairman with the approval of his colleagues. It is advisable only to have one record, and that record should, of course, be the minute signed by the chairman in the minute book.

Minutes Read and Signed.

Assuming the minutes are correctly recorded by the secretary, the minute should read: 'The minutes of the board meeting held on the day of last were read and signed by the chairman.' The use of the word 'confirmed' should be avoided, as that may imply that the resolutions are not complete without 'confirmation,' whereas the resolution is binding directly it is passed, and the secretary or other official is justified in acting upon any resolution directly it is agreed to. The only reason for reading the minutes of the preceding meeting is to give all the directors an opportunity of seeing that the secretary has correctly recorded their proceedings.

If it be found on reading the minutes that any alteration is required, such alteration should be made, not by erasure, but by striking out in ink the incorrect words and writing in the correct ones, and the alteration should be initialled by the chairman.

No alteration in a decision arrived at can be allowed on the reading of the minutes, the only permissible revisions being those which affect the correctness of the record of those decisions.

Minuting Dissent.

Where the decision of a board meeting is not unanimous it is not usual to record the fact that the decision is only that of a majority; but if on the point being put to him by the secretary, the dissentient director or directors desire their dissent to be recorded, there is no objection to stating, after recording the resolution: 'Mr. A. B. and Mr. C. D. voting against the resolution,' or 'Mr. A. B. and Mr. C. D. dissenting.'

If it be found on reading the minutes of a previous meeting that the dissent of a director who voted against a resolution has not been recorded, and such director desires his dissent to be inserted in the minutes, the words can be added, and the addition initialled by the chairman when signing the minutes. If the director did not actually vote against the resolution, but has, on reconsideration, decided against a particular resolution passed by the board, the minutes should not be altered, as they have been correctly recorded.

Specimen Minutes.

The minutes recording the examination of the cash position should read as follows:—'Bank pass book and certificate were produced showing the following balances:

On Deposit Account £

On Current Account £ .'

The latter was agreed with the cash book.

Share transfers (where they form the subject of a resolution) should be referred to in the minutes by their consecutive numbers and the minute should be to the effect that:—

IT WAS RESOLVED that transfers Nos. 1 to 20 inclusive be passed and the common seal affixed to the necessary new certificates Nos. to inclusive.

In large companies, committees are sometimes appointed by the board with power between board meetings to pass and sign cheques and to pass transfers. Their proceedings should be summarised in a report, or their minutes read and embodied in the minutes of each board meeting as reports 'received and adopted.'

Secretary to take Notes.

It is the secretary's duty to take the official notes of the proceedings, and he should not therefore rely upon the chairman's notes on the agenda paper. The secretary

should take full and careful notes of all decisions arrived at, and it is wise to obtain the wording of any important resolution made out in the handwriting of the proposer, and, in any event, it should be initialled by the chairman unless it is in his handwriting on the agenda.

In writing up his minutes, the secretary must take great care to see that the record is both accurate and complete. While brevity is desirable, care must be taken to see that the exact intention of the board is accurately and explicitly expressed. It is very inadvisable to give reasons in a minute for any resolution passed by the board. It is true that in the case of *Crawley & Co.* (1889, 42 Ch. d., on page 226) Lord Esher said: 'Minutes of board meetings are kept in order that the shareholders may know exactly what their directors have been doing, why it was done, and when it was done.' Notwithstanding this expression of high legal opinion, it will be found in practice inadvisable to explain in the minute book why any particular resolution is passed. Indeed, this is sometimes impossible, as the reason for a particular decision which may operate in the mind of any one member may be quite different from that which influences his colleagues. Moreover, it is unusual and undesirable in the case of company board meetings for the minute book to be accessible to shareholders generally, and there appears to be no authority for the suggestion that they have a right of access to the directors' minute book, and no secretary would be safe in assuming that shareholders have such a right.

Inspection of Minute Books.

An occasion might arise when refusal to inspect board minutes might be justified—without express instructions from the chairman—in the case of a director himself, if it appeared evident that he wished to utilise his privileged position for a purpose detrimental to the company and the board. A difficulty of this kind was the subject of judicial decision in *R.* v. *Hampstead Borough Council, ex p. Woodward* (*The Secretary*, 1917, p. 68), where the principle was affirmed that whilst a member of a public body acting solely in the public interest has a right to inspect the documents of that body, yet if the inspection is sought for any other purpose, and the interest of the public is not his sole aim, he is deprived of his *primâ facie* right, and will not be permitted to utilise his privilege for personal or other ulterior objects.

With regard to the minutes of general meetings of shareholders of public companies, these usually follow certain stereotyped lines. The first resolution submitted at the annual general meeting of shareholders is for the

General Meetings.

adoption of the report and accounts and generally takes the following form:—

> That the directors' report and statement of accounts as at the 31st December last, now submitted to this meeting, be and the same are hereby received and adopted.

If the report recommends the payment of a dividend, a second resolution may be submitted to the following effect, or these words may be added at the end of the first resolution, namely:—'That a dividend of per cent. for the year ended 31st December last be and the same is hereby declared on all the issued shares of the company payable less income tax to the shareholders appearing on the register as on the day of (the date on which the share register was closed).

The wording must of course be altered to suit the circumstances, *e.g.* if there are two or more classes of shares, the resolution must state exactly on which class of shares the dividend is payable. If an interim dividend has been paid it is desirable to add after the words 'dividend of per cent.' words in brackets to the following effect (making with the interim dividend declared on the last, a dividend of per cent.).

The next resolution usually submitted is the resolution for the re-election of the retiring directors, and should be in the following words:—

> That Mr. 'A. B.' the director retiring by rotation, be and he is hereby re-elected a director of the company.

The resolution appointing the auditors is usually proposed and seconded by some shareholder other than a director. While this is usual and desirable, it is by no means necessary, and it is quite competent for the resolution to be proposed and seconded by directors or other officials. The resolution should be in the following form:—

> That Messrs. 'A. B. & Co.,' chartered (or incorporated) accountants, be and they are hereby appointed auditors of the company for the ensuing year, at a remuneration of £ .

S. 112 of the Companies Consolidation Act, 1908, provides that every company shall at each annual general meeting appoint an auditor, and sub-s. 7 of that section provides that the remuneration of the auditors shall be fixed by the company in general meeting. Presumably, however, it is in the power of the shareholders to delegate their

functions to the directors if they so desire, and in the case of new companies it is not unusual for the shareholders to appoint the auditors, but instead of fixing their remuneration, to add at the end of the resolution, words to the following effect: 'At a remuneration to be fixed by the board.'

Amendments.

If any amendment is proposed to a resolution, such amendment after being seconded, is put to the meeting before the original resolution is submitted. If the amendment is lost, the chairman will then proceed to put the original resolution. If the amendment is carried, it then takes the place of the original resolution, and, notwithstanding that it has already been voted upon by the meeting, the chairman will again put it in the form of a substantive motion.

In minuting a motion to which an amendment is proposed, it is desirable to give the name of the proposer and seconder of the original motion, and care must be taken to set out the exact words of the motion, then to record the name of the proposer and seconder of the amendment with the exact wording of the amendment, and the secretary should be careful to state in his minute the declaration of the chairman upon the voting, first, of the amendment, and, if that amendment is carried, also of the substantive motion. If two amendments are proposed to the same motion, the first amendment (after being seconded) should be disposed of before the chairman accepts a second amendment. It is not usual to allow the same person to move more than one amendment to any particular motion.

If an amendment is proposed and finds no seconder, the chairman is justified in passing on to the next business without putting the amendment to the meeting, and in that case, while it is not absolutely necessary to record the fact on the minutes, there is no objection to recording in the minutes the fact that Mr. 'A. B.' proposed the following amendment, which found no seconder.

It is not necessary to record on the minutes, in the case of a vote taken by show of hands, the exact number voting for or against the resolution, though if the chairman announces those numbers there is no objection to recording them. If the chairman announces a resolution to be 'carried unanimously,' that fact should be recorded, and where a majority of voters vote in favour of a resolution and a minority remain neutral, it may be recorded that the resolution was carried *nem. con.* This expression, which is an abbreviation of the words 'nemine contradicente,' is in ordinary acceptation, only a method of recording the fact that no one actually voted against the resolution. Strictly

speaking, however, the expression 'nem. con.' is a parliamentary expression, and according to the *Encyclopaedia of the Laws of England* (Vol. 9, page 594) the words signify the *unanimous* consent of the House of Commons to a vote or resolution—a different expression being used to record a similar vote in the House of Lords. (See also article by Sir Ernest Clarke in *The Secretary*, Jan., 1917.)

When a resolution has to be carried by a given majority, the minutes should record the fact that the chairman declared the resolution carried by the requisite majority.

A form of resolution, happily not of frequent occurrence in shareholders' meetings, is, for a shareholder to move 'the previous question.' This is sometimes done where a discussion upon a particular subject is carried to inordinate length, and the meeting desires to closure such discussion.

By far the better way, when a shareholder desires that a particular motion shall not be put to the vote, is for such shareholder to move 'That the meeting do proceed to the next business.' These words convey the exact intention of the motion, and if seconded and carried, have the same effect as the moving of 'the previous question.' It is customary for a motion of this character to be put to the vote without debate.

The minute should read: 'Mr. A. B. moved and Mr. C. D. seconded, that the meeting do proceed to the next business. This was put to the meeting and declared by the chairman to be carried. The meeting accordingly proceeded to the discussion of the next item on the agenda.'

Or: 'Mr. A. B. moved and Mr. C. D. seconded, that the meeting do proceed to the next business. This was put to the meeting and declared by the chairman to be lost. The discussion of the subject under consideration was then continued.'

CHAPTER XXVI

FILING

AN efficient system of filing is essential to the proper working of any office; without it, confusion, delay and needless labour—resulting possibly in financial loss—are caused. On the other hand, nothing is more conducive to expeditious working than a system which is at once comprehensive and simple. It may indeed be said that such a system is the keystone in the organisation of an office, and this is a fact which has been fully appreciated in recent years by the makers of office requisites. It does not fall within the scope of this chapter to recommend the productions of any individual firms, but rather to suggest the general principles, which, as the result of practical experience, are found to underlie methods of filing correspondence, agreements, title deeds and other documents, have proved satisfactory, and are readily adaptable to the requirements of large or small undertakings. The prospective purchaser will have no difficulty in obtaining the mechanical aids necessary for the completion of his office equipment from the numerous manufacturers of requisites suitable for varied systems of filing.

Filing Staff.

While, however, a judicious selection of such aids is of importance, it is at least equally important that care be given to the organisation of the staff of the filing office. It should be a primary rule that access to the files can only be gained through the filing clerk or clerks; unlimited access results (in an office of any magnitude) in missing files and documents replaced incorrectly; it is therefore essential that the rule be laid down and rigidly enforced that the required file or document is only to be obtained through the proper person, to whose custody it is to be returned without delay. It is also essential that all new files should only be established in conjunction with the head of the filing office,

so that overlapping may be avoided and a carefully arranged system of files may be developed and recorded.

Central v. Departmental Filing. In the organisation of a large office, there should be either a filing office connected with each department of the undertaking or a central filing office supplying the needs of all departments. Advocates of both methods are to be found; those who prefer the central office point to economy of labour and the advantages of centralisation. It seems, however, that the balance of advantage lies with the method first mentioned. It is quite easy, if the departmental filing staff is kept not fully occupied with the work of filing, to arrange supplementary duties, and so to avoid waste of labour, while the great advantage—since time is so frequently 'of the essence of the contract'—in having a filing staff identified with each department, lies in the greater speed with which the desired file may be obtained. Centralisation may be theoretically sound, but in practice there is much to be said for the departmental method; indeed, it may even be found that, in distinct sections of a given department, it is desirable to file the papers of such sections apart from those which are in the custody of the filing office. Such exceptions, however, should be well defined, for reasons too apparent to need enumeration. The point to be emphasised is, that methods of organisation should not be so rigidly enforced as to hamper speedy, efficient and simple working.

Loose Copies. In many modern offices, the press copying of the outwards mail is dispensed with, or, if retained, loose copies (carbon, if typed, or loose press copies, if hand-written) of all letters are made in addition to the copies in the letter-book. The loose copy is an integral factor in the filing system, and its existence is assumed throughout this chapter, as no efficiently organised office can work at the speed demanded to-day, if reference has constantly to be made both to a letter-copying book and a file consisting only of inwards letters.

Register. A register dealing with inwards and outwards letters and containing, in one entry, the dates of receipt and reply, the correspondent's name, the subject, and the reference to the file of correspondence, should be kept with unfailing promptitude. Such a register is invaluable for reference, and is needed to supplement the actual filing of correspondence. Each inwards letter should be stamped with the date of receipt, and endorsed with the file number.

It should also be a rule that each outward letter should have the subject to which it relates set out at the head.

Each letter should only refer to one subject, but exceptions to this rule may be provided for by increasing the number of loose copies in accordance with the number of subjects dealt with in the letter.

Referencin

It will be seen from preceding remarks that a proper system of referencing is a fundamental factor in any method of filing. Such references, by means of numbering are suggested below; but success, or otherwise, in the work of the filing office, largely depends on the way in which the numbering is carried out. Every subject should be separately indexed (*i.e.* bear a distinctive number), but many, or perhaps most subjects, in a large department, require sub-dividing for convenience in the work of the department; and here, more than in any other detail, care must be exercised. If, on the one hand, correspondence is insufficiently sub-divided, it is difficult to trace required correspondence, and time is wasted; while on the other, unnecessary division of any principal subject is wasteful in the use of filing material, and increases the risk of filing in the wrong sub-division. No hard and fast rule can be laid down regarding the question of references: each office has circumstances peculiar to its own business, and elasticity is essential. Briefly, it may be said that a conservative use of sub-divisions will probably be found convenient in working.

Numbering

Every subject of correspondence, as stated in the preceding paragraph, should bear a distinctive number, and every sub-division of the same subject a further number. These may conveniently be an integral number for the main subject and a decimal fraction for each sub-division. The following examples sufficiently indicate the suggested method:—

Rates and Taxes	6
,, Income Tax)	6·1

In a department or office dealing with the business of several companies, amplification of the system of reference numbers will be needed in order to establish the identity of documents and to guide the filing clerk. This may be done in a simple manner by prefixing a number to the reference suggested in the foregoing paragraph and is indicated as follows:—

"A"	Company	(Rates and Taxes)	100/6
"B"	,,	(Income Tax)	200/6·1
"C"	,,		300
"C"	,,	(Finance)	300/12
"D"	,,	(Investments)	400/12·1

The even hundreds are readily remembered, and to them, as a convenient guide to inter-departmental correspondence, may be added tens, thus:—

"A" Company	Secretary's Department	100
"A" Company	Accountant's ,,	120
"B" Company	Secretary's ,,	200
"C" Company	Manager's ,,	310
"D" Company	Legal ,,	430

This method of numbering (which is easily variable to meet any particular circumstance) has the merit of being comprehensive and not unduly complex, and, used intelligently, should afford a ready indication to the files dealing with the correspondence upon any subject of the business of any company. It may also conveniently comprehend a subject relating to more than one company by the simple combination of the prefixes.

Index of Files.

An index of the main subjects and their sub-divisions is, of course, an indispensable part of the filing system. Where the nature of the business permits, and the correspondence is of sufficient magnitude, a printed alphabetical index of files is to be recommended, particularly if a central filing room, serving all departments, forms a part of the office organisation. In other circumstances, the expense of a printed index would probably not be justified, and in this event, either a manuscript register or a card index register would meet the requirement of the office.

If due regard is given to future needs, the card index will be found to give greater elasticity, as the index may easily be kept up-to-date by the addition of cards as required, and the labour of providing a new manuscript register or registers from time to time is avoided. Further, as correspondence becomes obsolete and is destroyed (the question of a 'time-limit' for correspondence is dealt with later) the superfluous cards may be removed from the drawer, thus always rendering the index a 'live' one. The difficulty of keeping a manuscript register free from entries which, through lapse of time, have become useless, is obvious.

It may be well here to indicate, on broad lines, the equipment required for the filing office. The vertical filing cabinet (of which many patterns abound), large enough to accommodate papers of foolscap size, is undoubtedly the most satisfactory receptacle for general correspondence. The old-fashioned pigeon-hole cupboard harbours dust, and its contents are not accessible with sufficient ease; congestion is a fatal weakness. The vertical cabinet, not

built up too high, is free from these faults; the contents of a drawer may be seen at a glance, and the desired papers obtained without delay, while a properly constructed cabinet is virtually dust-proof. The card index drawers should be attached to the cabinet.

Each main subject of correspondence with its sub-divisions should be kept in flexible cardboard folders, and each division is separated by means of a 'guide,' *i.e.* a sheet of stout cardboard bearing the main number in a metal frame. The main number is thus easily visible, and affords facility in obtaining required files with a minimum of trouble. Where the business of several companies is dealt with in one office, the folders should be of different colours, to allow of easy identification, the name of the company being printed or stencilled on the side of the folder so that it appears horizontally to the eye when the drawer is opened. The folder should bear the names and reference numbers of all the files which it contains; and entries should also be made of any transfers of files to other folders. The files should not be fastened to the folder, which should always be kept in the drawer. When a file is removed for use outside the filing office, a slip of paper stating to whom it has been handed, or a receipt form should be substituted until its return, or an entry should be made on the index card.

Each separate file of correspondence should be kept in a stout paper (preferably manila) cover bearing, as an endorsement, the subject-matter and the reference number. The cover should be folded twice, so that the right-hand side may be folded over the contents before the left-hand of the wrapper (bearing the endorsement). The slight extra cost of this form of cover is fully justified by the condition in which papers, thus housed, may be preserved. All the contents should be firmly fastened to the cover by a loose tag so that the contents can be readily opened out for reference.

The contents of each drawer should be arranged numerically from front to back, and the first and last numbers indicated on the outside of the drawers.

Transfer from Curr Files and Destructio

The filing cabinet must be supplemented by transfer cases, to which files of correspondence will periodically be transferred for permanent storage, or for a prescribed time before their destruction.

Regarding the latter, a time limit (if such be at all practicable) must be fixed to accord with the nature of the undertaking. In some offices, it may not be possible to destroy any correspondence for very many years, or only

selected files may be disposed of, and no inflexible rule can well be applied for universal guidance. It may, however, be said with confidence that, in the majority of offices, far too many obsolete papers of all kinds are retained, with consequent congestion of valuable and (in many cases) limited space, and ever increasing difficulty in obtaining with ease and rapidity any document or file to which reference is desired. Certainly much correspondence which had merely a passing importance, and papers of a formal character, together with documents containing information in the form of rough drafts, and which can consequently be obtained in a final form elsewhere, may be disposed of in a comparatively short space of time. A period of retention of, say, seven years, should perhaps be sufficient in the case of the bulk of the general correspondence of an office, while papers relating to the capital issues of a Company, including all documents connected with statutory meetings and stock and share transfer deeds (indeed most, if not all, of the correspondence and documents pertaining to the work of the Registration Department) should be retained permanently and be housed under such conditions as will ensure their good condition and easy access. Every secretary will have unhappy recollections of the important file which, suddenly required after a lapse of years, cannot be found without prolonged search.

It is suggested, as a general rule, that files of correspondence should be removed from the filing cabinet and placed in transfer cases at least every two years. Each 'main' folder (to which reference has already been made) must be endorsed with the number of the transfer case in which the file for the previous two years has been placed, as well as with the number of the case to which the file in question is now being transferred, thus ensuring continuity of reference and affording facilities for easily obtaining any required file.

The transfer case should be large enough to accommodate foolscap size papers with comfort, and a convenient form is that of the box file, opening at the side and front. An endorsement bearing the number, in bold figures, and a brief statement of the contents, on the back, will make the transfer case complete. Suitable reference must be made in the correspondence index.

Filing of Agreements, Contracts, Title Deeds, etc.

The foregoing suggestions apply, as has been indicated, principally to the general correspondence of an office, but there are many other classes of documents which have to be dealt with by the company secretary, and these call for special consideration.

(*a*) *Agreements and Contracts.* These (in the form of originals) are of great importance, and as such should be preserved with all care. They can be best filed in separate envelopes, long enough to receive a foolscap size agreement folded lengthways, and so endorsed with name, date and subject, that these particulars are seen when the cabinet drawer is opened. Such a drawer should be narrow and high, and capable of holding the agreement or contract envelopes in a perpendicular position, whilst on the outside is indicated the name of the company making the agreements or contracts. There are differing opinions as to the filing of duplicate and spare copies of such documents; some secretaries prefer that these be kept apart from the originals, but all extra copies (or, at any rate, some of them) should be kept in the envelope which contains the original. This practice ensures a reminder, upon every occasion when reference is made to an Agreement or Contract, of the number of copies available, thereby avoiding the possibility of overlooking the need for obtaining fresh prints or typed copies from time to time. Wherever possible, original documents should be stored in a strong room or fire-proof safe, and it should be insisted that, at the close of each day, any original agreements or contracts which may have been in use in the office are to be returned to the filing clerk for safe custody.

The alphabetical register in book form is recommended for recording agreements, as affording a more permanent index than the card system. A book of this kind is never out of date, and provides under each letter, and in order of time, an entire survey of the agreements entered into. Sufficient information will be given by a register with the following headings:—No., Date of Agreement, Parties, Subject, Remarks.

(*b*) *Title Deeds.* Documents relating to the sale and purchase of property, or, more exactly, the deeds which embody such transactions, never become obsolete, and must be dealt with accordingly. They should always be stored in the strong room (if such be provided), or in a fireproof safe. An excellent practice is to file each parcel of deeds relating to any one purchase or sale separately. Stout expanding envelopes of a uniform size suitable for this purpose, and provided with a deep flap and tapes for tying, are manufactured by various firms, and are really indispensable if these documents are so to be preserved as befits their importance. All the deeds comprised in one parcel may be usefully summarised on a type-written schedule (giving date, nature of and the parties to each deed), which should be

affixed in a permanent manner to the inside of the deep flap of the envelope.

On the front of the envelope should be an endorsement in bold characters, giving the number of the parcel, parish, and name of the vendor or purchaser. This information is only needed in respect of the 'principal' deed, as being the only one which directly affects the undertaking.

Here again, an alphabetical index in book form is to be preferred to the card index, and the following headings will meet all requirements:—No., Date, Name of Vendor or Purchaser, Number of Deeds, Parish, Remarks.

It must be noted that the 'principal' deed only will appear in this index; all antecedent or subsidiary ones are included in the schedule recommended above. All the deeds in each parcel should bear an individual and a progressive number, thus:—280/1, 280/2, and so on; it will be observed that the index is furnished with a column which shows the number of deeds or documents in each parcel.

(*c*) *Registration Department.* The filing of all papers and documents connected with the work of this Department calls for separate and different treatment, owing to its peculiar circumstances.

With respect to the general correspondence, the large majority of letters are received from and sent to stock brokers, bankers and solicitors, only a very small percentage being between the Department and the company's shareholders; if, therefore, the correspondence is filed under the names of the senders or addressees, it is, without cross-referencing, difficult to trace the particular account to which it refers. The simplest and most efficient method is to file all letters under the names of the stock or shareholders to whose accounts they relate. By this system all correspondence connected with an account (whether in the name of one proprietor or more) is readily available as it is kept together, and preserves its identity by a progressive number, which is retained until the account is closed. An enlargement of the same principle of filing is found in the practice of some secretaries, who progressively number each account in their registers, and this number is adopted for reference in all subsequent correspondence relating to the account.

The methods of filing and storing need not be on such comprehensive lines as those suggested in the earlier part of this chapter, dealing with general correspondence. A 'backing' sheet, bearing the number, and (if desired) the name or names composing the account is all that is needed.

All letters, inwards and outwards, are fastened thereto, and the files, thus formed, are kept in box files or cases, which bear an appropriate endorsement of their contents.

It may be urged as an objection to this method that, in an office dealing with large numbers of shareholders' accounts, an accumulation of correspondence will soon result in congestion of space, but this objection can be met by a periodical removal to permanent storage.

Considerable experience shows that the demands of the registration department are met by retaining for reference one year's correspondence, in addition to that of the current year. Annually, the cases containing the earlier files are removed to storage, after they have been numbered and indexed for subsequent reference.

If such a system of filing as has been indicated is adopted, it will naturally include such documents as notices of change of address, and orders for the payment of dividends. Failing this, these documents should be progressively numbered and filed in numerical order, proper reference being made in the appropriate registers of the company.

Transfer deeds may conveniently be numbered in progressive order, and at intervals bound into volumes containing twelve months' (or a lesser or longer period according to circumstances) deeds. Unless the quantity of transfers is very small, such volumes should only relate to one stock or class or shares. The method of pasting transfer deeds into guard books is clumsy and antiquated, and leads in many cases to a collection of books which are difficult to handle.

Closely connected with the filing of transfer deeds is the disposal of surrendered stock and share certificates, and a satisfactory method is found in affixing them to the counterfoils of the books of certificates whence they were originally issued. A brief reference may be endorsed on the certificate, indicating the progressive number of the transfer deed to which it relates and such other particulars as may facilitate future reference.

(*d*) *Insurance Policies.* These form a distinct class, and where a large number of properties is concerned, it is desirable to file them apart from other documents. They are best stored in cabinets of such dimensions as will permit them to be filed in an upright position, and may well be indexed (bearing progressive numbers) by the card system, as in many cases their importance is only for a limited period. Obsolete policies should, as they lapse, be removed from the cabinet and the indices marked accordingly.

As a supplement to filing, complete records should be furnished on cards relating to each property or block of properties; a card designed with the following heading will be found useful in keeping necessary details:—Insurance of; Against; Insured by; Insured with: Office or Fund, Proportion; Policy Nos.; Sum Insured; Rates; Discounts; Premiums; Premiums paid: From, To; From, To; From, To. (*i.e.* dates covered by premium payments).

On the back of the record cards, spaces may be provided for particulars of any special obligations under the policies and of any claims arising thereunder. The latter being shown as under:—Policy No., Reasons for Claim, Amount of Claim, Amount Paid.

(*e*) There are many papers and documents dealt with in the secretary's office which do not come within the range of the foregoing sections. Periodical returns and statements, records of staff, analyses of sales and output, and the many unclassified items with which every secretary has to deal, have to be preserved—some temporarily, others permanently —and these must largely be dealt with as conditions may dictate. Generally speaking, such miscellaneous documents may well bear a progressive number, and be recorded by means of the card or book index, any periodical transfer or destruction being recorded therein.

Finally, as eventually files of correspondence and documents (or the majority of them) find their way to cellars or strong rooms, it is imperative that a simple yet complete and up-to-date record of the contents of such storage places be kept. Simplicity has been urged throughout this chapter, and here again it is recommended. A progressive number, company's name (if more than one company is dealt with by the office), and a brief indication of the contents of each parcel, added to which must be given the location of the parcel, *i.e.* the number of shelf or locker, if such be part of the equipment, will suffice, and should enable the filing staff to obtain any desired parcel with the minimum of delay. It should, however, be a strict rule that here, as in the case of the filing office, the custody of the contents be placed in the hands of one member of the staff, through whom alone any required document or parcel is to be obtained.

CHAPTER XXVII

STAMP DUTIES

In considering the imposition of duties it is necessary to bear in mind that Acts of this character must be strictly construed according to the natural interpretation of the words used—in other words, effect must be given to the intention of the legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed. The subject, therefore, cannot be taxed without clear words for the purpose. There can be no intendment in favour of liability.

It rests upon the parties to an instrument and the persons concerned in the preparation of it, to take care that the law is not evaded, and s. 5 of the Stamp Act, 1891, imposes a penalty upon them if there is any neglect to set forth fully and truly in the instrument all the facts and circumstances affecting the liability thereof to duty, or the amount of duty with which it is chargeable. If an instrument is of such description as to fall under two or more heads of charge, and consequently may be liable to duty at different rates, it should be stamped with duty at the highest rate. The most recent decision on this subject was given in 1908 by the House of Lords in the case of *Speyer Brothers* v. *The Commissioners of Inland Revenue* (1908), A.C. 92.

Impressed and Adhesive Stamps.

The Stamp Act, 1891, provides that, except where express provision is made to the contrary, stamp duties for the time being chargeable by law upon any instrument are to be denoted by impressed stamps only, and accordingly adhesive stamps are only applicable to a few descriptions of instruments. Where the use of adhesive stamps is allowed, the ordinary stamps for denoting postage and revenue may be used for an instrument charged with a duty not exceeding 2s. 6d., unless an appropriated stamp is provided, as in the case of foreign bills or notes. In all cases the adhesive stamp must be cancelled by writing upon it the name or initials of the person or firm and the date, or the stamp must be otherwise effectively cancelled, so as to render it

incapable of further use. The Act also provides that an instrument containing or relating to several distinct matters is to be separately and distinctly charged as if it were a separate instrument with duty in respect of each of the matters. The effect of this provision may be illustrated by two of several cases decided thereon. In these two cases it was held (1) that an instrument containing an appointment of new trustees and also vesting the trust property in them was chargeable in respect both of the appointment and of the vesting (*Hadgett* v. *Inland Revenue,* L.R., 3 Ex. D. 46); and (2) that a deed of separation between a husband and wife containing a covenant by the husband to pay an annuity to the wife was chargeable as a deed as well as in respect of the covenant [*Lewis and Lewis* v. *Inland Revenue* (1898), 2 Q.B. 290].

'Denoting' Stamps.

'Denoting' stamps are provided to meet the case of instruments where the amount of duty payable depends upon the duty borne by some other instrument. These stamps are used for duplicates or counterparts of instruments generally, where the maximum duty of five shillings impressed thereon is less than the duty charged on the original instrument, and for other instruments executed as collateral or substituted instruments charged with a lower rate of duty by reason of their being collateral to or in substitution for instruments which bear a higher rate of duty, *e.g.* in the case of marketable securities charged with a reduced rate of duty by reason of their having been issued in substitution for an original marketable security which was duly stamped. Instruments stamped with a low rate of duty by reason of higher duty having been paid on some other instrument must bear a denoting stamp to make them available. These stamps are impressed without any payment upon production to the proper officer of Inland Revenue of all the instruments necessary to satisfy him that the full duty has been paid. Another stamp, termed an 'adjudication' stamp, is also provided for the case of executed instruments submitted to the Commissioners of Inland Revenue for the purpose of the duty thereon being assessed by them, and where this stamp is impressed on an instrument no question is afterwards permitted as to the sufficiency of the duty paid thereon.

Adjudication Stamps.

Stamping of Executed Instruments.

The general rule with regard to stamping executed instruments not prohibited by law to be stamped after execution is that they are allowed to be stamped in the case of agreements under hand within fourteen days, and in the case of other instruments within thirty days after first

execution without payment of a penalty. Afterwards a penalty is exigible except in the case of the majority of instruments first executed abroad which may be stamped without penalty at any time within thirty days after being first received in the United Kingdom. The rules on this subject are set forth in s. 15 of the Stamp Act, 1891, as amended by s. 15 of the Finance Act, 1895.

Dealing with the subject of the charge of stamp duties with which secretaries of companies are more immediately concerned, it may be well considered that the first in importance of these duties as affecting secretaries of companies are those which must be paid on the registration of a company. These duties affect the memorandum and articles of association and the capital of the company.

Memorandum and Articles of Association.

The Companies (Consolidation) Act, 1908, provides in s. 6 that the memorandum of association, and in s. 12 that the articles of association, shall in each case bear the same stamp duty as if it were a deed. This duty is 10s.

Capital Duty

The duty on the capital of a company was first charged in 1888, and was confined to share capital. It was extended in 1899 to loan capital.

Share Capital.

The principal enactments now existing as respects share capital are contained in ss. 112 and 113 of the Stamp Act, 1891. Of these sections the first relates to the capital of companies registered with limited liability under the Companies Acts, and the second, as amended by s. 12 of the Finance Act, 1896, relates to the capital of every other corporation or company where the liability of the shareholders is limited. The liability to duty extends in both cases to any increase of the authorised capital, and the duty now payable is charged at the rate of £1 per cent. by s. 39 of the Finance Act, 1920. The duty is payable upon a statement of the amount of the nominal share capital. The expression 'nominal share capital' was held in 1893 (*A.-G.* v. *Milford Docks Co.*, 69 L.T.R. 453) to mean the capital of the shareholders, whether divided into shares or stock, as distinguished from borrowed capital. The increase of registered capital means an increase of the maximum amount of capital which a company has power to issue, and if a resolution is passed for an increase to a particular sum the duty is payable immediately on this sum, although at the time of the passing of the resolution the issue of a portion of this increase is alone contemplated. The position in this matter is clearly defined in a case [*A.-G.* v. *Anglo-Argentine Tramway Co.* (1909), 1 K.B. 677] which related to a resolution passed on July 26, 1907, for an increase of capital to an amount not

exceeding £5,000,000, and two resolutions subsequently passed for actual increases of £200,000 and £2,800,000 respectively, upon which two sums' duty was tendered and refused, and it was held that duty was payable on the £5,000,000.

Questions have arisen as to the liability to this duty in the case of a consolidation or a re-arrangement of the capital of a company. The leading case on this subject is the *Midland Railway Company* v. *The Attorney-General* [(1902), A.C. 171], which had reference to a Special Act of Parliament by which the Midland Railway Company was authorised to re-arrange and consolidate its several descriptions of capital, and the effect of the arrangement was that (1) certain stocks bearing interest at fixed rates were consolidated into one stock bearing a uniform rate of interest, whilst the nominal amount of the stock issued to some of the holders was increased; and (2) the ordinary stock was cancelled and extinguished, and in lieu thereof two stocks each for the same amount were created as 'preferred' and 'deferred' ordinary stocks. It was held by the House of Lords that in each case the increase in the total nominal amount of the stock was an increase in respect of which the duty was payable.

In the same way the taking over by one company of the business of another company, in consideration of shares issued by the absorbing company upon an authority by statute to increase its capital, was held to involve a liability to the payment of duty by this company [*Great Northern Piccadilly and Brompton Ry. Co.* v. *A.-G.* (1909), A.C. 1].

In the case of a registered company the statement is to be delivered to the Registrar of Joint Stock Companies, and the duty on the first capital is payable on registration, and on any increase is payable within fifteen days after the passing of the resolution by which the capital is increased.

In the case of any other corporation or company the statement is to be delivered to the Commissioners of Inland Revenue within one month after the date of the formation of the corporation or company or of the increase being authorised.

Loan Capital. The duty on loan capital is charged by s. 8 of the Finance Act, 1899, as amended by s. 10 of the Finance Act, 1907. It is payable by every local authority, corporation, company, or body of persons formed or established in the United Kingdom upon a statement to be delivered to the Commissioners of Inland Revenue before the issue of the loan, and the duty payable is charged at the rate of 2*s.* 6*d.* per cent. Loan capital is defined as meaning any debenture stock,

or any capital which is borrowed or has the character of borrowed money. It is, however, provided that the duty is not to be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued. In any such case a statement need not be rendered. Questions have arisen as to whether the conversion or consolidation of loan capital is an issue of loan capital. This is illustrated by the case of *The Attorney-General* v. *The Regent's Canal and Dock Company* [(1904), 1 K.B. 263], which related to the issue of debenture stock at one rate of interest in extinction of existing loans secured by three different debenture stocks at varying rates of interest, the amount of the new stock issued to each holder being such an increased amount as would enable him to receive the same interest as he previously had. By this means the nominal amount of the new stock considerably exceeded the nominal aggregate amount of the three previous stocks, and it was held by the Court of Appeal that there had been an issue of loan capital in respect of which duty was payable under the section.

The decision in this case was followed by the Court of Appeal, and was affirmed by the House of Lords in the case of *The Attorney-General* v. *The London and India Docks Company* [(1909), A.C. 7], relating to an issue of debenture stock in two classes which became merged in a new statutory company where the operation did not involve the raising from the public of any additional capital.

There is in this respect a marked difference between a consolidation of nominal share capital and a consolidation of loan capital, seeing that a consolidation of share capital without an increase does not attract duty. The law was accordingly amended by s. 10 of the Finance Act, 1907, which provided that where after August 9, 1907, duty has been paid relating to loan capital, and there is afterwards a conversion or consolidation of the loan capital to which the statement relates, and a consequent delivery of a new statement of the converted and consolidated capital, duty on so much of the loan capital converted or consolidated as is shewn to the satisfaction of the Commissioners of Inland Revenue to have been included in the first statement shall be repayable.

The instruments next in importance to secretaries of companies are the instruments in use in connection with the business of the company.

Agreement with a Company.

An agreement executed under the seal of a company, which is not otherwise charged with stamp duty, is chargeable in England with the fixed duty of 10*s.*, but in Scotland is chargeable with the duty of 6*d.*, unless it contains a clause of registration.

It is not, however, necessary that all agreements with a company should be under the seal of the company, as the Companies (Consolidation) Act, 1908, provides in s. 76 that 'any contract which, if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of a company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.' A contract by a company made as provided by this section, being merely an agreement under the hand of an officer of the company is charged with the stamp duty of 6*d.* only. This duty may be denoted by an adhesive stamp, and there are five exemptions from the duty of which the first three are important, and are (1) when the matter of the agreement is not of the value of £5; (2) when it is for the hire of a labourer, artificer, manufacturer, or menial servant; and (3) when it is for or relating to the sale of goods, wares, or merchandise.

Letters of Allotment.

The duty on letters of allotment and letters of renunciation or any other document having the effect of a letter of allotment of shares or loans is 1*d.* where the nominal amount allotted is less than £5, and 6*d.* in other cases.

The duty on a letter of renunciation, whether charged with 2*d.* or 6*d.*, may be denoted by an adhesive stamp; but impressed stamps are necessary in the case of any other of these documents, and the stamp must be impressed before signature.

Letters or Powers of Attorney.

Certain of the duties under the head of letter or power of attorney affect secretaries of companies. The duty on an ordinary letter or power of attorney is 10*s.*; but there is a special charge of duty on a letter or power of attorney for the receipt of dividends—namely, 1*s.*, if made for the receipt of one dividend only, and 5*s.* in any other case.

There is an exemption in favour of a request, under hand only from the proprietor of any stock for payment of the dividends or interest arising from the stock to any person therein named.

Proxies and Voting Papers.

The charge of duty upon proxies to vote at a meeting is 1*d.* A similar charge of duty is imposed upon a voting paper. The duty on either instrument may be denoted by an adhesive stamp, and, except in the case of

instruments, first executed out of the United Kingdom, for which provision is made in s. 9 of the Finance Act, 1907, proxies and voting papers may not be stamped after execution. A proxy or voting paper charged with the duty of one penny must specify the date of the meeting at which it is to be used, and is available only at that meeting and any adjournment thereof. If a proxy does not fulfil these conditions, it is chargeable as an ordinary letter or power of attorney.

Affidavits and Statutory Declarations.

The duty on an affidavit or statutory declaration is *2s. 6d.* There are six exemptions from this duty, but the only exemption which is important to secretaries of companies is the Exemption no. 2, which, as amended by s. 6 of the Finance Act, 1907, includes any 'affidavit or declaration required by law.'

Until 1907 it was necessary for the purpose of this exemption that an affidavit or declaration required by law should be made before a justice of the peace, but this is not now necessary. The document must, however, be required by law, and the exemption is, therefore, not applicable to a statutory declaration required by a company to be made upon the death of the holder of stocks or shares merely to establish the identity of the deceased person with the person whose name appears on the register of stocks and shares. A statutory declaration relating to one transaction is not liable to more than one duty by reason of its being a joint declaration made as to the whole of it by one person, and as to part of it by another person (*Reversionary Interest Society* v. *Inland Revenue*, 22 *Times Law Rep.*, 740).

Transfers of Stocks, Shares, and Securities.

One of the most important duties in the business of a company is the keeping of the register of stocks, shares, and securities, and the entering of transfers of stocks and shares and securities on that register.

The transfer of any description of registered shares, stocks, or securities in a company is required to be evidenced by an instrument of transfer, and the instrument, if the transfer is on sale, is charged by the Stamp Act, 1891, amended by the Finance Act, 1920, with duty according to the consideration passing from the purchaser to the vendor. This duty varies from 1*s.* where the consideration does not exceed £5 to £3 where the consideration does not exceed £300, and thereafter is at the rate of 10*s.* for every £50 or fractional part of £50 of the consideration. Such a transfer operating as a voluntary disposition *inter vivos* is chargeable with the like stamp duty as a transfer on sale with the substitution of the value of the shares or stock transferred

Gifts *inter vivos*.

for the consideration, and applies equally to transfers of registered marketable securities. The Act provides in Sub-s. (2) of s. 74 that no transfer operating as a voluntary disposition *inter vivos* shall be deemed to be duly stamped unless the Commissioners of Inland Revenue have expressed their opinion thereon, and a secretary of a company can therefore refuse to accept for registration any such transfer unless it bears an adjudication stamp. The charge of *ad valorem* duty does not apply in seven cases of transfer and in those cases the fixed duty of 10*s*. is payable.

The seven cases may be shortly stated as follows:—

1. A transfer on the appointment of a new trustee or the retirement of a trustee;
2. A transfer as for a nominal consideration to a mere nominee of the transferor where no beneficial interest in the property passes;
3. A transfer by way of security for a loan or a re-transfer to the original transferor on repayment of a loan. In the case of such a transfer the loan would as a rule be disclosed in a separate instrument charged with the duty of 6*d*. as an agreement or with mortgage duty, according as it is under hand or under seal;
4. A transfer to the residuary legatee of stock, &c., which forms part of the residue divisible under a will;
5. A transfer to a beneficiary under a will of a legacy of stock, &c. The transfer must be of a specific legacy. A transfer in discharge wholly or partially of an ordinary pecuniary legacy is chargeable as to transfer on sale by reference to the amount of the legacy which is thereby satisfied [*Dawson* v. *Inland Revenue* (1905), 2 *Irish Reports*, 69];
6. A transfer of stock, &c., being the property of a person dying intestate to the party or parties entitled to it;
7. A transfer to the beneficiary under a settlement of the proportion of the settled funds to which he is entitled upon the distribution of the funds subject to the trusts of the settlement;
8. Transfer of stock or shares by an executor or administrative to himself in his representative capacity.

A transfer of shares or stock which after being executed in the United Kingdom is sent unstamped to the Colonies or abroad for completion and return is allowed to be stamped without penalty if it is presented for stamping within thirty days after its return. This is a slight relaxation of the precise terms of s. 15 of the Act of 1891, which allows instruments first executed abroad and received in the United Kingdom for the first time after execution to be stamped within thirty days. The concession was made by the Commissioners of Inland Revenue in the year 1896 in view of the risk of the loss of a stamped document in transit, and of course only applies on due proof that the transfer is presented for stamping within the thirty days.

Composition of Duty.

There is a provision in s. 115 of the Act of 1891 which enables a company to enter into an agreement with the Commissioners of Inland Revenue for the payment of a half-yearly composition in lieu of the duty on the transfers of the stock of the company. The entering into such an agreement is, however, subject to the absolute discretion of the Commissioners, and for some years past no such agreement has been entered into with a company.

Share Warrants to Bearer.

The stamp duty payable on a share warrant is a duty equal to three times the amount of *ad valorem* duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant if the consideration for the transfer were the nominal value of the share or shares or stock. The duty was extended in 1899 to any instrument to bearer issued by a company formed or established in the United Kingdom and having the effect of a share warrant.

Marketable Securities.

Loan capital when not represented by debenture stock is usually secured by bonds or debentures. These may either be transferable on a register or may be bearer securities. The charge of duty was in 1862 made applicable to securities by or on behalf of any foreign state or government or foreign or colonial municipal body, corporation, or company, bearing date or signed after June 3, 1862, if made or issued in the United Kingdom, or if the interest is payable in the United Kingdom and they are transferred or negotiated in the United Kingdom. The charge was extended in 1885 to securities of this character which, although originally issued abroad, are subsequently offered for subscription and delivered to a subscriber in the United Kingdom. This extension followed a decision in 1876 in the case of *Grenfell* v. *The Commissioners of Inland Revenue* (1 Ex. D. 242), in which it had been held that securities tendered for and purchased *en bloc* in New York and subsequently placed upon

the British market and allotted and delivered by the purchasers to persons in the United Kingdom who offered to take them upon the terms of a prospectus issued to them by the purchasers, were made and issued in New York.

Trust Deeds. It frequently happens that debentures or debenture stock are secured by trust deeds, and the practice with regard to stamping these deeds is as follows: If the trust deed is to secure debentures, it is stamped with the fixed duty of 10*s*., and the *ad valorem* duty is paid upon the debentures at the rate properly applicable to them. If, however, the trust deed is to secure debenture stock, the certificates for the stock are not chargeable with any duty, and the trust deed is accordingly stamped with the same *ad valorem* duty as a mortgage—namely, a duty at the rate of 2*s*. 6*d*. per cent.

Registered Bonds. The stamp duty charged upon registered bonds or securities is at the rate of 2*s*. 6*d*. per cent. as in the case of a mortgage, or if issued in substitution for a like security which was duly stamped is at the rate of 6*d*. per cent.; but since August 4, 1903, with a maximum duty of 10*s*. as provided by s. 7 of the Revenue Act, 1903. The duty payable upon the transfer of such securities is the same as in the case of a transfer of shares or stock. These same rates of duty apply to all colonial government securities.

Securities to Bearer. Until the year 1910 the stamp duty charged upon bearer securities (except colonial government securities), bearing date or signed after August 6, 1885, was charged at the rate of 1*s*. for every £10 or fractional part of £10, or in the case of such a security issued in substitution for a like security duly stamped at the rate of 6*d*. for every £20 or fractional part of £20. The stamp duty on securities bearing date before or on August 6, 1885, was the same as upon registered securities. Before the year 1899 three considerations had to be taken into account for the purpose of determining whether a foreign bearer security transferred or negotiated in the United Kingdom was chargeable with stamp duty—namely: (1) the date of the security; (2) whether the security was made or issued in the United Kingdom; and if not (3) whether the interest thereon was payable in the United Kingdom, but as from August 1 in that year the charge of duty of 1*s*. for every £10 or fractional part of £10 was applied by s. 4 of the Finance Act, 1899, to foreign and colonial bearer securities of every description except colonial government securities, and accordingly none of these considerations are now material, and the same charge of duty was also applied to foreign share warrants and stock certificates to

bearer issued by any company formed or established out of the United Kingdom and transferred or negotiated in the United Kingdom. It is immaterial whether the security is or is not a substituted security, as no provision is made for a differential rate of duty by reference to a security to which this section applies being substituted for a like security duly stamped.

This Act also contains in s. 6 an important provision making these charges of duty applicable to all instruments used for the purpose of transferring or negotiating the right to any marketable security, share, or stock if delivery thereof is, by usage, treated as sufficient for the purpose of a sale on the market.

The charges of duty on marketable securities to bearer other than colonial government securities or colonial municipal securities were doubled by s. 76 of the Finance (1909-10) Act, 1910, so that the charge of duty on all foreign marketable securities to bearer except colonial government securities and colonial municipal securities, was increased as from April 29, 1910, from 1*s.* to 2*s.*, and by the Finance Act, 1920, to 4*s.* for every £10 or fractional part of £10. The rate of charge applicable to foreign share warrants and foreign stock certificates which was also doubled by the same section is likewise 4*s.* per £10 nominal value, and is chargeable on first negotiation in the United Kingdom. The rate of duty on colonial municipal securities to bearer is now at 2*s.* for every £10 or fractional part of £10, and colonial government securities are chargeable at the rate of 5*s.* per £100 or fractional part thereof, whilst the rates for bearer securities of the United Kingdom, if issued before or on August 6, 1885, were increased from 2*s.* 6*d.* to 5*s.* per cent., or in the case of substituted securities from 6*d.* to 1*s.* per cent. with a maximum of £1, or if issued after that date from 1*s.* to 2*s.* for every £10 or fractional part of £10, or in the case of sub tituted securities from 6*d.* to 1*s.* for every £20 or fractional part of £20. These rates were increased by the Finance Act, 1920 to 4*s.* per £10 or fractional part thereof, or if given in substitution of a like security duly stamped, 2*s.* per £20 or part thereof.

The duty was reduced by s. 13 of the Finance Act, 1911, where the amount secured is repayable within the period of three years from the date when the duty becomes chargeable—that is to say, the first issue of the security, or, in the case of a security not issued in the United Kingdom, the first transfer, or negotiation in the United Kingdom—and the date is conspicuously stated on the face of the security. The reduced duty, which applies to all bearer

securities not being colonial government securities, is for every £10, or fractional part, 6*d.*, if the security will expire within a year, and 1*s.* if the security will expire after a year and within three years; and it is provided that if the security is not paid off within the stated period, and there is any subsequent dealing, the full rate of duty shall become payable, subject to an allowance of the duty already paid. The duty chargeable in respect of a substituted security does not apply where the reduced rate of duty is paid under this section.

Loans repayable at a Premium.

The duty is charged on the amount secured, and accordingly, if a debenture is issued upon a loan of a sum repayable unconditionally with a premium thereon, the aggregate amount of the loan and the premium is the amount secured upon which the duty is payable. This was decided in 1897 in the case of *Rowell* v. *The Commissioners of Inland Revenue* [*Knights Deep Limited* v. *Inland Revenue* (1900), 1 Q.B. 217]; but it was held in 1900 that if the terms of the debenture are such that the premium mentioned therein is only payable if it is paid off upon a notice, so that the payment of the premium merely depends upon the will and pleasure of the company, who are under no obligation to give the notice, the premium is not to be taken into account in computing the duty [*Knights Deep Limited* v *Inland Revenue* (1900), 1 Q.B. 217], and this principle is considered to be equally applicable to a premium which will become payable only in the case of the voluntary winding up of the company issuing the security.

Questions have arisen as to the extent of the charge of duty on a debenture, and reference may be made to the case of *The British India Steam Navigation Co.* v. *The Commissioners of Inland Revenue* (*Law Rep.* 7 Q.B.D. 165), decided in 1881, which related to an instrument not under seal issued by an English company, with coupons for interest attached, and purporting on the face of it to be a debenture, and to the decision of the House of Lords in 1908 in the case of *Speyer Bros.* v. *The Commissioners of Inland Revenue* [(1907), 1 K.B. 246], which related to a treasury note issued by a foreign government with coupons for interest attached, although giving no security to the holder beyond the promise to pay the face amount of the note, in both of which cases it was held that the charge of duty applied. It was held in the latter case that an argument that a security of a kind that can be described as marketable involves hypothecation of property as security for the debt for which it is issued is not tenable. It has also been held that the deposit of an unregistered debenture sealed in blank without name or

date to secure a temporary loan is an issue of the debenture [*Lyons* v. *The Tramways Syndicate, Limited* (1906), 2 Ch. 216].

Questions have also arisen as to what amounts to an issue in this country. The principal cases on this subject are the *Chicago Railway Terminal Elevator Company* v. *The Commissioners of Inland Revenue* (75 L.T.R. 572), decided in 1896, and *Brown* v. *The Commissioners of Inland Revenue* (84 *L.T.R.* 71), decided in 1900; but the decisions in both cases were upon the special facts and circumstances applicable thereto, and it is hardly necessary, therefore, to dwell upon them.

In considering the charge of duty at the lower rate applicable to securities given in substitution for like securities, it is necessary to determine whether a reduced rate applies, and in that case all the circumstances should be taken into account: *e.g.* whether the security is exchanged for one given by a different person and probably secured on different property [*Mount Lyell Mining and Railway Co., Limited*, v. *Inland Revenue* (1905), 1 K.B. 161]; and obviously debentures issued by a company in exchange for debentures of another company are not within the lower rate of charge.

Definition of Marketable Security.

Another point with reference to marketable securities which it is important to bear in mind is that a marketable security is defined by s. 122 of the Act of 1891 as meaning 'a security of such a description as to be capable of being sold in any stock market in the United Kingdom.' This definition was considered in 1888 in a case arising in Scotland (*Texas Land and Cattle Company* v. *Inland Revenue*, 16, Rettie 69), and Lord Shand, in the course of his judgment, said: 'It seems to me that the true interpretation of the clause must be to include, as marketable securities, all securities of such a description as to be capable according to the use and practice of stock markets of being there bought or sold.' This interpretation was adopted in 1895 by the Court of Appeal in England in the case of *Brown, Shipley & Co.* v. *The Commissioners of Inland Revenue* [(1895), 2 Q.B. 598], and accordingly it is not necessary that there should be any quotation of the security in an official list.

Debentures redeemed and re-issued.

S. 104 of the Companies (Consolidation) Act, 1908, enables a company to redeem and re-issue debentures of the company under certain circumstances; but it is expressly provided that the re-issue of a debenture so redeemed, or the issue of another debenture in its place shall be treated as the issue of a new debenture for the purposes of stamp duty.

Awards. The duty chargeable upon an award of any description made after August 3, 1906, is the fixed duty of 10*s*., and accordingly there is no longer any differential rate according to the nature of the matter in dispute. The duties previously payable were as follows: In the case of an award as to which an amount or value was the matter in dispute the duty was *ad valorem* and varied from 3*d*. to a maximum of £1 15*s*., according to the amount or value awarded, and in every other case the duty was £1 15*s*. This duty of £1 15*s*. caused considerable hardship in some cases, and the substitution of 10*s*. for these varying duties was made by s. 9 of the Revenue Act, 1906.

Bills of Exchange an Promissory Notes. In considering the duties payable on bills of exchange and promissory notes it is important to bear in mind that there is a clear distinction between the provisions of the stamp law and the provisions of the Bills of Exchange Act, 1882. This Act provides in s. 97 that 'nothing in this Act or in any repeal affected thereby shall affect the provisions of the Stamp Act, 1870—(the reference to the Stamp Act, 1870, is now a reference to the Stamp Act, 1891, as provided by Sub-s. (1) of s. 38 of the Interpretation Act, 1889)—or Acts amending it, or any law or enactment for the time being in force relating to the revenue.' The stamp duties on bills of exchange and promissory notes, with the exception of the fixed twopenny duty applicable to bills of exchange payable on demand, are *ad valorem*, according to the sum for which the bill or note is drawn. The fixed twopenny duty does not apply to a promissory note of any description.

The stamp for denoting the fixed duty may be an adhesive stamp, and in that case is the ordinary stamp available for postage and revenue. This fixed duty was first allowed in 1853, and was applicable only to drafts or orders—that is to say, cheques payable on demand. It was extended in 1871 to bills of exchange payable at sight or on presentation, and in 1899 to bills of exchange payable within three days after date or sight. These extensions have been a great service to the mercantile community. Drafts, orders, and cheques are included in the definition of a bill of exchange in s. 32 of the Stamp Act, 1891, and by the same section a bill of exchange payable on demand is made to include certain forms of order for the payment of money which are thus made chargeable with the fixed duty of two pence. These forms of order include orders for the payment of money out of a particular fund, or upon a contingency and orders for the payment of money weekly or monthly or at any other stated periods. These latter

orders are in frequent use for directing the regular payments of subscriptions, premiums on policies of insurance, &c., and care should be taken that they bear the twopenny stamp.

An order relating to the payment of money out of a particular fund chargeable with the fixed duty of two pence may take the form of a letter delivered to the payee. There are several cases on this subject, and the two following letters may be cited as illustrations:—

1. Please to remit to Messrs. Howe Whittaker and Tatham £700 and charge it in the account with me in settling for the present year's tithes of the rectory of Llambister [*Braybrooke* (*Lord*) v. *Meredith*, 13 Sim. 271].

2. Out of any balance which may be due to me after final arrangement of the account I will thank you to pay to George Parsons, Esq., £1977 (*Parsons* v. *Middleton*, 6 Hare 261).

These documents differ from those relating to the payment of a debt to a third party in which questions have been raised as to whether they are chargeable as assignments or bills of exchange. The most recent cases on this subject (*Brice* v. *Bannister*, 3 Q.B.D. 569 and *Buck* v. *Robson*, *ibid.* 686) establish that an order from a creditor to his debtor to pay to a third person and sent to the payee is an assignment and not an order for the payment of money. Questions have also arisen with regard to post-dated cheques, and there have been several decisions. No objection can now be raised to such a cheque which is declared to be admissible as evidence in an action brought after the date of the cheque [*Royal Bank of Scotland* v. *Tottenham* (1894), 2 Q.B. 715] and similarly no objection can be taken to an ante-dated cheque.

Promissory Notes.

The duties on other bills of exchange and on all promissory notes vary from *2d.*, where the sum payable does not exceed £10, to 1*s.* where the sum is between £75 and £100, and afterwards is at the rate of 1*s.* for every £100 or fractional part of £100. The stamps for denoting these duties are appropriated to bills and notes, and except in the case of foreign bills or notes must be impressed stamps.

Inland bills of exchange and promissory notes are required to be stamped before they are issued, and, except in the following circumstances the omission to stamp them before issue cannot be remedied, so that the documents are absolutely invalid, whilst the person issuing them is in any case liable to a penalty.

The circumstances under which an inland bill or note may be stamped after signature are defined as follows:—

S. 37 of the Act of 1891 which relates to the *ad valorem* duty provides that a bill or note bearing an impressed stamp of sufficient amount but not the proper appropriated stamp 'may be stamped with the proper stamp on payment of the duty, and a penalty of 40*s.* if the bill or note be not then payable according to its tenor, or of £10 if the same be so payable.' This stamp must be impressed.

Sub-s. (2) of s. 38, as amended by s. 36 of the Finance Act, 1918 which relate to bills of exchange charged with the fixed duty of 2*d.*, provides that if such a bill is presented for payment unstamped 'the person to whom it is presented may affix thereto an adhesive stamp of two pence, and cancel the same as if he had been the drawer of the bill.'

The duties on foreign bills of exchange and promissory notes, with the exception relating to certain bills for an amount exceeding £50, are the same as on inland bills or notes.

Duties on bills of exchange drawn and expressed to be payable out of the United Kingdom when actually paid or endorsed or in any manner negotiated in the United Kingdom shall, where the amount of the money for which the bill is drawn exceeds £50, be 9*d.*

> And where the amount exceeds £75, 1*s.* and thereafter 1*s.* for every £100 and any fractional part of £100.

The duties, if not previously paid, are required by s. 35 of the Act to be paid by the holder thereof 'before he presents for payment or endorses, transfers, or in any manner negotiates or pays the bill or note.' These duties are denoted by adhesive stamps which are required to be cancelled by the person affixing them; but if they are not so cancelled they may afterwards be cancelled by any *bona fide* holder.

The duty on a bill of exchange or promissory note drawn for money in any foreign or colonial currency is to be calculated according to the value on the day of the date of the instrument of the money in British currency. This is provided for by s. 6 of the Act of 1891, and the rate of exchange is determined in accordance with the provisions of s. 12 of the Finance Act, 1899.

Inland and Foreign Bills. The distinction between an inland bill or note and a foreign bill or note is explained in s. 36 of the Act of 1891, which is as follows:—

> A bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is

for the purpose of determining the mode in which the stamp duty thereon is to be denoted to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

There is not any similar provision with regard to a bill or note which is in fact drawn or made out of the United Kingdom, but purports to be drawn or made within the United Kingdom. The stamp duty on such a bill or note should be denoted by the adhesive stamp applicable to a foreign bill or note.

Exemptions from Duty.

There are eleven exemptions from the charge of duty upon bills of exchange and promissory notes. The most important of them relate to the business of banking and to the business of public departments. These latter include an exemption in favour of a 'bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.' This exemption was the subject of a decision [*Committee of London Clearing Bankers* v. *Inland Revenue* (1896), 1 Q.B. 222] in 1896, in which it was held that the exemption only applied to bills drawn for the sole purpose of remitting and placing to its proper account money which is already public money and was not therefore applicable to a transfer order on the Bank of England issued by the bank to a customer desiring to pay taxes by this means.

Exemption in favour of Coupons.

The principal exemption in which secretaries of companies are interested is that in favour of coupons. This exemption was originally limited to coupons attached to and issued with any security. It was extended in 1889 to coupons issued with an agreement or memorandum for the renewal or extension of time for payment of a security, and in 1894, to any coupon being one of a set of coupons whether issued with the security or subsequently issued in a sheet. The last extension followed a decision [*Rothschild* v. *Inland Revenue* (1894), 2 Q.B. 142] in 1894 that a coupon issued upon the exhaustion of the coupons attached to a *perpetual* security was not exempt.

Protest by Notary.

The duty payable upon a protest by a notary public depends upon the amount for which the bill or note was given. If the amount does not exceed £100, so that the duty on the bill or note does not exceed 1*s*., the duty on the protest is the same as that paid upon the bill or note. In any other case, the duty on the protest is 1*s*. This duty may be denoted by an adhesive stamp.

Policies of Insurance.

For the purpose of stamp duty, a policy of insurance is defined by s. 91 of the Act of 1891 as including 'every writing whereby any contract of insurance is made or agreed to be made or is evidenced,' and the charges of duty vary according as the policy is for:—

Sea Insurance;

Life Insurance; or any other form of insurance.

Policies of Sea Insurance.

A contract chargeable as a policy of sea insurance applies to the insurance of a ship, or the machinery, tackle, or furniture of a ship or any goods on board or of the freight or any other interest which may lawfully be insured in or relating to any ship, and may cover in the case of goods not only a sea risk but also other risks incidental to the transit of the goods from the commencement of the transit to the ultimate destination covered by the insurance. Such a contract is not valid unless it is expressed in a policy.

In considering the stamp duty payable on policies of sea insurance it is important to bear in mind that it is provided in s. 91 of the Marine Insurance Act, 1906, by which Act the ordinary law relating to marine insurance is codified, that 'nothing in this Act or in any repeal effected thereby shall affect the provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue.'

The stamp duties on policies of sea insurance vary according to circumstances.

Where the premium for the insurance does not exceed the rate of 2*s.* 6*d.* per cent. of the sum insured the duty is 1*d.*, and it is provided by s. 8 of the Finance Act, 1912, that this duty shall be payable where the premium is expressed to be a sum not exceeding the rate of 2*s.* 6*d.* per cent. of the sum insured, although this premium is subject to an increase (whether defined or not in the policy) in the event of the occurrence of a specified contingency. The section also provides that if, owing to the occurrence of the contingency, the premium is increased, so as to exceed the rate of 2*s.* 6*d.* per cent., the policy or a new policy may be stamped with the proper additional duty within thirty days after the date on which the increased duty is ascertained.

In any other case the duty depends upon the sum insured, and the duties payable are as follows:—

(*a*) In the case of a policy for a voyage the duty is at the rate of 3*d.* for every £250 or fractional part of £250 up to £1000, and thereafter 6*d.* for every £500 of the sum insured;

(*b*) In the case of a policy for time the duty is three times the amount payable on a voyage policy if the insurance be made for any time not exceeding six months, or six times that of a voyage policy if the time exceeds six months and does not exceed twelve months, but there is a provision for an additional duty of 6*d*. if the policy contains a continuation clause. It is not necessary that a policy for time should be confined to one ship (*Great Britain Steamship Premium Association* v. *White*, 19 Rettie, 109).

It is necessary to specify in the policy:—

(*a*) The particular risk or adventure;

(*b*) The names of the subscribers or underwriters; and

(*c*) The sum or sums insured.

The provision requiring the names of the subscribers or underwriters to be inserted is a reproduction of the old law contained in an Act of 1795, when it was not competent for any body of persons except the Corporation of the London Assurance and the Royal Exchange Assurance to become assurers; and so long ago as the year 1849 it was held in two cases (*Reid* v. *Allan*, 19 *Law Journ.* Exch. 39 and *Dowdall* v. *Allan*, 19 *Law Journ.*, Q.B. 41) that where policies are effected by a corporation or company it is a sufficient compliance with this provision if the name of the company or corporation is specified. In the case of a policy issued by a mutual insurance association it was held in 1880 (*Marine Mutual Insurance Association Ltd.* v. *Young*, 43 *Law Times Rep.* 441) that the affixing of the seal of the association authenticated by the signature of the manager is sufficient.

The policy may be either for a voyage or for time; but if for time the duration may not (except as provided by s. 11 of the Finance Act, 1901) exceed twelve months.

It has been established by a number of judicial decisions that a slip which is the first memorandum in an ordinary insurance is a contract of insurance, and not being a policy is not an instrument upon which an action can be maintained, but it can be looked at for collateral purposes wherever it is material. The omission to issue a policy cannot be waived by agreement between parties in order to obtain a decision upon questions arising upon a contract of insurance (*Nixon* v. *Albion Marine Insurance Co.*, 2 Exch. 338). A decision of much importance was given in 1900 in a proceeding in the

Commercial Court (*Charlesworth* v. *Faber*, 5 Com. Cas. 408) relating to a time policy for twelve months, which included a clause as follows:—

> Should the vessel be at sea or abroad on the expiration of this policy it is agreed to hold her covered until arrival at her port of final destination in the United Kingdom or on the continent of Europe at a *pro rata* daily premium to the within.

Bigham, J. (Lord Mersey) held that this policy was void at law as being a contract of sea insurance made for a longer period than twelve months, and his decision was followed and affirmed by the Court of Appeal in another case (*Royal Exchange Assurance Co.* v. *Sjoforsakrings Aktiebolaget Vega*, 2 K.B. 384), and led to an amendment of the law by s. 11 of the Finance Act, 1901, which allowed the insertion of a continuation clause as defined in the section and charged on any policy containing such a clause an additional duty of 6*d*. The section provided also for the payment, either upon that policy or upon a new policy, of the duty applicable to the new risk covered by the clause if it attaches. This additional duty is payable within thirty days after the risk has attached and is the duty applicable to a policy for a voyage.

Continuation Clause.

There is a special provision in s. 8 of the Finance Act, 1903, which relates to ships under construction that a policy to cover this risk is to be charged as a policy for a voyage, and if made to cover a period of time is not to be deemed a time policy. Such a policy may accordingly cover a period of time exceeding twelve months.

It is provided in s. 95 of the Act of 1891 that a policy of sea insurance may not be stamped after it is signed or underwritten except in two cases, of which the first relates to policies of mutual insurance and allows a duly stamped policy to be stamped with further duty to cover a proposed extension of the sum for which it was originally underwritten, and the second relates to policies executed out of but enforceable within the United Kingdom, and allows them to be stamped within ten days after their first being received in the United Kingdom. To these two exceptions must be added the stamping of a policy to cover a risk under a continuation clause or an increase of the premium as provided for by the Acts 1901 and 1912.

There is a special provision in s. 96 of the Act of 1891 permitting alterations in a policy under certain circumstances. These alterations must be made before notice of the

determination of the risk insured. In an old case (*Sawtell* v. *Loudon*, 5 Taunt 358) decided in 1814, it was held that a mistake by a broker in making out a policy as upon the ship instead of upon goods in the ship could be rectified by a memorandum signed by the underwriter. In like manner a mistake in the name of the ship insured can be rectified, and similarly other alterations of the same character which do not affect the stamp duty may be made, but it was held in 1807, in the case of *Hill* v. *Patton* (8 East 373), that a policy on a ship and outfit for a voyage cannot be altered after the ship has sailed and the risk has attached so as to make it available for the ship and goods, seeing that the outfit of a ship is an entirely different subject of insurance from the goods on board.

Although a policy of sea insurance cannot, except as above mentioned, be stamped after it is signed or underwritten, it may, under sub-s. (2) of s. 95 of the Act of 1891, be received in evidence as provided by s. 14 of the same Act upon payment of the duty charged thereon and a penalty of £100 as the penalty payable on stamping.

Policies of Life Insurance.

A policy of life insurance is defined by s. 98 of the Stamp Act, 1891, as meaning 'a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident.'

The stamp duty payable on a policy of life insurance varies according to the amount insured.

Where the amount insured does not exceed £10 the duty is 1*d.*;

Exceeds £10 and does not exceed £25, 3*d.*;

Exceeds £25 and does not exceed £500, 6*d.* for every £50;

Exceeds £500 and does not exceed £1000, 1*s.* for every £100;

Exceeds £1000, 10*s.* for every £1000.

The same liability attaches to fractional parts of £50 and £100 and £1000 respectively. A contract of life assurance must be followed by the issue of a stamped policy within one month after receiving or taking credit for the premium.

The duty applies to an endowment policy being a policy for a sum to be paid at a specified age with or without a condition that in the event of the death of the insured under that age a smaller sum shall be paid to his executors [*Prudential Insurance Co.* v. *Inland Revenue* (1904), 2 K.B. 658]. A policy affected under the Married Women's

Property Act, 1882, may be chargeable also with duty as a settlement. The duty does not apply to policies on the lives of cattle (*A.-G.* v. *Cleobury*, 4 Exch. R. 65).

Other Policies of Insurance.

Other policies relate to insurances against accident as defined by s. 98 of the Act, 1891, and payments to be made during sickness or incapacity from personal injury. The definition was extended by s. 11 of the Finance Act, 1899, as amended by s. 8 of the Finance Act, 1907, to employers' liability policies where the annual premium does not exceed £2. They also relate to policies by way of indemnity against loss or damage of or to any property.

All these policies are chargeable with the stamp duty of 6*d.*, which may be denoted by an adhesive stamp, and as in the case of life insurance a stamped policy must be issued within one month after receiving or taking credit for the premium.

Employer's Liability.

An employer's liability policy, where the annual premium is £2 or upwards, is chargeable with the duty of 10*s.* or of 6*d.*, according as the policy is under seal or under hand. It is important to bear in mind that agreements in the form of policies for the purpose of guaranteeing payments, *e.g.* principal or interest on a mortgage, are not chargeable under this head, but are chargeable as agreements [*Mortgage Insurance Corporation, Limited*, v. *Inland Revenue*, 57 *L.J.R.* (Queen's Bench), 630; and *Mortgage Insurance Corporation, Limited*, v. *Inland Revenue*, 21 Q.B.D. 352].

Risks Insured Without Issue of Policy.

The definition of a policy of insurance against accident extends to a notice or advertisement in a newspaper or other publication which purports to insure the payment of money to the holder thereof in circumstances in which a policy, if issued, would be a policy chargeable with the fixed duty of 1*d.*, and it is provided by s. 116 of the Act of 1891 as extended by s. 13 of the Finance Act, 1896, and s. 8 of the Finance Act, 1907, that the penny duty payable on a policy for the like purpose may be compounded for under an agreement entered into with the Commissioners of Inland Revenue for the delivery to them of quarterly accounts of all sums received by way of premium and the payment of a duty equal to 5 per cent. on the aggregate amount of these sums.

This composition corresponds with a composition allowed since 1849 by the private Acts of the Railway Passengers' Assurance Company and the Ocean Accident and Guarantee Corporation, Ltd., in respect of risks insured without the issue of a formal policy.

Receipts.

A receipt is defined by s. 101 of the Act of 1891 as including 'any note, memorandum, or writing whereby any money

amounting to £2 or upwards or any bill of exchange or promissory note for money amounting to £2 or upwards is acknowledged or expressed to have been received or deposited or paid or whereby any debt or demand or any part of a debt or demand of the amount of £2 or upwards is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.'

The duties payable upon receipts were formerly *ad valorem* with a maximum of 10*s*. They were reduced to 1*d*. in 1853, and increased to 2*d*. by the Finance Act, 1920, and the present definition taken from the Stamp Act of 1870 is an enlargement of the definition previously in force. It will be observed that no particular form of words is now necessary to render a writing given for or upon the payment of money chargeable as a receipt, and that it is not necessary that the writing should be signed. There are numerous decisions upon the definition of a receipt. The use of the word 'settled' or of any form of writing, even a mere signature in a book in columns by which payment is acknowledged, is sufficient, and in the case of *The Attorney-General* v. *The Carlton Bank, Limited* [(1899), 2 Q.B. 158] decided in 1899, it was held that the initials by the secretary or cashier of a bank written in a book containing entries of sums collected or recovered by the salaried solicitor of the bank as an acknowledgment that moneys amounting to a total sum of £2 or upwards had been paid over by him to the bank rendered the duty payable. It has also been held in two other cases [*General Council of the Bar* v. *Inland Revenue* (1907), 1 K.B. 462], decided in 1907, that the placing of his initials by a King's Counsel or of his signature by a barrister against the fees marked on his brief as an acknowledgment of the payment of fees, amounting to £2 or upwards, is a receipt within the definition. The charge extends to every document signed as a receipt, and it is not material that the sum for which the receipt is given was included with other sums for which another receipt was given. Thus, in the case of *The Attorney-General* v. *Ross* [(1909), 2 Ir. R. 246], it was held in 1909 by the Court of Appeal in Ireland that a receipt given for rent amounting to £2 was chargeable with the duty, although the payment was included in a composite account for rent and goods for which another receipt, duly stamped, had been given, and the separate receipt for rent was stated to have been given for book-keeping purposes only.

A receipt for a payment by cheque is a receipt for a bill of exchange within the definition, and when a payment amounting to £2 or upwards is made, it is not material whether it is a payment in full or on account.

In the case of contra accounts, where a settlement is effected between the parties by payment of a balance and the sum paid is less than £2, a receipt stamp is not necessary, but it must be clear that the receipt was not in the form of a receipt for the debt itself—it must show precisely what it is —*e.g.* 'Settled in contra.' If a receipt for the debt is given it must be stamped.

There are fifteen exemptions from the duty on receipts; of these the most important are the receipts given by bankers for deposits by their customers, or in the ordinary course of business upon a bill of exchange or promissory note duly stamped, receipts given upon duly stamped documents for the consideration expressed therein to be payable and the receipts given for taxes or duties or in connection with Government business. There was formerly an exemption in favour of a receipt written upon a bill of exchange or promissory note, but this exemption was repealed in 1895 by s. 9 of the Finance Act of that year in consequence of a practice which had become established of including on one sheet of paper a cheque followed by a formal receipt in discharge of an account paid by the cheque for which a separate receipt would otherwise have been required. This practice was stated to be convenient for matters of account, but was a distinct loss to the revenue. Upon the repeal of the exemption it was provided that the name of the payee written upon a draft or order, if payable to order, shall not constitute a receipt chargeable with stamp duty.

Allowance for Spoiled Stamps.

The provisions relating to the allowance for spoiled stamps are contained in ss. 9 to 12 of the Stamp Duties Management Act, 1891; but the time within which the allowance could formerly be claimed—namely, six months—was extended by s. 13 of the Revenue Act, 1898, to two years.

In order to obtain the allowance it is necessary to satisfy the Commissioners of Inland Revenue with regard to impressed stamps that the stamp is on material which has been inadvertently and undesignedly spoiled, or has by some means been rendered unfit for the purpose intended, and, except in the case of bills of exchange and promissory notes, and instruments wholly or partially executed, that the stamp was spoiled before the material bore the signature of any person.

In the case of bills of exchange and promissory notes which have been signed, it must be shown in the case of a bill of exchange that it has not been accepted or delivered out of the hands of the drawer for any purpose other than by way of tender for acceptance; and in the case of a promissory note, that it has not been delivered out of the hands of the maker. If this cannot be shown, another completed and duly stamped bill or note identical in every particular except in the correction of a mistake must be produced.

In the case of an executed instrument it must be shown either that it was void from the beginning, or by reason of a mistake therein was unfit for the purpose intended, or that a necessary party had refused to execute it and complete the transaction, or that by reason of a failure to enrol or register it within the time required by law the instrument had failed and become void, or that another instrument between the same parties and for the same purpose had been executed.

In the case of adhesive stamps the Commissioners must be satisfied not only that they have been inadvertently and undesignedly spoiled or rendered unfit for use, but also that they have not been affixed to any material.

Except in the case of claims for the allowance of spoiled stamps impressed on plain material or unexecuted documents, or adhesive stamps where the total amount claimed is less than ten shillings, an applicant for allowance is required to verify by declaration the statements in his application. Where a declaration is necessary the regulations of the Commissioners require that the person for whose use and business the stamps were purchased, or his agent authorised by him in writing, shall attend personally at the allowance office, and make the declaration on a form provided by them and before one of their officers, which in the case of an executed instrument must include a statement tnat there have been no legal proceedings in which it could or would have been tendered in evidence. It is also required that an executed instrument, which must be presented in a complete state without mutilation, shall be given up to be cancelled. If an authorised agent attends, the authorisation may be either for a specific application or, in the case of a company having occasion to make frequent applications, may be a general authority to be acted on as occasion requires.

In the case of policies of insurance (except sea policies) a special form of declaration has been provided, and it is required that this declaration, whether it relates to completed policies or not, shall be made by the applicant or by a responsible agent of the applicant fully acquainted with all

the facts to which he declares. In the case of policies which have been fully executed and completed and are not strictly within the legal provisions, the Commissioners have prescribed special conditions governing the allowance which limit the time within which the application must be made, and require information to be furnished according as the application for allowance is due either (*a*) to errors or omissions in preparation where a duly stamped substituted policy is not produced; or (*b*) to the policy not being taken up—that is to say, a policy prepared in anticipation, but declined by the proposer; in both of these cases the application must be made within three months from the date of execution of the policy; or (*c*) to change of intention—that is to say, that the insured has changed his original intention, and has desired either a different kind of policy or an alteration in the terms of the policy as prepared, in which case the application must be made within one month from the date of execution, the policy must not have been in the hands of the insured, and the declaration must include a statement that any premium paid on the first policy has been applied towards the new one.

Allowance may also be made for misused stamps—that is to say, for any excess duty denoted by a stamp upon an instrument which is of greater value than is required, or for the stamp on an instrument not liable to duty, and provision is made for the purchase by the Commissioners of stamps not spoiled or rendered useless, but for which the owner has no immediate use.

The allowance in any case may be made in money or stamps at the discretion of the Commissioners.

Duties and Liabilities of Secretaries.

The greatest care is required by secretaries of companies in dealing with instruments chargeable with stamp duty. S. 14 of the Act of 1891 prescribes the terms upon which instruments not duly stamped may be received in evidence, and provides that such an instrument shall not be received in evidence unless it can be legally stamped after execution, and then only upon payment of the unpaid duty and certain penalties. The section proceeds in Sub-s. (4) as follows:—

> Save as aforesaid, an instrument executed in any part of the United Kingdom or relating wheresoever executed to any property situate or to any matter or thing done or to be done in any part of the United Kingdom shall not, except in criminal proceedings, be given in evidence or be available for any purpose whatever unless it is duly stamped in accordance with the law in force at the time when it was first executed.

Accordingly, when an instrument chargeable with duty is produced to the secretary of a company for any purpose it becomes his duty to ascertain that it is duly stamped before he can regard it as available for the purpose, and if any doubt arises it will rest upon the person producing it to satisfy him that it is duly stamped. In ordinary circumstances it is not, however, necessary to do more than to see that the instrument when produced appears to be sufficiently stamped, and in the case of a document bearing a proper adhesive stamp the presumption is that the stamp was affixed at the proper time unless the contrary is shown. In any case of doubt the person producing the instrument should be directed to apply to the Commissioners of Inland Revenue for the duty to be determined as provided by s. 12 of the Act. The importance of the sub-section to secretaries of companies becomes apparent on a reference to s. 17 of the Act, which is as follows:—

> If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records, any instrument chargeable with duty enrols, registers, or enters any such instrument not being duly stamped, he shall incur a fine of £10.

The responsibility of a secretary or registering officer of a company in this matter is similar to that of the Registrar of Joint Stock Companies, and it was established in 1888 in the case of *Reg.* v. *The Registrar of Joint Stock Companies* (21 Q.B.D. 131), relating to the refusal of the Registrar to file a contract on the ground that it was insufficiently stamped, that the proper mode of questioning the legality of his refusal was to present the contract for the adjudication of the Commissioners under s. 12 of the Act, and an application for a mandamus against the Registrar was accordingly refused.

In the case of a transfer of shares or stock or marketable securities where a sum less than the market value is shown as the consideration for the transfer, or in the opinion of the secretary or registering officer there is any doubt as to the sufficiency of the stamp thereon, it is desirable that he should require the opinion of the Commissioners of Inland Revenue to be obtained, seeing that if the transfer is made (1) on a sale, (2) in satisfaction in the whole or in part of a pecuniary legacy which is chargeable as on a sale for the amount of the legacy discharged thereby, (3) in liquidation of a debt, or (4) in exchange for other securities *ad valorem* duty is in each case payable on the value or agreed value of the con-

sideration, whilst if the transfer is made by way of gift *inter vivos* the *ad valorem* duty is payable on the value of the property transferred. In the case of *Maynard* v. *The Consolidated Kent Collieries Corporation Ltd.* [(1903), 2 K.B. 121], it was held in 1903 that for the purpose of determining whether a transfer on a sale of shares presented to a company for registration was duly stamped the directors were entitled to go behind that which appeared on the face of the document so as to ascertain whether the consideration stated therein, and in respect of which the transfer was duly stamped, was less than the actual consideration which had been given, and that unless they were satisfied as to the sufficiency of the duty paid the directors were entitled to refuse registration. A similar refusal on the same grounds was upheld in a previous case (*Flessig* v. *Harmony Proprietary Company Ltd.*), which came before Mr. Justice Kekewich on January 18, 1899.

Adjudication Stamp.

It is provided by sub-s. (2) of s. 74 of the Finance (1909-10) Act, 1910, that no transfer made by way of gift *inter vivos* shall be deemed to be duly stamped unless an adjudication stamp has been obtained, and accordingly the secretary or registering officer of a company is in a position to refuse to register such a transfer unless it bears an adjudication stamp; but if the transfer is stamped with *ad valorem* duty upon the market value of the shares or stock or securities transferred, there will be practically no risk in accepting the transfer for registration without the adjudication stamp being impressed thereon, and the Commissioners of Inland Revenue have by notice definitely stated that they will not object if registering officers think fit to register transfers of stock or marketable securities which admittedly operate as voluntary dispositions *inter vivos* and are stamped with *ad valorem* duty upon the market value of the stock or securities at the date of the instrument without insisting upon adjudication. It will be open to the registering officer to obtain the adjudication stamp subsequently if any necessity for this course should arise; but such a necessity could hardly arise unless the production of the transfer were required as evidence before a Court in some civil proceeding.

It is by no means easy for a registering officer to determine the particular circumstances under which a transfer is made; but where a transfer is made for a nominal consideration, he should require information to be given to him as to the facts relating to the transaction, and if the information is not furnished, or is not sufficient to enable him to satisfy himself as to the proper stamp duty, he should refuse to

register the transfer until it bears the adjudication stamp, or an indication showing that the Commissioners of Inland Revenue have been satisfied, is produced by the words 'Transfer passed for 10s.,' with the signature of an officer of the Commissioners, and the stamp of his office, appearing upon a written explanation furnished to that officer which should be retained. If the information is furnished to the registering officer and is to the effect that the transfer was made by way of security for a loan, or on a re-transfer on repayment of a loan, or to mere nominees of the transferor where no beneficial interest passed he should ask for a certificate setting forth the facts, and signed by the parties, or by the agent of one or both, being a solicitor or a member of a stock exchange, or a banker.

In the case of a transfer to or by a bank, or its official nominee, a certificate signed by the proper representative of the bank to the effect that 'the transfer is excepted from s. 74 of the Finance (1909-10) Act, 1910, and is duly stamped' may be regarded as sufficient.

Although there is not any provision affecting the secretary of a company, it is considered that the fact that the stamp on a transfer is 10s. only is not to be regarded as necessarily implying notice of a trust, and reference may be made to s. 13 of the Conveyancing Act, 1911, relating to the position of a purchaser in this matter. This section provides that where on a transfer of a mortgage the stamp duty if payable according to the amount of the debt transferred would exceed the sum of 10s., a purchaser shall not by reason only of the transfer bearing a 10s. stamp be deemed to have or have had any notice of a trust.

The secretary of a company carrying on the business of life insurance should take care that no payment is made to the assignee of a life policy unless the assignment is duly stamped, as if such a payment is made the duty not paid, together with the penalty payable on stamping, becomes under s. 118 of the Act of 1891 a debt from the company to the Crown.

Shares Credited as Fully or Partly Paid.

S. 88 of the Companies (Consolidation) Act, 1908, requires that the company shall file with the Registrar of Companies in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale or for services or other consideration in respect of which that allotment was made, such contract being duly stamped, or if the contract is not reduced to writing, the particulars of the contract stamped with the

same stamp duty as would have been payable if the contract had been reduced to writing.

In the case of a contract reduced to writing it was held on June 22, 1906, in the case of *Rex* v. *Registrar of Joint Stock Companies, ex parte* Platt (K.B.D. not reported), that the Registrar was entitled to refuse to file a contract relating to the allotment of shares which does not show the true consideration for which the shares have been allotted, and it is provided in sub-s. (2) of s. 88 of the Act of 1908 that in the case of a contract not reduced to writing the Registrar may as a condition of filing the particulars (which are deemed an instrument within the meaning of the Stamp Act, 1891) require that the duty payable thereon shall be adjudicated.

Where a contract for sale is in consideration of a sum of money and this sum is satisfied by a bill of exchange, the allotment of fully paid shares in exchange for the bill of exchange is not an allotment for a consideration other than cash (*R.* v. *Registrar of Joint Stock Companies, ex parte* Platt, not reported).

Liquidator in Voluntary Winding Up.

A liquidator in the voluntary winding-up of a company is an officer of the company within the meaning of the section, and it is his duty to pay out of the assets of the company the stamp duty in respect of any unfiled contract constituting the title of an allottee of shares allotted as fully or partly paid up otherwise than in cash and to file the contract [*In re X Company Limited* (1907), 2 Ch. 92].

The only other section in the stamp laws which it is necessary to refer to in connection with the duties and liabilities of secretaries of companies is s. 21 of the Stamp Duties Management Act, 1891, which is as follows:—

> Any person who practises or is concerned in any fraudulent act, contrivance, or device not specially provided for by law with intent to defraud Her Majesty of any duty shall incur a fine of £50.

This penalty has been enforced more than once against the secretary of a company who had been foolish enough to act under pressure or to study the interests of persons concerned with the company rather than those of the revenue, with the result that stamp duty had been evaded.

APPENDIX A

TABLE OF STAMP DUTIES AND FEES

I. On Registration by a Company having a Share Capital. See Table *B* [First Schedule], of Companies (Consolidation) Act, 1908.

Nominal Share Capital.	*Ad valorem* duty on Statement of Capital. (£1 per cent.)			Fee Stamps on Memorandum of Association.			Total, including 10s. deed stamp on memorandum, 15s. deed and fee stamps on articles, and 5s. each on the following:— (1) Declaration of compliance. (2) List of persons who have consented to be Directors (*b*). (3) Directors' consent to act (*b*). (4) Contract to qualify, if there is any qualification (*a*), (*b*), (*c*).		
£	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
100	1	0	0	2	0	0	5	5	0
500	5	0	0	2	0	0	9	5	0
1,000	10	0	0	2	0	0	14	5	0
1,500	15	0	0	2	0	0	19	5	0
2,000	20	0	0	2	0	0	24	5	0
3,000	30	0	0	3	0	0	35	5	0
4,000	40	0	0	4	0	0	46	5	0
5,000	50	0	0	5	0	0	57	5	0
6,000	60	0	0	5	5	0	67	10	0
7,000	70	0	0	5	10	0	77	15	0
8,000	80	0	0	5	15	0	88	0	0
9,000	90	0	0	6	0	0	98	5	0
10,000	100	0	0	6	5	0	108	10	0
11,000	110	0	0	6	10	0	118	15	0
12,000	120	0	0	6	15	0	129	0	0
13,000	130	0	0	7	0	0	139	5	0
14,000	140	0	0	7	5	0	149	10	0
15,000	150	0	0	7	10	0	159	15	0
16,000	160	0	0	7	15	0	170	0	0
17,000	170	0	0	8	0	0	180	5	0
18,000	180	0	0	8	5	0	190	10	0
19,000	190	0	0	8	10	0	200	15	0
20,000	200	0	0	8	15	0	211	0	0
25,000	250	0	0	10	0	0	262	5	0

(*a*), (*b*), (*c*)—See footnote to p. 314.

Nominal Share Capital.	*Ad valorem* duty on Statement of Capital. (£1 per cent.)			Fee Stamps on Memorandum of Association.			Total, including 10s. deed stamp on memorandum, 15s. deed and fee stamps on articles, and 5s. each on the following:— (1) Declaration of compliance. (2) List of persons who have consented to be Directors (*b*). (3) Directors' consent to act (*b*). (4) Contract to qualify, if there is any qualification (*a*), (*b*), (*c*).		
£	£	s.	d.	£	s.	d.	£	s.	d.
30,000	300	0	0	11	5	0	313	10	0
35,000	350	0	0	12	10	0	364	15	0
40,000	400	0	0	13	15	0	416	0	0
45,000	450	0	0	15	0	0	467	5	0
50,000	500	0	0	16	5	0	518	10	0
60,000	600	0	0	18	15	0	621	0	0
70,000	700	0	0	21	5	0	723	10	0
80,000	800	0	0	23	15	0	826	0	0
90,000	900	0	0	26	5	0	928	10	0
100,000	1,000	0	0	28	15	0	1,031	0	0
125,000	1,250	0	0	30	0	0	1,282	5	0
150,000	1,500	0	0	31	5	0	1,533	10	0
175,000	1,750	0	0	32	10	0	1,784	15	0
200,000	2,000	0	0	33	15	0	2,036	0	0
250,000	2,500	0	0	36	5	0	2,538	10	0
300,000	3,000	0	0	38	15	0	3,041	0	0
400,000	4,000	0	0	43	15	0	4,046	0	0
500,000	5,000	0	0	48	15	0	5,051	0	0
600,000	6,000	0	0	50	0	0	6,052	5	0
700,000	7,000	0	0	50	0	0	7,052	5	0
800,000	8,000	0	0	50	0	0	8,052	5	0
900,000	9,000	0	0	50	0	0	9,052	5	0
1,000,000	10,000	0	0	50	0	0	10,052	5	0

And so on at the rate of one pound further capital duty on every £100 or fraction of £100.

In addition to the documents mentioned in the last column, the following, if not filed on registration, must be filed prior to commencing business: Copy Register of Directors, notice of registered office, and prospectus or statement in lieu (*b*). 5*s*. each.

Before a company which files a prospectus or statement in lieu (*i.e.* not a private company) can commence business, it must comply with s. 87 by filing the declaration therein mentioned and obtain the Registrar's certificate.

Companies' Capital Duty is not payable by a company having a share capital if the liability of the members is *unlimited*.

(*a*) Required only when not signed for in memorandum.
(*b*) Not required in the case of a private company.
(*c*) Stamp duty of 6*d*. on each contract if qualification is £5 or upwards in value.

Fees for registration of any increase of share capital made after the first registration of the company, are the same per £1,000, or part of a £1,000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration. Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than £50.

II. On Registration by a Company Limited by Guarantee and not having a Share Capital. See Table *B* [Second Section of first Schedule] of Companies (Consolidation) Act, 1908.

No. of Members not exceeding	Fee Stamps on memo.	Total, including 10*s.* deed stamp on memorandum, 15*s.* deed and fee stamps on articles, and 5*s.* each on the following:— (1) Declaration of compliance. (2) List of persons who have consented to be Directors. (3) Directors consent to act.
	£ *s.* *d.*	£ *s.* *d.*
20	2 0 0	4 0 0
Exceeding 20 but not exceeding 100	5 0 0	7 0 0
Every 50 additional ..	5 0	—
Unlimited	20 0 0	22 0 0

In addition to the documents mentioned the following, if not filed on registration, must be filed prior to commencing business: Copy register of Directors, notice of registered office, and prospectus or statement in lieu. Fee 5*s.* each.

Before a company which files a prospectus or statement in lieu (*i.e.* not a private company) can commence business, it must comply with s. 87 by filing the declaration therein mentioned and obtain the Registrar's certificate.

Increase of membership *after* registration for every fifty additional members, 5*s.*, provided that no greater fee than £20 shall be payable in respect of number of members, taking into account the fee paid on registration.

III. Other Fees.

Registering a document required to be registered other than the Memorandum of Association or the abstract required to be filed by a Receiver or Manager or the Statement to be rendered by a Liquidator in a Winding up in England	5*s.*
or	
Making a record of any fact by the Act required or authorised to be recorded by the Registrar.	

IV. TRANSFERS ON SALE OF STOCKS AND SHARES AND OF REGISTERED BONDS AND DEBENTURES (*being marketable securities*). Except stock of the Bank of England—on the transfer of which the duty is 15*s.* 6*d.*

Consideration.	*Duty.* £	*s.*	*d.*
Not exceeding £5	0	1	0
£5 to £10	0	2	0
£10 ,, £15	0	3	0
£15 ,, £20	0	4	0
£20 ,, £25	0	5	0
£25 ,, £50	0	10	0
£50 ,, £75	0	15	0
£75 ,, £100	1	0	0
£100 ,, £125	1	5	0
£125 ,, £150	1	10	0
£150 ,, £175	1	15	0
£175 ,, £200	2	0	0
£200 ,, £225	2	5	0
£225 ,, £250	2	10	0
£250 ,, £275	2	15	0
£275 ,, £300	3	0	0

And for every additional £50 or part of £50, 10*s.*

As to transfers for nominal consideration, see Inland Revenue circular, p. 324.

V. REGISTERED MORTGAGES, BONDS, AND DEBENTURES (except a marketable security otherwise specially charged with duty).

(*a*) Principal or only security.

Amount Secured.	*Duty.* *s.*	*d.*
Not exceeding £10	0	3
£10 to £25	0	8
£25 ,, £50	1	3
£50 ,, £100	2	6
£100 ,, £150	3	9
£150 ,, £200	5	0
£200 ,, £250	6	3
£250 ,, £300	7	6

For every additional £100 or fractional part of £100, 2*s.* 6*d.*

(*b*) Collateral security (other than an equitable mortgage).

Amount Secured.	*Duty.* *s.*	*d.*
Every £100 or part thereof	0	6

VI. REGISTERING A MORTGAGE OR CHARGE.

Not exceeding £200. Fee 10*s.*

Exceeding £200. Fee 20*s.*

VII. BEARER SECURITIES.

(*a*) Debentures, 4*s*. for each £10 or fractional part of £10 secured. If given in substitution for a like security duly stamped, 2*s*. per £20 or part thereof. [Reduced rates when amount secured is to be paid off within three years (Finance Act, 1911).]

(*b*) Share Warrants.
Three times the amount of *ad valorem* duty which would be chargeable on a transfer deed if consideration were the nominal value of such share or shares or stock. Where the share warrant or stock certificate relates to a company formed or established out of the United Kingdom, stamp duty is 4*s*. per £10 nominal value, chargeable on first negotiation in United Kingdom.

(*c*) Substituted securities to bearer given for a like security duly stamped. For every £20 or part thereof, 2*s*.

(*d*) Scrip to bearer, 2*d*.

VIII. LOAN CAPITAL DUTY (s. 8 of Finance Act, 1899). On issue of loan capital not secured by an instrument bearing the mortgage or marketable security duty, *ad valorem* duty of 2*s*. 6*d*. per cent.

IX BILLS OF EXCHANGE AND PROMISSORY NOTES. (See also p. 320.)

Payable on demand or within three days after date or sight .. .. 2*d*.

Value on Bill or Note.	*Duty.* s.	d.
Not exceeding £5	0	2
,, ,, £10	0	2
,, ,, £25	0	3
,, ,, £50	0	6
,, ,, £75	0	9
,, ,, £100	1	0

For every additional £100 or part thereof, 1*s*.

X. CONTRACT NOTES.

Value.	*Duty.* s.	d.
Exceeding £5 but not exceeding £100 ..	0	6
,, ,, ,, £500 ..	1	0
,, ,, ,, £1,000 ..	2	0
,, ,, ,, £1,500 ..	3	0
,, ,, ,, £2,500 ..	4	0

For every £2,500 or part thereof, 2*s*. (maximum £1).

XI. Letter of Allotment or Renunciation.

If total nominal amount allotted or renounced is £5 or over	6*d.*
In other cases	1*d.*

XII. Scrip Certificate — 2*d.*

XIII. Proxy or Power of Attorney.

For one meeting or an adjournment thereof	1*d.*
For receipt of dividend or interest on stock—	
One payment only	1*s.*
In any other case	5*s.*
For receipt of money or bill of exchange or promissory note not exceeding £20, or any periodical payment not exceeding annual sum of £10 (not already charged)	5*s.*
For sale, transfer, or acceptance of Government or Parliamentary stocks or funds where the nominal value of the stocks or funds does not exceed £100	2*s.* 6*d.*
Any other kind whatsoever	10*s.*

XIV. Receipt.

For sums amounting to £2 and upwards	2*d.*

Notes.

1. *Colonial and Foreign Companies.*—All transfers of shares executed in the United Kingdom are liable to Stamp Duty [*Wright* v. *Commissioners of Inland Revenue*, 11 *Exch. Rep.* 48].

2. *Stamping after Execution.*—The instrument, unless it is written upon duly stamped material, is to be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom, in case it is first executed at any place out of the United Kingdom.

In view of the risk of loss in transit of a stamped document, the Board of Inland Revenue allow transfers and other documents first executed in this country, and then sent to the Colonies or abroad for completion and return, to be stamped on due proof to the satisfaction of the Board's Officer that they are presented for stamping within thirty days of their return to the United Kingdom.

3. *Renewal of Bonds, &c.*—Where Bonds, Debentures, or other similar Securities maturing at a fixed date are renewed during the currency thereof, the Memorandum or instrument of renewal is chargeable, if under hand only, with the duty of sixpence, or if under seal, with the duty of ten shillings, or with the duty of sixpence for every £100 of the amount secured, if such duty would not amount to so much as ten shillings.

INLAND REVENUE CIRCULAR RELATING TO STAMP DUTIES

INLAND REVENUE,
SOMERSET HOUSE,
LONDON, W.C. 2.
August, 1922.

The Board of Inland Revenue furnish the following information regarding the Stamp Duties with which Secretaries, Registrars and other Officers of Companies are most usually concerned.

Secretaries of Companies and others whose office it is to register or enter any instrument chargeable with Stamp Duty are required to see that such instrument is properly stamped before registration or entry. In any case of doubt the Commissioners of Inland Revenue may be asked to adjudicate upon and assess the Duty under the provisions contained in s. 12 of the Stamp Act, 1891, and officers responsible for registering instruments should suggest that applicants have recourse to this step whenever it appears to be in any way desirable.

Any person, being the proper officer to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with any Duty, who enrols, registers, or enters any such instrument not being duly stamped, in liable to a fine of £10.

Persons executing instruments in which all the facts and circumstances affecting their liability to Duty, or the amount of such Duty, are not fully stated, or who, being employed or concerned in the preparation of any instrument, neglect to set forth such facts and circumstances, are liable to a fine of £10.

The duties are required to be denoted by impressed stamps, except in the following cases:—

Foreign Bills	Adhesive 'Bill' stamps must be affixed and cancelled before payment, endorsement or negotiation.
Agreements under hand (6*d*.) . . Bills of Exchange on demand (2*d*.) Letters of Renunciation (1*d*. or 6*d*.) Proxies (1*d*.) . . . . . Receipts (2*d*.)	Adhesive 'Postage and Revenue' stamps may be used. Such stamps must be effectively cancelled by the person first executing the instrument.

	£	s.	d.
AGREEMENT not otherwise charged with Duty, under hand only or without clause of registration ..	0	0	6
AGREEMENT not otherwise charged with Duty, under Company's seal or with clause of registration ..	0	10	0
BILL OF EXCHANGE (CHEQUE), payable on demand or at sight or on presentation or within three days after date or sight..	0	0	2
BILL OF EXCHANGE and PROMISSORY NOTE, drawn or expressed to be payable in the United Kingdom—			
Not exceeding £10	0	0	2
Exceeding £10 but not exceeding £25	0	0	3
,, £25 ,, ,, £50	0	0	6
,, £50 ,, ,, £75	0	0	9
,, £75 ,, ,, £100	0	1	0
,, £100, for every £100 or part ..	0	1	0
drawn and expressed to be payable out of the United Kingdom and actually paid, endorsed or negotiated in the United Kingdom—			
Not exceeding £10	0	0	2
Exceeding £10 but not exceeding £25 ..	0	0	3
,, £25 ,, ,, £100 ..	0	0	6
,, £100, for every £100 or part ..	0	0	6

BONDS, DEBENTURES, MORTGAGES AND OTHER SECURITIES.

I.—Registered and transferable only by instrument of transfer—	£	s.	d.
Where the amount secured does not exceed £10	0	0	3
Exceeds £10 and does not exceed £25	0	0	8
,, £25 ,, ,, £50	0	1	3
,, £50 ,, ,, £100	0	2	6
,, £100 ,, ,, £150	0	3	9
,, £150 ,, ,, £200	0	5	0
,, £200 ,, ,, £250	0	6	3
,, £250 ,, ,, £300	0	7	6
,, £300, for every £100, and also for any fractional part of £100 of such amount	0	2	6
If given in substitution for a duly stamped security, whether registered or to bearer, for every £100, or part .. .. (Maximum duty 10s.)	0	0	6
II.—Transferable by delivery (Bearer Securities):—			
(*a*) Repayable within not more than one year, for every £10, or part, of amount secured ..	0	0	6
(*b*) Repayable within not more than three years for every £10, or part, of amount secured..	0	1	0

	£	s.	d.
(*c*) Repayable at a time exceeding three years, for every £10, or part, of amount secured	0	4	0
(*d*) If given in substitution for one duly stamped under (*c*), for every £20, or part	0	2	0

A bearer security given in substitution for a registered security requires the full duty of four shillings for every £10, or part.

The term 'amount secured' includes in certain circumstances any bonus or premium covenanted to be paid when the bonds or debentures are redeemed. For instance, a bond for £100 which secures the payment of the £100 with a premium of £5 must be stamped for £105, unless such premium is payable only in consequence of some voluntary act of the Company. This rule applies alike to original and substituted securities.

Where Debentures are re-issued under the provisions of s. 104 of the Companies (Consolidation) Act, 1908, either by the re-issue of the same Debentures, or by the issue of other Debentures in their place, such re-issued Debentures fall to be treated as new Debentures for the purposes of Stamp Duty, and the full *ad valorem* Duty is payable thereon. Similarly, if Debenture Stock is re-issued, further duty is payable either on the trust deed or by way of Loan Capital Duty.

In the case of substituted Securities of any description chargeable with a reduced rate of Duty, the Duty can only be impressed thereon upon presentation at Somerset House, or at the Inland Revenue Office, Edinburgh, of both the original and substituted Securities at a date prior to the expiration of the original Securities. When registered Securities have changed hands, the transfers must be produced for inspection.

CAPITAL (SHARE), per £100 or part of £100 nominal .. £1

A stamped statement of the amount which is to form the nominal share capital of any Company to be registered with limited liability under the Companies Acts, 1908-1917, is to be delivered to the Registrar of Joint Stock Companies before the Company is registered. In the case of any increase of nominal share capital a statement must be delivered duly stamped, within 15 days of the resolution of the Company authorising the increase.

In the case of other Companies formed or established in the United Kingdom with limited liability, a statement must be delivered, duly stamped, to the Commissioners of Inland Revenue within one month after the date of the Act, Letters Patent, Order, or other authority constituting the Company. In the case of an authority to increase the nominal share capital a statement must be delivered, duly stamped, within the like period.

	£	s.	d.
LETTER OF ALLOTMENT LETTER OF RENUNCIATION }	0	0	6
If the nominal amount allotted or renounced is under £5	0	0	1
LOAN CAPITAL, per £100 or part of £100	0	2	6

(Subject to deduction of 2s. for each complete £100 which is applied in conversion or consolidation of existing Loan Capital.)

A statement of the amount of any Loan Capital proposed to be issued by a Company formed or established in the United Kingdom is required to be delivered to the Commissioners of Inland Revenue, but duty will not be charged to the extent to which mortgage or marketable security duty has been paid on any trust deed or other instrument securing the loan.

Loan Capital includes any funded debt and any capital having the character of borrowed money in whatever form it is issued, but not a bank overdraft or other loan raised for a merely temporary purpose for a period not exceeding 12 months.

	£	s.	d.
POWER OF ATTORNEY, PROXY, or other instrument in the nature thereof:—			
For the sole purpose of appointing or authorising a proxy to vote at any one meeting (including an adjournment thereof) at which votes may be given by proxy, whether the number of persons named in such instrument be one or more ..	0	0	1
For the receipt of the Dividends or Interest of any Stock:—			
Where made for the receipt of *one* payment only	0	1	0
In any other case connected with the receipt of Dividends or Interest	0	5	0
General	0	10	0

An order, request, or direction under hand only from the proprietor of any stocks or shares to any Company or to any officer of any Company or to any banker to pay the dividends or interest arising therefrom to any person therein named is not chargeable with duty.

	£	s.	d.
RECEIPT given for or upon payment of £2 or more..	0	0	2
SCRIP CERTIFICATE, SCRIP, or other similar document	0	0	2

	£	s.	d.
SHARE WARRANT AND STOCK CERTIFICATE TO BEARER—			
Issued under the provisions of the Companies Acts —three times the *ad valorem* Duty chargeable on a Transfer for a consideration equal to the nominal value of the shares or stock.			
Issued by colonial and foreign companies, per £10	0	4	0
TRANSFER on sale or operating as a Voluntary Disposition *inter vivos* of Stock, Shares or Marketable Securities of Companies, where the amount or value of the consideration for the sale (or, in the case of Voluntary Disposition *inter vivos*, the value of the property) does not exceed £5 ..	0	1	0
Exceeds £5 and does not exceed £10 ..	0	2	0
,, £10 ,, ,, £15 ..	0	3	0
,, £15 ,, ,, £20 ..	0	4	0
,, £20 ,, ,, £25 ..	0	5	0
,, £25 ,, ,, £50 ..	0	10	0
,, 50 ,, ,, £75 ..	0	15	0
,, £75 ,, ,, £100 ..	1	0	0
,, £100 ,, ,, £125 ..	1	5	0
,, £125 ,, ,, £150 ..	1	10	0
,, £150 ,, ,, £175 ..	1	15	0
,, £175 ,, ,, £200 ..	2	0	0
,, £200 ,, ,, £225 ..	2	5	0
,, £225 ,, ,, £250 ..	2	10	0
,, £250 ,, ,, £275 ..	2	15	0
,, £275 ,, ,, £300 ..	3	0	0
,, £300, for every £50, and also for any fractional part of £50 of such amount of value	0	10	0

'Marketable Security' includes the registered Bonds and Debentures, generally, of Companies, Corporations and Public Bodies.

A transfer of any Stock, Shares or Marketable Security operating as a Voluntary Disposition, *inter vivos*, is chargeable with *ad valorem* stamp duty at the above rates on the value of the property transferred. No such transfer is duly stamped unless it bears the Adjudication Stamp of the Commissioners of Inland Revenue. Registering Officers should therefore decline to register any transfers *inter vivos* by way of gift, unless they bear the Adjudication Stamp. An exception may, however, be made where the transfers are stamped with *ad valorem* duty upon the market value of the Stock or Securities at the date of the instrument, it being open to the Registering Officer to obtain the Adjudication Stamp at any time subsequently, should necessity arise.

By s. 42 of the Finance Act, 1920, special provision is made for the case of transfers to a dealer on a Stock

Exchange as therein defined, or his nominee, when the transaction to which the transfer relates has been carried out by the dealer in the ordinary course of his business. Such transfers are sufficiently stamped with 10s. if, in addition to that duty, they bear the special supplementary stamp under the terms of the Section.

A transfer made in liquidation of a debt or in exchange for other Securities attracts *ad valorem* Duty.

Transfers executed under seal, by way of Mortgage, of any Stock, Shares or Marketable Security, are chargeable, if the loan be disclosed in the Instrument of Transfer, according to the scale set forth under the head 'Bonds and Debentures.' If the loan be not disclosed in the Transfer, and the transaction is disclosed by a further instrument, the further instrument, if under hand only, is chargeable with the duty of 6d. or if under seal is chargeable according to the said scale, and in either case the Transfer is chargeable with a duty of 10s.

	£	s.	d.
TRANSFER of any other kind.. .. fixed duty	0	10	0

Included under this head are:—

(*a*) Transfers vesting the property in trustees on the appointment of a new trustee of a pre-existing trust. or on the retirement of a trustee.

(*b*) Transfers for a nominal consideration to a mere nominee of the transferor where no beneficial interest in the property passes.

(*c*) Transfers by way of security for a loan or re-transfer to the original transferor on repayment of a loan.

(*d*) Transfer to a residuary legatee of stock, &c., forming part of the residue divisible under a will.

(*e*) Transfers to a beneficiary under a will of a specific legacy of stock, &c.

(*f*) Transfers of stock, &c., forming part of an intestate estate, to the person entitled to it.

(*g*) Transfers to a beneficiary under a settlement, on distribution of the trust funds, of stock, &c., forming the share or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

Transfers by executors in discharge, or partial discharge, of a pecuniary legacy are chargeable with *ad valorem* duty on the amount of the legacy so discharged.

In every case of a transfer for a nominal consideration, it will be necessary for the Registering Officer to be furnished with information as to the facts of the transaction. In the case of a transfer falling within category (*b*) or (*c*) above, a certificate should be required, setting forth the facts of the transaction, signed by (1) both transferor and

transferee, or (2) a member of a Stock Exchange or a solicitor acting for one or other of the parties, or (3) an accredited representative of a bank, when the bank or its official nominee is a party to the transfer. In the last case the certificate may be to the effect that 'the transfer is excepted from s. 74 of the Finance (1909–10) Act, 1910.'

Transfers to or from trustees other than those clearly falling within the above categories (*a*), (*d*), (*e*), (*f*), and (*g*) should be required to be adjudicated, unless either they are stamped with *ad valorem* duty (but with a minimum of 10*s*.) on the market value of the stock, &c., or they have been certified by a Marking Officer under the arrangement described below.

In a large number of cases transfers for a nominal consideration are presented to an official Deed Marking Officer before being produced to the Registering Officer for registration. In such cases, if a written explanation of the facts is produced to the Marking Officer and accepted as justifying him in passing the transfer for stamping with 10*s*., he will mark the explanation with the words 'Transfer passed for 10*s*.,' his signature and his office stamp, and return it to the person presenting the transfer in order that it may be available for production to the Registering Officer. The explanation will be required to contain sufficient particulars to identify it with the transfer to which it relates. An official form (No. 19) is provided for use in such cases when desired.

Where a transfer for nominal consideration stamped with 10*s*. is produced to a Registering Officer accompanied by a written explanation thus certified by a Marking Officer, the Board will not hold the Registering Officer liable to any penalty under s. 17 of the Stamp Act, 1891, if he accepts the transfer for registration without questioning the sufficiency of the stamp. The explanation should be retained by the Registering Officer.

The explanation and the Marking Officer's certificate may sometimes be endorsed on the transfer itself, or (exceptionally) the certificate may be given on the transfer without a written explanation, the Marking Officer having been satisfied by other evidence produced to him. In either of these cases the Board will not hold the Registering Officer responsible if he registers the transfer stamped with 10*s*.

It should be understood that this certification by a Marking Officer is not equivalent to adjudication, and that it is possible that cases may arise in which the Registering Officer, in consequence of special information in his possession, or for some other good reason, may feel it incumbent upon him to require that the transfer be formally presented for adjudication in accordance with the provisions of s. 12 of the Stamp Act, 1891.

APPENDIX B

DOCUMENTS TO BE FILED WITH THE REGISTRAR OF COMPANIES UNDER THE COMPANIES (CONSOLIDATION) ACT, 1908

Section.	*Nature of Return.*	*When to be filed.*
9	Office copy of Order of the Court confirming an alteration of memorandum of association.	Within 15 days from date of order.
10	Articles of Association, if Company is limited by guarantee or unlimited.	On application for registration.
15	Memorandum of Association.	On application for registration.
26	Annual list of members and summary.	Within 7 days after the 14th day after the first or only ordinary general meeting in the year.
34	Situation of, change in, or discontinuance of, Colonial register.	Prior to commencing business.
40	Memo as to return of accumulated profits.	Before resolution takes effect.
42	Particulars of consolidation of share capital or conversion of shares into stock.	On conversion.
44	Particulars of increase of share capital, or of members.	Within 15 days.
45	Office copy of Order of Court on re-organisation of capital.	7 days after order.
51	Copy of Order of Court and of minute as to reduction of capital.	Before reduction can take effect.
62	Situation and changes of registered office.	Before commencing business.

Section.	*Nature of Return.*	*When to be filed.*
65	Copy of statutory report.	7 days before meeting.
70	Copy of special or extraordinary resolution.	Within 15 days.
72	Undertaking by director.	On appointment.
75	Names, addresses and occupations of directors or managers.	On entry in register and on any change.
80	Copy of prospectus (duly signed).	Before issue.
82, 87 & 121	Statement in lieu of prospectus (duly signed).	Before allotment.
87 & 121	Statutory declaration as to shares held for cash and directors' holdings.	Prior to commencing business or exercising borrowing powers.
88	Return as to allotments.	Within one month after allotment.
93 & 99	Registration of mortgages and charges.	Within 21 days after creation.
94	Registration of enforcement of security.	Within 7 days from date of order or appointments.
95	Accounts of receivers and managers.	Half-yearly and on ceasing to act.
143	Copy of winding-up order.	Forthwith.
195	As to final meeting and dissolution, by voluntary liquidation.	Within one week after meeting.
202	Ditto under supervision of the Court.	Ditto.
223	Copy of Order of Court declaring dissolution void.	Within 7 days after making of Order.
224	Statement by liquidator of proceedings in and position of liquidation.	Prescribed intervals.
274	Companies incorporated outside United Kingdom to file copy of charter, &c.	Within one month from establishment of place of business.

APPENDIX C

PENALTIES UNDER THE COMPANIES (CONSOLIDATION) ACT, 1908

Section.	*Offence.*	*Maximum Penalty.*	*Persons Liable.*
9	Failure to deliver to Registrar copy of Order of Court as to alteration of memorandum.	£10 a day.	The company.
18	Failure to supply on request, and on payment (if any), copy of memorandum and of articles (if any).	£1.	The company.
25	Failure to keep a register of members.	£5 a day.	The company, directors and managers.
26	Failure to send annual list of members and summary to Registrar.	£5 a day.	The company, directors and managers.
30	Refusal to allow inspection or give copy of register to members.	£2 and £2 a day.	The company, directors and managers.
38	Forging or altering, or uttering, &c., share warrant or personation. As to engraving share warrants.	Penal servitude for 3 years—life. Penal servitude for 3–14 years.	Any person.
41 & 61	Failure to revise copies of memorandum after alteration.	£1 a copy.	The company, directors and managers.
44	Failure to notify increase of capital or members to Registrar.	£5 a day.	The company, directors and managers.

Section.	*Offence.*	*Maximum Penalty.*	*Persons Liable.*
52	Failure to embody copy of registered minute of reduction of capital in memorandum.	£1 for every copy.	The company, directors and managers.
54	Concealing name of a creditor or misrepresenting his interests.	Prosecution for misdemeanor.	Directors, managers or officers.
60	Failure to add to director's proposal a statement that his liability is unlimited.	£100 and damages (if any).	Directors, managers and proposers.
60	Failure to notify the fact of his unlimited liability to any director or manager appointed on that condition.	£100 and damages (if any).	Promoters, directors, managers, secretary.
62	Failure to notify to Registrar situation and change of registered office.	£5 a day.	The company.
63	Failure to paint or affix name.	£5 and the same per day.	The company and every director and manager.
	Using seal or issuing documents without name of company.	£50 and liability to holders.	Any director, manager or officer.
64	Failure to hold annual general meeting.	£50.	The company, and every director, manager, secretary and other officer.
70	Failure to send copy of special or extraordinary resolution to Registrar.	£2 a day.	The company, directors and managers.
	Failure to embody special resolution in articles and to supply to members when required.	£1 a copy.	
72	Failure to sign and file with Registrar undertaking to act as director.	£50.	The applicant for registration.
73	Failure by director to obtain qualification within 2 months or shorter time if specified.	£5 a day.	Every person so acting.

Section.	*Offence.*	*Maximum Penalty.*	*Persons Liable.*
75	Failure to keep register of directors and send copy to Registrar.	£5 a day.	The company, directors and managers.
80	Failure to file prospectus with Registrar.	£5 a day.	The company and persons party to issue of prospectus.
87	Failure to file statutory declaration as to shares held for cash and directors' holdings.	£50 a day.	Every person responsible for contravention.
88	Failure to file return of allotments with registrar.	£50 a day.	Directors, managers, secretary, other officers.
92	Failure to issue certificates for shares, etc., within 2 months after registration of allotment or transfer.	£5 a day.	The company, and every director, manager, secretary or other officer.
93	Failure to register mortgages and charges.	£50 a day or £100. Charge void against liquidator or any creditor.	Directors, managers, secretary, other officers and any person.
94	Failure to register appointment of receiver or manager.	£5 a day.	Any person.
95	Failure to file accounts with Registrar.	£50.	Receiver or manager.
100	Failure to make entry in register of mortgages.	£50.	Directors, managers or other officers.
101	Refusing inspection of register of mortgages and copies of instruments.	£5 and £2 a day.	Any officer refusing inspection, directors and managers.
102	Refusing inspection and copies of debenture register and trust deed.	£5 and £2 a day.	The company, directors, managers, secretary, or other officer.

Section.	*Offence.*	*Maximum Penalty.*	*Persons Liable.*
108	Banking and Insurance Cos., and deposit, provident and benefit societies making statement (Form C of 1st Schedule) before commencing business and half-yearly.	£5 a day.	The company, directors and managers.
109	Failure to produce books and documents in investigation.	£5 for each offence.	Officers and agents.
113	Failure to secure signature and circulation of balance sheets.	£50.	The company, directors, managers, secretary and officers.
115	Carrying on business with less than statutory number of members.	Liability for debts.	Every member.
195 & 202	Failure to report dissolution to Registrar.	£5 a day.	Liquidator.
216	Falsification of books.	Imprisonment for 2 years.	Directors, officers, contributories.
223	Failure to file copy of order of Court declaring dissolution void.	£5 a day.	Any person.
224	Failure to send to Registrar statement of proceedings in liquidation.	£50 a day.	Liquidator.
	Failure to allow inspection, &c., and to make periodical statement of position.	£50 a day.	Liquidator.
274	Failure by company incorporated outside U.K. to file copy of charter, &c.	£50 or £5 a day.	The company, officers and agents.
281	Making false statements in returns, &c.	Imprisonment 2 years or fine.	Any person.
282	Improper use of the word 'Limited.'	£5 a day.	Any person.

APPENDIX D

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STOCK EXCHANGE REGULATIONS AS TO OFFICIAL QUOTATION AND PERMISSION TO DEAL IN NEW SECURITIES

OFFICIAL QUOTATIONS

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 authorised 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 material 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 authorised 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.

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; [NOTE.—It is sufficient if no power is taken to forfeit dividends.]
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 that has been worn out, lost, or destroyed shall not exceed one shilling.

NOTE.—Although not included in the official list of requirements, the Articles should also contain the following provisions:

Power to increase the capital must be vested in the Company in General Meeting;

Directors must be removable by the Company in General Meeting;

If Articles give Directors power to refuse transfers the power must be limited to partly-paid shares.

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 the 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 than 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.' (See Note II below.)
5. Should Debenture 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 Stockholders.

NOTE I.—Although not included in the official list of requirements, the Trust Deed should also contain the following provisions:

The charge for a Stock Certificate issued to replace one worn out, &c., must not exceed 1*s*.

Where Stock is partly repaid new Certificates must be issued. It is not sufficient to stamp the old Certificate.

Stock should be transferable in multiples of £1.

NOTE II.—If preferred the following clause may be substituted for No. 4:

The expression 'Extraordinary Resolution' when used in this Schedule, means a resolution passed at a meeting of the Stockholders, duly convened and held in accordance with the provisions herein contained, by a majority consisting of not less than three-fourths of the persons voting thereat, upon a show of hands, or if a poll be duly demanded, then by a like majority in value at the poll. The quorum of any such meeting shall be a clear majority in value of the whole of the Stockholders, but so that where a meeting for the purpose of passing an Extraordinary Resolution is convened, then and in such case, if within one hour from the time appointed for the meeting holders of a clear majority in value of the Stock are not present so as to form a quorum, the meeting shall stand adjourned for 21 days, and shall accordingly be held on the corresponding day of the week, and at the same time and place

as that originally fixed by the notice convening the meeting, and notice of such adjourned meeting shall be given in the manner provided by Clause — of the foregoing indenture, and such notice shall state that those Debenture Stock holders who are present shall form a quorum, and if at such adjourned meeting a quorum as above defined is not present, then those Debenture Stock holders who are present shall be a quorum and may transact the business for which the meeting was originally convened, and a resolution passed thereat by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands, or if a poll is duly demanded, then by a majority consisting of not less than three-fourths of the votes given on such poll, shall be considered as an Extraordinary Resolution within the meaning of this Schedule.

Share and Stock Certificates

All Certificates should state on their face the authority under which the Company is constituted and the amount of the authorised Capital of the Company.

The method of Signature must be in accordance with the Articles of Association.

All Certificates should bear a footnote to the effect that no Transfer of any portion of the holding can be registered without the production of the Certificate.

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 Resolutions); and on their back the conditions of issue, redemption, and transfer.

Bonds

Bonds must specify the amount and conditions of the loan, the power under which it has been contracted, and the numbers and denominations of the Bonds issued, and in the case of a loan issued either wholly or partly in London, those issued in London must bear the autograph signature of the London Agents or Contractors.

Bonds and Debentures of English Companies must be under the Common Seal of the Company and must bear the requisite autographic signatures.

Where an issue of Colonial or Foreign Bonds or Debentures is made wholly or partly in London, those issued in London must bear the autographic counter-signature of the London Agents or Contractors.

SCRIP

In cases where a Government Municipality Corporation or Company has sold an issue of Stock Shares or Securities which is subsequently offered for public subscription by the purchaser evidence must be produced that the purchasing House has received due authority to issue the Scrip on account of the Government Municipality Corporation or Company, or in the alternative such Scrip must be enfaced 'Contractors' Scrip.'

LIST OF DOCUMENTS TO BE SUPPLIED

NEW COMPANIES

Before the application form can be issued for signature there must be supplied through the broker of the Company:

A Copy of the Prospectus (see p. 332).

Two Copies of the Articles of Association (see p. 332).

In the case of Debentures or Debenture Stock the Trust Deed [where possible before execution] (see p. 333).

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 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.

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 total number of Allottees and the largest number of Shares (*a*) applied for by, and (*b*) allotted to any one applicant.
6. The number of Shares allotted for a consideration other than cash (being Nos. to).
7. That the Share Certificates are ready for delivery.
8. That the purchase of the properties has been completed, and the purchase-money paid.

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 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.

A Statutory Declaration by the Chairman and Secretary stating:

1. That the Prospectus complies with the provisions of the Companies (Consolidation) Act, 1908, and that all documents required by that Act have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
2. In the case of an English Company charging property abroad, that the necessary mortgage has been properly legalized in the country where the property is situated.
3. The amount of Stock applied for by the public.
4. The amount unconditionally allotted to the public (Nos. to).
5. The amount, viz: £ %, paid thereon in cash.
6. The amount allotted for a consideration other than cash. (Nos. to).

7. The total number of Allottees.
8. The largest amount of Debentures or Debenture Stock (*a*) applied for by, and (*b*) allotted to any one applicant.
9. That the Debentures or Debenture Stock Certificates are ready for delivery.
10. That a Trust Deed has been executed and completed, if such be the case.
11. The effect of such Trust Deed, and the nature of the charge created thereby in favour of the Debenture holders.

A Statutory Declaration by the Chairman and Secretary stating:

1. The total amount of the Authorised 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 Concessionaries, 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.

FURTHER ISSUES.

A King's Printers' copy of the Act of Parliament authorising, the Resolutions, &c., creating, and the Circular or Prospectus offering, the 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 rata*.

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. 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.

VENDORS' SHARES.

A Certified List of the present holders of the Vendors' 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 Vendors' 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.

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 the present Register of Shareholders.

Certified printed copies of Contracts, Agreements, &c., 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, &c., 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.

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, &c., or notarially certified printed translations of the same.

A Certified copy of the 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.

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, including Contracts relating to the issue of fully or partly-paid Shares.

31. Share Register.
32. Reply to Bankers, &c., *re* Notice of Lien.
33. Index to Share Register.
34. Card Index to Share Register.
35. Indemnity and Request for Duplicate Dividend Warrant.
36. Debenture Stock Notice and Interest Warrant.
37. Dividend Notice and Warrant.
38. Dividend Request.
39. Specimen Signature and Dividend Request.
40. Debenture Stock Redemption Receipt.
41. Power of Attorney—Form to be signed on lodgment.
42. ,, ,, ,, Ditto.
43. Power of Attorney: Model Power.
44. ,, ,, Statutory Declaration.
45. Specimen Signature of Donee under Power of Attorney.
46. Share Warrant.
47. Receipt for Deposited Share Warrant.
48. Application for Share Warrants.
49. Share Warrant Application Receipt.
50. Receipt for Share Warrants deposited in Exchange for other Share Warrants.
51. Receipt for Share Warrants Lodged for Registration.
52. Register for issue of Share Warrants in exchange for Registered Shares.
53. Register for issue of Registered Shares in Exchange for Share Warrants.
54. Share Warrants Register.
55. Receipt for Share Warrants issued in Exchange for Share Certificate.
56. Application for Registered Shares in Exchange for Share Warrants.
57. Application for Exchange of Share Warrants.
58. Notice on Presentation of Transfer with nominal consideration unless adjudicated or properly stamped.

NOTE.—Forms numbered 7, 8, 9, 11, 12, 14, and 30 are based upon those recommended by the Institute of Bankers and approved by the Council of the Chartered Institute of Secretaries. The forms were specially designed to be used with 'window' envelopes.

THE
'A' COMPANY, LIMITED

Share Certificate

No......

Name.....

Address.....

No. of Shares.....

Distinctive No.....

Posted to.....

Date .....

Initials of Director signing

.....

(*Perforated*)

RECEIVED the.....*day of*.....*19*.....

Certificate No.....*for*.....*Shares in the*

'A' COMPANY, LIMITED, in the name of.....

Signature.....

(*Perforated*)

Certificate No..... *Number of Shares*.....

THE 'A' COMPANY LIMITED

Incorporated under the Companies Acts, 1908 to 1917.

Registered Office: London Wall, London.

Capital: £ in Shares of £ each.

This is to Certify *that*.....

.....

of.....

is registered as the holder of.....*Shares of*

.....*each*,.....*paid up, numbered as per endorsement*

in The 'A' Company, Limited, *subject to the provisions of the Memorandum and Articles of Association of the Company.*

Given under the Common Seal of the Company,

this.....*day of*.....*19*.....

.....*Director.*

.....*Secretary.*

NOTE.—*The Company will not transfer any Share without the Production of a Certificate relating to such Share, which Certificate must be surrendered before any Deed of Transfer can be registered or a new Certificate issued in exchange.*

FORM No. 1.—Share Certificate (where there is only one class of Shares). **See p. 36.**

B. In the absence of any prospectus publicly advertised in this country, or circular to shareholders, the Committee will also require an advertisement in two leading London morning papers giving all material conditions relating to the formation of the Company and to the flotation of the Issue, and stating that the Directors collectively and individually are responsible for the information advertised.

These details must also include official statements as to

(1) The Capital, authorised and issued.
(2) Borrowing Powers and the extent to which they have been exercised.
(3) Date and particulars of Incorporation.
(4) Names and addresses of Directors, Bankers, Auditors and Secretary.
(5) Objects of the Company, nature of its business or particulars of property acquired.

C. Where a Broker is instructed to sell on behalf of a Company a further issue of Stock or Shares forming a part of an amount previously created (permission to deal, if necessary, having been given for the original issue) he may obtain permission to deal on presentation of a letter from the Company authorising him to make the sale, or he may sell the Stock or Shares previous to permission being given, provided he makes the sale subject to the permission being granted.

D. In the case of Securities issued abroad or in the Colonies or Dependencies, or Securities of a purely local character within the United Kingdom a Broker may make a specific bargain with the authority of the Chairman or the Deputy-Chairman or two members of the Sub-Committee on Special Settlements and Official Quotations, but bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

APPENDIX E

SOME NOTES CONCERNING THE PARIS STOCK EXCHANGE, ETC., AS RELATING TO COMPANIES ISSUING SECURITIES NEGOTIATED THERE

I. The 'Abonnement.'

[These notes are believed to represent reliably the state of things at the time of writing, but it should be mentioned that the requirements and procedure, both of the fiscal authorities and of the bourse authorities are not unfrequently altered,—usually in the direction of causing the companies more trouble and expense.]

Before any financial service may be done for a foreign company, or before such company's shares may be dealt with in any way in France, it is necessary to enter into an arrangement regarding the payment of taxes known as the 'Abonnement.' This is an undertaking to pay certain annual taxes, viz.:—

1. The Stamp Duty ('Droit de Timbre') of Fr. 0.10 per Frs. 100 upon the nominal value of the security; payable in equal quarterly instalments.

   NOTE.—When it has been proved to the Fisc that a company's accounts have shown a debit balance on profit and loss account for three years in succession, the company is entitled to ask for a refund of the stamp duty paid for the third year, and to be allowed to discontinue paying stamp duty for successive years so long as the profit and loss account continues to show a debit balance.

2. The Transfer Duty ('Droit de Transmission') of Fr. 0.50 per Frs. 100, upon the average market price of the security for the previous year; payable in quarterly instalments.

3. The Income Tax ('Impôt sur le Revenu') of 10 per cent. on interest or dividends paid.

   NOTE.—In the case of securities on which the income varies, the tax has to be paid in advance in four quarterly instalments, provisionally calculated

on the basis of four-fifths of the previous year's dividend, a final settlement being arrived at after the actual dividends for the year are ascertained.

The company is entitled to recover the transfer duty and income tax by deductions made when paying dividends to its French shareholders. If it does not, the amount of these taxes is regarded as additional dividend, and a supplementary income tax of one-ninth of the transfer duty for the previous year and one-ninth of the income tax is charged.

These taxes are payable on the proportion of the capital estimated by the Fisc to be in circulation in France, the estimate being based on the number of shares registered in the names of persons whose addresses are in France, plus the number of bearer shares estimated to be in France as shown by the cashing of coupons and other indications regarding which the company has to furnish information to the authorities. The minimum assessment is one-tenth for shares and two-tenths for bonds or debentures and there are triennial revisions.

In the case of a foreign company it is necessary to appoint a French financial institution as 'Représentant Responsable,' and to forward to that institution:—

(*a*) A declaration of the company's intention to circulate in France certain shares; of its undertaking to pay taxes; and of its appointment of the institution named as 'Représentant Responsable.'

(*b*) A letter indemnifying the 'Représentant Responsable' in respect of the 'abonnement.'

These documents are usually drafted by the 'Représentant Responsable' and signed by two directors and by the secretary, and sealed before a notary, the notary's certificate being legalised by the French consul.

A French translation (made by a sworn translator) of the company's complete articles of association has to be published in the 'Bulletin des Annonces légales obligatoires à la charge des sociétés financières' at a cost of Frs. 4 per line.

There must also be published in the said 'Bulletin' a notice, signed by two Directors (such signatures being notarially attested, and legalised) giving the following particulars:—

1. Name of the company.
2. The laws under which the company carries on its operations.
3. The head office.

4. The object of the company.
5. The length of time for which the company is constituted.
6. The amount of the capital, with the amount of each class of shares, and the amount not yet called up on the shares.
7. The date when the financial year ends, and a certified copy of the last balance sheet.
8. Full particulars of any debentures.
9. The advantages granted to the promoters, directors and all other persons; list of real assets received from the vendors and consideration paid to the vendors for same.
10. Particulars of method of convening general meetings, and place where they are held.
11. Names, addresses and professions of the directors.

The fiscal authorities contend that an 'Abonnement' is entered into for the whole remaining duration of the company in the case of shares or, in the case of debentures or bonds, until they have been redeemed.

In case of absorption or liquidation, the cancellation of the 'Abonnement' may be obtained upon its being proved to the satisfaction of the Fisc:—

(*a*) *In case of absorption.*—That the exchange of the shares of the company absorbed against those of the absorbing company is virtually terminated, provided that an 'Abonnement' has been taken for the new shares.

(*b*) *In case of liquidation.*—That the liquidation is completely terminated, and the company has consequently ceased to exist.

II. Introduction of Shares into France. In order to obtain the admission and quotation of shares in the markets 'à terme' (which deals in quantities of not less than 25 shares, which may, however, be represented by several warrants of lower denominations than 25 shares) and 'au comptant,' it is necessary to make application to the respective 'Syndicats' (through the French firm or institution entrusted with the introduction, which firm or institution must undertake to carry over the shares for a period of at least six months) by means of forms which embody certain undertakings on the part of the company, among which may be mentioned:—

A. To the Syndicat des Banquiers en Valeurs près la Bourse de Paris.

To conform with the usages of the Paris market (including supplying the Syndicat with copies of the proceedings at general meetings and other reports and notices) and, specially to advise the Committee of the Syndicat, at least 8 days' before the next subsequent settlement, of all rights of subscription, etc., attaching to the shares, and to fix for the deposit of bearer shares to secure rights a period terminating not earlier than the seventh day of the following month.

When paying coupons, not to deduct more than one country's tax.

To provide for the renewal of sheets of coupons in Paris, without expense to proprietors.

To advise the Committee at once of the numbers of any shares on which a 'stop' is placed.

B. To the Syndicat des Banquiers en Valeurs au Comptant.

All, the above, as well as:—

To furnish the Committee of the Syndicat with two copies of the proceedings of each general meeting; and to advise it of the amount payable in respect of each coupon and the date when such coupon becomes payable; and all other information of interest to shareholders.

To replace a defaced warrant on the request of the Committee.

To exchange warrants for others of different denominations at a fixed tariff within twenty days.

PARQUET.—If it is desired to have the shares of a foreign company quoted on the 'Parquet,' it must be proved that the company is constituted in conformity with the laws of its own country. The form of application, with all the necessary papers, must be submitted to the French Chancellor of the Exchequer, and quotation is only allowed after he has given his assent.

APPENDIX F

FORMS

1. Share Certificate (with receipt form attached).
2. Share Certificate (without receipt form).
3. Debenture Stock Certificate (with receipt form attached).
4. Mortgage Debenture Stock Certificate (with receipt form attached).
5. Fractional Certificate.
6. Declaration and Indemnity for Duplicate Certificate.
7. Application for Bonds or Stock.
8. Application for Shares where no receipt for Application is issued.
9. Application for Shares (with Receipt Form attached).
10. Application and Allotment Sheet.
11. Allotment Letter (with one receipt).
12. Allotment Letter (with Receipts in full).
13. Letter of Allotment and Interim Certificate.
14. Offer of New Shares.
15. Common Form of Transfer.
16. Balance Receipt.
17. Notice *re* Certification on Transfer.
18. Receipt for Transfer over the Counter.
19. ,, ,, ,, through Post.
20. Receipt for Transfer (Alternative form).
21. Rubber Stamp on Transfer.
22. Attestation where Deed Executed by Mark.
23. Notice *re* Lodgment of Transfer.
24. Register of Transfers for Board Meeting.
25. Notice to Party on whose behalf Notice of Restraint has been lodged.
26. Notice to Party who lodged Notice of Restraint.
27. Request by Executors to be placed on Register.
28. Certificate of Identity.
29. Letter of Indemnity on waiving production of Probate or Letters of Administration in Small Estates.
30. Call Letter.

31. Share Register.
32. Reply to Bankers, &c., *re* Notice of Lien.
33. Index to Share Register.
34. Card Index to Share Register.
35. Indemnity and Request for Duplicate Dividend Warrant.
36. Debenture Stock Notice and Interest Warrant.
37. Dividend Notice and Warrant.
38. Dividend Request.
39. Specimen Signature and Dividend Request.
40. Debenture Stock Redemption Receipt.
41. Power of Attorney—Form to be signed on lodgment.
42. ,, ,, ,, Ditto.
43. Power of Attorney: Model Power.
44. ,, ,, Statutory Declaration.
45. Specimen Signature of Donee under Power of Attorney.
46. Share Warrant.
47. Receipt for Deposited Share Warrant.
48. Application for Share Warrants.
49. Share Warrant Application Receipt.
50. Receipt for Share Warrants deposited in Exchange for other Share Warrants.
51. Receipt for Share Warrants Lodged for Registration.
52. Register for issue of Share Warrants in exchange for Registered Shares.
53. Register for issue of Registered Shares in Exchange for Share Warrants.
54. Share Warrants Register.
55. Receipt for Share Warrants issued in Exchange for Share Certificate.
56. Application for Registered Shares in Exchange for Share Warrants.
57. Application for Exchange of Share Warrants.
58. Notice on Presentation of Transfer with nominal consideration unless adjudicated or properly stamped.

NOTE.—Forms numbered 7, 8, 9, 11, 12, 14, and 30 are based upon those recommended by the Institute of Bankers and approved by the Council of the Chartered Institute of Secretaries. The forms were specially designed to be used with 'window' envelopes.

THE
'A' COMPANY, LIMITED

Share Certificate

No......

Name .....

Address.....

No. of Shares.....

Distinctive No.....

Posted to.....

Date .....

Initials of Director signing

.....

(Perforated)

RECEIVED the.....*day of*.....*19*.....
Certificate No.....*for*.....*Shares in the*
'A' COMPANY, LIMITED, in the name of.....

Signature.....

(Perforated)

Certificate No..... *Number of Shares*.....

THE 'A' COMPANY LIMITED

Incorporated under the Companies Acts, 1908 to 1917.

Registered Office: London Wall, London.

Capital: £ in Shares of £ each.

This is to Certify *that*.....

.....

of.....

is registered as the holder of.....*Shares of*

.....*each*,.....*paid up, numbered as per endorsement*

in The 'A' Company, Limited, *subject to the provisions of the Memorandum and Articles of Association of the Company.*

Given under the Common Seal of the Company,

this.....*day of*.....*19*.....

.....*Director.*

.....*Secretary.*

NOTE.—*The Company will not transfer any Share without the Production of a Certificate relating to such Share, which Certificate must be surrendered before any Deed of Transfer can be registered or a new Certificate issued in exchange.*

FORM No. 1.—Share Certificate (where there is only one class of Shares). See p. 36.

[Endorsement on Share Certificate]

Date of certification or lodgment	NAME OF TRANSFEREE	No. of Shares	DISTINCTIVE NUMBERS		TRANSFER NO.	New Certificate No.
			FROM	TO		

PARTICULARS OF SHARES HEREIN REFERRED TO		
No. of Shares	DISTINCTIVE NUMBERS	
	FROM	TO

THE
'A' COMPANY, LIMITED

—

Preference Share Certificate

—

No......

Name .....

Address.....

No. of Shares.....

Distinctive No.....

Posted to.....

Date.....

Initials of Director signing

.....

(*Perforated*)

Certificate No..... *Number of Shares*.....

THE 'A' COMPANY, LIMITED

Incorporated under the Companies Acts, 1908 to 1917.

Registered Office: London Wall, London.

SHARE CAPITAL £ .

Divided into Ordinary Shares of £ each, Numbered to inclusive, and Five per cent. Cumulative Preference Shares of £ each, Numbered to inclusive.

The Preference Shares carry a fixed Cumulative Preferential Dividend at the rate of 5 per cent. per annum and rank as to dividend and capital in priority to the Ordinary Shares, but convey no further right to participate in profits or assets.

This is to Certify *that*.....

.....

of .....

is registered as the holder of.....

Five per cent. Cumulative Preference Shares of.....*Pounds each, fully paid, numbered as per endorsement in* **The 'A' Company, Limited,** *subject to the Memorandum and Articles of Association of the Company.*

Given under the Common Seal of the Company,

this.....*day of*..... *19*.....

.....*Director.*

..... *Secretary.*

NOTE.—*The Company will not transfer any Share without the Production of a Certificate relating to such Share, which Certificate must be surrendered before any Deed of Transfer can be registered or a new Certificate issued in exchange.*

FORM No. 2.—Share Certificate where there is more than one class of Shares, see p. 36. (For Stock Exchange requirements, see p. 335.)

[Endorsement on Share Certificate]

Date of certification or todfiment	NAME OF TRANSFEREE	No. of Shares	DISTINCTIVE NUMBERS FROM	DISTINCTIVE NUMBERS TO	TRANSFER NO.	New Certi-ficate No.

PARTICULARS OF SHARES HEREIN REFERRED TO

No. of Shares	DISTINCTIVE NUMBERS FROM	DISTINCTIVE NUMBERS TO

THE

A' COMPANY, LIMITED

No..... £.....

Debenture Stock

Bearing Interest at £ per cent. per annum, payable every and

Name .....

Address .....

Posted to.....

Date.....

Initials of Director signing

.....

(Perforated)

RECEIVED the.....*day of*.....*19*.....

Certificate No.....*for £*.....*Debenture Stock*

in the 'A' Company, Ltd., *in the name of*.....

Signature.....

(Perforated)

[For Stock Exchange regulations as to Debenture Stock Certificates see page 335.]

No..... £.....

THE 'A' COMPANY LIMITED

Incorporated under the Companies Acts, 1908 to 1917.

AUTHORISED CAPITAL £

Divided into [Ordinary] Shares of £ each.

Issued Capital £

Issue of £ Debenture Stock

Made pursuant to the Company's Articles of Association and to Resolutions of the Company, dated day of , 19, , bearing interest at the rate of per cent. per annum, payable and

This is to Certify *that*.....

of .....

is the proprietor of.....*Pounds of the above stock issued subject to the provisions and conditions printed on the back hereof.*

Given *under the Common Seal of the Company,*

this.....*day of*.....*19*.....

..... *Director.*

.....*Secretary.*

NOTE.—The Company will not register a transfer of any stock without the production of the Certificate relating to such stock which Certificate must be surrendered before any transfer whether of the whole or any portion thereof can be registered or a new Certificate issued in exchange. Any amount of this stock being not less than £1 or a multiple thereof may be transferred.

FORM No. 9.—Debenture Stock Certificate.—See also p. 356.

FORM No. 4.—Mortgage Debenture Stock Certificate.

[For Stock Exchange regulations as to Debenture Stock Certificates, see p. 335.]

No...... £.....

THE 'A' COMPANY, LIMITED.

Incorporated under the Companies Acts, 1908 to 1917.

CAPITAL £.....

Divided into .....% Cumulative Preference Shares of £..... each, and ..... Ordinary Shares of £..... each.

£..... 4½% First Mortgage Debenture Stock.

Interest payable 1st February and 1st August.

Issued under Article..... of the Articles of Association and a Resolution of the Directors dated the ..... day of .....19.....

This is to Certify that .....

of .....

is the Proprietor of ..... Pounds of.....Stock, which Stock is constituted by a Trust Deed dated the ..... day of..... 19....., and made between the Company of the one part, and..... .....of the other part, and issued subject to the provisions contained in such deed.

Given under the Common Seal of the Company this ..... day of .....19.....

..... *Director.*

..... *Secretary.*

The Company will not transfer any stock without the production of the certificate relating to such stock, 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. Any amount of this stock being not less than £1 or a multiple thereof may be transferred.

[*See opposite p.* 357].

[DELIVERED]

RECEIVED the.....*day of*.....19.....

Certificate No......*for £*.....*Mortgage Debenture Stock*

in the 'A' Company, Limited, in the name of.....

(Signature).....

[PERFORATED]

THE 'A' COMPANY LIMITED.

MORTGAGE DEBENTURE STOCK CERTIFICATE.

No......

Name.....

Address.....

Posted to.....

Date.....

Initials of Director Signing

.....

FORM No. 4 *(continued).*

[BACK OF FORM]

[COPY OF REGISTRAR'S CERTIFICATE.]

I hereby Certify that a mortgage or charge by way of Trust Deed dated the ..... day of ..... 19...., and created by the 'A' Co., Ltd., for securing the sum of £ ....., was this day registered pursuant to Section 93 of the Companies (Consolidation) Act, 1908.

Given under my hand at London this ..... day of ..... 19.....

.....

Registrar of Companies.

[*NOTE.—Under the requirements of the Stock Exchange, 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 Resolutions*): *and on their back the conditions of issue, redemption and transfer*]

FORM No. 5.—See p. 36.

2d. Stamp

FRACTIONAL CERTIFICATE.

THE 'A' COMPANY, LIMITED.

Issue of..... Shares of £..... each.

FRACTIONAL CERTIFICATE No.....

Representing ONE..... $\frac{\text{th}}{\text{rd}}$ of a

....SHARE.

I HEREBY CERTIFY that the Bearer of this Certificate, upon presenting the same, together with ..... other similar Certificates, will be entitled to an allotment of One Fully-paid ..... Share of £..... in the Capital of the above-named Company, subject to the following stipulation:

That within three months from the date hereof, this Fractional Certificate, together with similar Certificates, making up one or more whole ..... Shares, shall be lodged at the Company's Office with the Application Form endorsed on the back hereof duly signed.

Dated the..... .....19 .

By order of the Board,

Secretary.

Entered.....

N.B.—This Fractional part of a Share cannot be Registered, nor can it bear any Dividend until exchanged with .....other Fractional Certificates for an entire Share.

FORM No. 5 (*continued*).—See p. 36.

ENDORSEMENT ON FRACTIONAL CERTIFICATE.

FORM OF APPLICATION.

As the Bearer of this Fractional Certificate, and the ..... similar Fractional Certificates attached, I (or we) request the allotment to me (or us) of One whole ..... Share of ....., and authorise the Company to place my (or our) name on the Register of Members in respect thereof.

Signature .....

Name in full .....

Address .....

.....

Description .....

Date .....

N.B.—This application is only to be signed by the holder when presenting the Fractional Certificate (with ..... others, making a complete Share) for registration at the Company's Office.

Impressed Stamp 2/6

FORM No. 6.—See pp. 36, 64.

DECLARATION AND INDEMNITY FOR DUPLICATE CERTIFICATE.

THE 'A' COMPANY, LIMITED.

Insert here full Name, Address, and Description of Declarant

I, *A. B.*, of ..... do solemnly and sincerely declare that I am the Registered Proprietor of..... in the 'A' COMPANY, LIMITED, and that the Certificate numbered ..... in respect of the said ..... has been mislaid, destroyed or lost; and that I have made, or caused to be made, diligent but unavailing search for the same; and I further declare that I have not sold, pledged, or in any other way disposed of the said..... and the same are my absolute property.

And I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at ..... this ..... , 19..... *A. B.*

Before me, *X. Y. Z.*,

This Declaration must be made and signed either before a Justice of the Peace, a Notary Public, or a Commissioner to administer oaths in the Supreme Court of Judicature in England, and must bear a 2*s.* 6*d.* impressed Stamp.

I, the above-named *A. B.*, do hereby request The 'A' COMPANY, LIMITED, to issue to me a Certificate of the ..... above mentioned, notwithstanding the loss of the Certificate numbered ..... and in consideration of the Company so doing, I hereby, for myself, my heirs, executors or administrators, indemnify the said Company against all claims and demands, moneys, losses, damages, costs, and expenses which may be brought against, or be paid, incurred, or sustained by the said Company by reason or in consequence of the said Certificate having been mislaid, destroyed or lost, or by reason or in consequence of the issuing to me of the said Certificate or otherwise howsoever in relation thereto respectively.

I further undertake and agree, if the said Certificate shall hereafter be found, forthwith to deliver up the same or cause the same to be delivered up to the 'A' Company, Limited, their successors and assigns without cost, fee or reward.

Dated this ..... *day of* .....19....

Signed by the said *A.B.*
in the presence of

Witness's Name and Address } *X. Y. Z.* .....

6*d.* STAMP.
A. B.

Note.—The Indemnity must bear a 6*d.* Stamp, either impressed or adhesive. The Company may (and will if the account be of any magnitude) require a guarantee or indemnity by a person of standing as follows:—

And I ..... of ..... concur in the above request and guarantee the performance by the said ..... of the above undertaking.

(*Signature*).....

FORM No. 7.—See p. 45.

APPLICATION FOR BONDS OR STOCK.

[*Size* 8½ *in. by* 8¼ *in.*]

(See note on p. 350.)

THE 'A' COMPANY, LIMITED.

ISSUE OF £ 5% STERLING BONDS.

No.....

To the ..... Bank,
London, E.C.
(*As Agents for the 'A' Company, Limited.*)

GENTLEMEN,

HAVING paid to you the sum of £....., being the deposit (at the rate of ..... per cent.) payable on application for £..... of the above-mentioned 5% Sterling Bonds, I/we, being of full age, hereby request that you will allot to me/us that amount of Bonds, and I/we hereby agree to accept the same or any less amount that you may allot to me/us, and to make the remaining payments thereon in cash according to the terms and conditions

..... ;

To be written distinctly.

Name (*in full*) .....

Address (*in full*) .....

.....

Profession or Business.....

(A woman should state whether she is a Spinster, Wife, or Widow.)

Date.....19 . (*Signature*) .....

This Form, when duly filled up as directed above, should be sent, with the necessary remittance, to the ..... Bank,

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'. If altered from 'Order' to 'Bearer' the alteration *should be signed by the Drawer.*

An acknowledgment will be forwarded in due course, either by Allotment Letter or by return of the Deposit.

FORM No. 8.—See p. 45.

APPLICATION FOR SHARES WHERE NO RECEIPT APPLICATION IS ISSUED.

[*Size* 8½ *in. by* 8¼ *in.*]

(See note on p. 350.)

THE 'A' COMPANY, LIMITED.

SHARE CAPITAL £ .
Divided into Shares of £ each.
Issue of Shares of .

No.....

To the Directors of
THE 'A' COMPANY, LIMITED.

GENTLEMEN,

HAVING paid to your Bankers the sum of £.....being a deposit of.....per Share on Application for.....Shares of £..... each in the above-named Company, I/we, being of full age, hereby request that you will allot to me/us that number of Shares, and I/we hereby agree to accept the same or any less number that you may allot to me/us upon the terms and conditions of the Prospectus (dated.....) and Memorandum and Articles of Association of the Company, and I/we authorise you to place my/our name(s) on the Register of Members in respect of the Shares allotted to me/us.

To be written distinctly.

Name (*in full*) .....

Address (*in full*)

Profession or Business.....
(A woman should state whether she is a Spinster, Wife or Widow.)

(*Dated*).....19 . (*Signature*) .....

This Form, when duly filled up as directed above, should be sent, with the necessary remittance, to the Company's Bankers, the ..... Bank,.....

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'. If altered from 'Order' to 'Bearer' the alteration *should be signed by the Drawer.*

The Company will forward an acknowledgment in due course, either by Allotment Letter or by return of the Deposit.

FORM No. 9.—See p. 45.

APPLICATION FOR SHARES WITH RECEIPT FORM ATTACHED.
Size 13 in. by 8¼ in., the receipt being exactly a quarter of the whole form.
(See note on p. 350.)

THE 'A' COMPANY, LIMITED.

SHARE CAPITAL - - - £350.
Divided into Shares of £ each.
ISSUE OF SHARES OF .

No.....

To the Directors of
THE 'A' COMPANY, LIMITED.

GENTLEMEN,

HAVING paid to your Bankers the sum of £..... being a deposit of ..... per Share on Application for..... Shares of £.... each in the above-named Company, I/we, being of full age, hereby request that you will allot to me/us that number of Shares, and I/we hereby agree to accept the same or any less number that you may allot to me/us upon the terms and conditions of the Prospectus (dated.....), and Memorandum and Articles of Association of the Company, and I/we authorise you to place my/our name(s) on the Register of Members in respect of the Shares allotted to me/us.

To be written distinctly.

Name (in full).....

Address (in full).....

.....

Profession or Business.....

(A woman should state whether she is a Spinster, Wife or Widow.)

(*Date*).....19.... (*Signature*).....

This Form, when duly filled up as directed above, should be sent *entire*, with the necessary remittance, to the Company's Bankers, the .....Bank, Lombard Street, London, E.C.

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'

If altered from 'Order' to 'Bearer' the alteration should be signed by the Drawer.

The Applicant is particularly requested to write clearly, *within the bordered space* below his or her name and the *full* address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below the bordered space.

[PERFORATED]

THE 'A' COMPANY, LIMITED.
APPLICATION RECEIPT.

Name of First or of Sole Applicant. .....

Address .....

.....

.....

Joint Applicants (if any) Names only. .....

.....

RECEIVED for account of The 'A' Company, Limited, from the person(s) whose name(s) is/are written in the margin, the undermentioned amount being a deposit of ..... per share on Application for Shares in the above-named Company.

For ..... Bank, Limited.

Cashier.

....19....

This Receipt, when returned by the Bankers, must be preserved by the Applicant to be exchanged in due course for the relative Share Certificate.

FORM No. 10.—See p. 45.

APPLICATION AND ALLOTMENT SHEET.

Allotment of 100,000 Shares of £10 each in The 'A' Company, Limited, issued at par (or £.... per Share as the case may be).

No. of Allot.	Name.	Address.	Description.	No. of Shares applied for.	Amount received on Appn.	No. of Shares Allotted.	Amount payable on Appn. & Allot.	Balance due on Allotment.	Date of payment.	Amount paid.	Amount returnable.	Balance due if paid up in full.	Amount returnable.	Date of payment.	Distinctive Nos. of Shares.		No. of Cert.	Ledger folio.	Remarks.
															From	To			

FORM No. 11.—See p. 45.

ALLOTMENT LETTER (WITH ONE RECEIPT).

[*Size* 13 *in. by* 8¼ *in., the docket at the foot being exactly a quarter of the whole form.*]

(See note on p. 350.)

6d. Stamp

Space for Name and Address of Allottee to be filled in by the Company.

No.....

THE 'A' COMPANY, LIMITED,

.....

London, E.C.,

....., 19 .

ISSUE OF SHARES [DEBENTURE STOCK OR BONDS] OF

SIR OR MADAM,

In response to your application, you have been allotted

£ Shares of £ each / Debenture Stock *or Bonds* of the 'A' Company, Limited.

The Amount payable on Application and Allotment (viz., per Share / per cent.) is .. .. £

You *have already* paid .. .. £

Making amount *due from* you on Allotment .. .. £

or

Making amount *due to* you, for which a cheque is enclosed £

Payment of the amount due from you should be made on or before as directed below.

[Further particulars with regard to this Issue can be inserted here as required.]

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded *entire* to the Company's Bankers, the ..... Bank, ... who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice will be given by the Company (by advertisement) when the allotment letter is ready for exchange.

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'

If altered from 'Order' to 'Bearer' the alteration should be signed by the Drawer.

RECEIVED for account of the 'A' Company, Limited, the above amount due on Allotment.

For.....BANK, LIMITED,

.....

Cashier.

Date.....19.....

..... [PERFORATED] .....

No.....

ALLOTMENT.

THE 'A' COMPANY, LIMITED

.....

£ - - .

Date.....19.....

FORM No. 12.—See p. 45.

ALLOTMENT LETTER (WITH RECEIPTS FOR AMOUNT DUE ON ALLOTMENT AND FOR PAYMENT IN FULL).

[Size 13 in. by 8¼ in., the dockets being exactly a fourth of the total length.]

(See note on p. 350).

6d. Stamp

Space for Name and Address of Allottee to be filled in by the Company.

No.....

THE 'A' COMPANY, LIMITED,

.....

London, E.C.,

....., 19.....

ISSUE OF SHARES [DEBENTURE STOCK OR BONDS] OF

SIR OR MADAM,

In response to your application, you have been allotted Shares of £ each / £ Debenture Stock or *Bonds* of the 'A' Company, Limited.

The Amount payable on Application and Allotment (viz., per Share / per cent.) is .. .. £

You have already paid .. .. £

Making amount *due from* you on Allotment .. .. £

or

Making amount *due to* you, for which a cheque is enclosed £

Payment of the amount due from you should be made on or before the as directed below.

[Further particulars as to Payment in Full should be inserted here.]

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded *entire* to the Company's Bankers, the .....Bank, ... who will return it duly receipted. It should then be carefully preserved, to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'

If altered from 'Order' to 'Bearer' the alteration should be signed by the Drawer.

RECEIVED *for account of the* 'A' Company, Limited, *payment in full on the above-mentioned Shares. Stock.*

For ..... BANK

.....

Cashier.

Date ..... 19.....

RECEIVED *for account of the* 'A' Company, Limited, *the amount due on Allotment.*

For ..... BANK

.....

Cashier.

Date ..... 19.....

..... [PERFORATED] .....

PAYMENT IN FULL. *No.*.. .....

THE 'A' COMPANY, LTD.,

.....

£.....

Date .....19.....

[PERFORATED]

ALLOTMENT. *No.*.. .....

THE 'A' COMPANY, LTD.,

.....

£.....

Date .....19.....

FORM No. 13.—See p. 46.

LETTER OF ALLOTMENT AND INTERIM CERTIFICATE.

(This form should be printed on stout paper.)

THE 'A' COMPANY, LIMITED.

To A. B. *No.*.....

.....

THIS is to Certify that in accordance with your application you have been allotted and registered as the holder of ..... Shares of ..... each in The 'A' Company, Limited, numbered from ..... to ..... inclusive, upon which you have paid the sum of ..... per Share.

The remaining instalments are payable as follows:

£..... *per share on*..... 19.....

£..... ,, ,, ... 19.....

£..... ,, ,, ... 19.....

Seal of Co.

..... *Director.*

..... *Secretary.*

(Address of Company)

....., 19.....

RECEIVED *on Account of* The 'A' Company, Limited, *for* The 'Z' Bank.

Instalment due.....19....., £ : : .....*Cashier*.....19.....

,, ,, ...19....., £ : : .....*Cashier*.....19.....

,, ,, ...19....., £ : : .....*Cashier*.....19.....

This Form must accompany each Remittance, and all Cheques, &c., must be made payable to the Bankers.

All Remittances must be sent to ..... Bank, drawn to bearer and crossed 'not negotiable.'

[PERFORATED]

THE 'A' COMPANY, LIMITED.

Instalment due.....19..... £ : : *Date*.....19.....

Allotment Letter No...... *Cashier's Initials*.....

To be detached by the Bankers.

[PERFORATED]

THE 'A' COMPANY, LIMITED.

Instalment due.....19....., £ : : *Date*.....19.....

Allotment Letter No...... *Cashier's Initials*.....

[PERFORATED]

THE 'A' COMPANY, LIMITED.

Instalment due.....19....., £ : : *Date*.....19.....

Allotment Letter No...... *Cashier's Initials*.....

FORM No. 14.—See p. 46.

OFFER OF NEW SHARES, TO ACCOMPANY CIRCULAR OF THE COMPANY.

[*Size* 13 *in. by* 8½ *in., the receipt being a quarter of the whole form.*]

(See note on p. 350.)

[FRONT]

THE 'A' COMPANY, LIMITED.

Authorised Capital £ , divided into Shares of £ each
of which Shares have been issued and are fully paid up. ,
FURTHER ISSUE OF SHARES OF £ EACH.
At Par.
At a Premium of per Share.

LONDON, E.C.,

.....19.....

To the Shareholder whose name and address are written in the bordered space on the Reverse of this Letter.

SIR OR MADAM,

WITH reference to our Circular of this date, your present holding and the extent of your right to participate in the above-mentioned issue are specified on the Reverse of this letter, opposite your name and address.

If you intend to take up the shares to which you are entitled, you will please fill up and sign the Form of Acceptance and forward the *entire* sheet, with the necessary remittance, to the Company's Bankers, the ..... Bank,..... to be received by them not later than .....

If you desire to transfer your rights you must sign the 'Form of Renunciation and Nomination,' as set out on the reverse of this letter, and your Nominee(s), who must be of full age, must (instead of you) then fill up and sign the Acceptance Form and forward the *entire* sheet, with the necessary remittance, as directed in the preceding paragraph.

Should you elect to divide your rights, the *entire* Form must be deposited at the Company's Office to be cancelled and exchanged for Split Forms.

If the Conditions as to Acceptance and Payment are not duly observed, your right to participate in the above-mentioned Issue will be absolutely forfeited (and the Directors will deal with the Shares for the benefit of the Company at their discretion).

Yours faithfully,

Secretary.

..... [PERFORATED] .....

A Share Certificate in the name of the Acceptor will be ready on it will be exchanged on or after that date at the Company's Office, ...in exchange for this Receipt.

[P.T.O.

FORM No. 14 (*continued*).

(See note on p. 350.)

[BACK OF FORM 14.]

THE 'A' COMPANY, LIMITED. No._____

Present holding ..... Shares.
Entitled to a
pro rata allotment of ..... Shares

Space for Name and Address of Shareholder, to be filled in by the Company.

Joint Shareholders (if any) Names only. .....

FORM OF RENUNCIATION AND NOMINATION, to be signed by the Shareholder only if the Rights are renounced.

To the Directors of The 'A' Company, Limited.

I/we hereby renounce my/our right to the above-mentioned new Shares and nominate.....

Name (in full), Address and Occupation of Nominee. .....

If woman, state whether Spinster, Wife or Widow. .....

to have all the benefits of the offer contained in your Circular dated .....

(*Signature of Shareholder*)* } .....

Affix stamp. Under £5 Nominal, 1*d.*; £5 and over, 6*d.*

Date ..... 19.....

*[Instructions as to Signatures of Joint Holders.]

FORM OF ACCEPTANCE to be signed by the Shareholder or Nominee.

To the Directors of The 'A' Company, Limited.

Having paid to your Bankers the sum of £ ..... being the First Instalment at the rate of ..... per Share in respect of ..... Shares referred to in the within letter, I/we the above-mentioned Shareholder(s)/Nominee(s) hereby accept your offer of the said Shares pursuant to the terms and conditions of your Circular of ..... and I/we authorise you to place my/our name(s) on the Register of Members in respect of the said Shares.

(*Signature of Acceptor*) .....

Date..... 19.....

Cheques should be made payable to *Bearer* and crossed 'NOT NEGOTIABLE'

If altered from 'Order' to 'Bearer' the alteration should be signed by the Drawer

[PERFORATED]

THE 'A' COMPANY, LIMITED.

Further issue of Shares of £ each at No._____

Name of first or of Sole Acceptor. .....

Address .....

.....

.....

Joint Acceptors (if any) Names only. .....

.....

RECEIVED for Account of The 'A' Company, Limited, from the person(s) whose name(s) is/are written in the margin the undermentioned amount, being the First Instalment at the rate of per Share, payable on Acceptance of Shares of above-mentioned Issue.

For.....Bank Limited

STAMP

.....
Cashier.

£_____ .....19.....

For instructions as to exchange of this Receipt for Certificate, see reverse.

FORM No. 15.—See p. 55.

COMMON FORM OF TRANSFER.

I/We, *A.B.*, of ..... in [1] consideration of the sum of ..... paid by *C. D.*, ..., hereinafter called the said Transferee, do hereby bargain, sell, assign and transfer to the said Transferee, ... pounds Stock (.....shares of £.....each, ...paid numbered from..... to..... inclusive) of and in the undertaking called The 'A' Company Limited, to hold unto the said Transferee, his/their Executors Administrators, and Assigns, subject to the several conditions on which I/we held the same immediately before the execution hereof; and I/we, the said Transferee, do hereby agree to accept and take the said Stock (shares) subject to the conditions aforesaid. As Witness our hands and Seals this.....day of.....in the year of our Lord One thousand nine hundred and.....

Signed, sealed, and delivered by the above-named ..... in the presence of:

Witness's { *Signature* ..... *Address* ..... *Occupation*..... }

A. B.

L. S.

Signed, sealed, and delivered by the above-named..... in the presence of:

Witness's { *Signature* ..... *Address* ..... *Occupation* ..... }

C. D.

L. S.

[1] The Consideration-money set forth in a Transfer may differ from that which the first Seller will receive, owing to sub-sales by the original Buyer; the Stamp Act requires that in such cases the Consideration-money paid by the Sub-purchaser shall be the one inserted in the Deed, as regulating the *ad valorem* Duty; the following is the *Clause* in question:

'Where a Person, having contracted for the purchase of any Property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the Property is in consequence conveyed immediately to the Sub-purchaser, the Conveyance is to be charged with *ad valorem* Duty in respect of the Consideration moving from the Sub-purchaser.'—[54 & 55 Vic. cap. 39, sec. 58, sub-sec. 4.]

For the recommendations of the Council of the Institute in regard to execution of transfers, see Chapter VII.

FORM No. 16.—See p. 58.

BALANCE RECEIPT.

THE 'A' COMPANY, LIMITED.

No......

.....19....

No. of Certificate ..... *for £*..... stock [..... shares].

Name, *A. B.*

Amount of Balance £..... stock [. shares].

Issued to .....

[PERFORATED]

THE 'A' COMPANY, LIMITED.

LONDON WALL, E.C.

No......

....., 19.....

Certificate No..... for £..... Stock [..... Shares] in the name of *A. B.* has been lodged at the Company's Office to meet transfers, leaving an available balance of £..... [..... shares] for which a Certificate will be prepared when required.

Secretary.

NOTE.—This receipt does not in any way constitute a title to the Stock (shares) therein referred to and is not negotiable. The Company will not be in any way responsible for any purpose for which it may be used otherwise than the Certification of further Deeds of Transfer or exchange for a Definitive Balance Certificate.

No Transfer for any of the Balance of Stock (shares) above referred to will be certified, neither will a Balance Certificate be issued, without the production of this receipt.

FORM No. 17.—See p 57.

NOTICE *RE* CERTIFICATION ON TRANSFER.

[*This notice should be enclosed in a plain envelope as a precaution against interception.*]

THE 'A' COMPANY LIMITED,
LONDON WALL, E.C.

....., 19.....

To A. B.

DEAR SIR OR MADAM,

Please note that the undermentioned Deed of Transfer, purporting to be signed by you $\frac{\text{has}}{\text{have}}$ been presented for certification. $\frac{\text{This,}}{\text{These,}}$ when executed by the transferee, will, subject to the approval of the Directors, be duly registered:

STOCK £ OR NO. OF SHARES	NAMES OF TRANSFEREES

Unless I hear from you to the contrary by return of post I shall assume the same to be in order.

Yours faithfully,

Secretary.

FORM No. 18.—See p. 60.

RECEIPT FOR TRANSFER OVER THE COUNTER

(See alternative Form No. 20.)

THE 'A' COMPANY, LIMITED.

No......

No......

No. of Deeds for registration.....

.....	Ordinary Shares.

Ordinary Shares.....

in favour of *A. B.*

[PERFORATED]

In favour of .....

Received ..... Deed(s) of Transfer for the above, for Registration, subject to the approval of the Board. Also Registration Fee(s), 2*s.* 6*d.*

Left by *X. Y. Z.*

New Certificate will be ready for delivery in exchange for this receipt on or after the .. .., 19....

Date.....19....

Fee, ... received by *C. D*

Secretary.

NOTE.—In some companies the transferee's name is omitted from the receipt. In such cases the transferee's name must be endorsed thereon when applying for new Certificate. A separate book for each class of share or stock is sometimes used; the colour of the paper being different for each class.

[In lieu of a counterfoil some companies use carbon copies.]

FORM No. 19.—See p. 60.

RECEIPT FOR TRANSFER THROUGH POST AND LETTER ENCLOSING NEW CERTIFICATE.

(See also Forms Nos. 18 and 20.)

No.____

THE 'A' COMPANY, LIMITED.

London Wall, E.C

_____19__

I beg to acknowledge Transfer(s) as undermentioned with relative Certificate(s) and Fees amounting to_____

Subject to the approval of the Directors new Certificate(s) in favour of Transferee(s) will be sent you in due course.

Secretary.

To_____

Number of Transfers	Transferee	Amount and Description of Transfers

[PERFORATED]

No.____

THE 'A' COMPANY, LIMITED.

London Wall, E.C.

_____19__

I beg to enclose Sealed Certificate(s) of this Company in accordance with particulars stated below. Please sign and return to me the form of receipt appended thereto (or hereto)_____

Secretary.

To_____

No.	Name	Amount and Description of Stock or Shares

Received Certificate No._____

for_____Stock (or Shares).

Date_____

Signature.

[PERFORATED]

No.____

THE 'A' COMPANY, LIMITED.

Letter dated _____19__

From_____

Enclosing Transfer(s) as follows:

Number of Transfers	Transferee	Amount and Description of Transfer

Fees received,

New Certificate(s) sent as follows:

No.:—

To:—

Date when sent _____ _____19__

FORM No. 20.—See p. 60.

RECEIPT FOR TRANSFER (ALTERNATIVE FORM).

(See also Forms Nos. 18 and 19).

No.....

.....19....

THE 'A' COMPANY, LIMITED.

RECEIVED from .....

.....

the undermentioned ..... Transfer Deed....of..... SHARES [£..... stock] for Registration, subject to the approval of the Directors.

No. of Shares .....

Amount of Stock £.....

Name of .....

Fee paid .....

Certificate ready.....

[PERFORATED]

No.....

.....19....

No. of Shares, or Amount of Stock

In the Name....of

The Certificate.... in respect of the above Transfer.... will be ready for delivery in exchange for this Receipt on.....

Registration Fee .....

Secretary.

FORM No. 21.—See p. 60.

RUBBER STAMP ON TRANSFER, FOR RECORD OF OPERATIONS.

[*By using this form on transfer deeds the need for a separate Register of Transfers is avoided.*]

THE 'A' CO., LTD.	
Transfer No. . .	
Date Recd. . .	
,, Ackd. . .	
,, Advised	
,, Passed . .	
Old Cert. No. . .	
Transferor's Fo.	
New Cert. No.	
Transferee's Fo.	
Date Cert. sent.	

FORM No. 22.—See p. 62.

FORM OF ATTESTATION WHERE DEED HAS BEEN EXECUTED BY A MARK.

SIGNED, sealed and delivered by the above-named *A. B.* in our presence, he having signed by a mark in consequence of being unable [through physical infirmity] to sign his name, the deed having first been read over and explained to him and he appearing fully to understand the effect thereof.

[Two Witnesses should attest, one of whom should be a Doctor, Justice of the Peace, Minister of Religion, Barrister, Solicitor, or other person of standing.]

FORM No. 23.—See pp. 56, 60.

NOTICE *RE* LODGMENT OF TRANSFER.

[*This notice should be enclosed in a plain envelope as a precaution against interception. It should also be printed on tinted paper to distinguish it readily from Form No.* 17.]

THE 'A' COMPANY, LIMITED.
LONDON WALL, E.C.

.....19.....

Please note that the undermentioned Deed(s) of Transfer, purporting to be signed by you, $\frac{\text{has}}{\text{have}}$ been lodged at this Office for registration, subject to the approval of the Directors, viz.:

STOCK £ OR NO. OF SHARES	NAMES OF TRANSFEREES

Unless I hear from you to the contrary by return of post I shall assume the same to be in order.

Secretary.

FORM No. 24.—See p. 63.

REGISTER OF TRANSFERS (FOR BOARD MEETING).

Consolidated Ordinary Stock. *Date of Registration,*

....., 19 .....

No.	Folio	Transferor	Amount	Transferee	Folio
2204	918	Johnson, J. ..	1000	Arliston, Mrs. E. ..	90 *n*
2205	2290	Smith, A.	800	Adams, E. U. ...	91
2206	1000	Jackson, H. Y.	200	Baildon, J. J. ...	209 *n*
			2000		

Transfers Nos. to , both inclusive, passed

'*n*' means New Account. The name opposite which it appears has not previously been entered on the register.

FORM No. 25.—See p. 65.

NOTICE TO PARTY ON WHOSE BEHALF NOTICE OF RESTRAINT HAS BEEN LODGED.

(This form can be modified, as requisite, where payment of dividend s has been restrained.)

THE 'A' COMPANY, LIMITED,
LONDON WALL, E.C.

.....19 .....

DEAR SIR(S),

I BEG to inform you that deed(s) transferring the..... Stock [.....Shares] registered in the joint names of *O. P.* & *R. S.*, the Stock (..... Shares) referred to in the Affidavit and Notice of Restraint dated ..... and lodged at this Office on the ....., has(ve) been presented here for (certification registration), and I have to give you notice on behalf of the Company that such transfer(s) will* [when presented for registration] be duly passed by the Directors after the expiration of eight days from the date hereof, unless in the meantime proceedings are taken to prevent the registration of said transfer(s).

Yours faithfully,

Secretary.

* In the case of a transfer already lodged for registration cross out the words 'when presented for registration.'

[*This notice should be sent by registered post.*]

FORM No. 26.—See p. 65.

NOTICE TO PARTY WHO LODGED THE NOTICE OF RESTRAINT.

THE 'A' COMPANY, LIMITED,
LONDON WALL, E.C.

.....19 .....

DEAR SIR(S),

REFERRING to the Affidavit and Notice dated ..... filed..... and lodged by you at the Company's Office on ..... restraining the transfer of £..... Stock [.....Shares] registered in the joint names of *O. P.* & *R. S.*, I beg to send you herewith copy of a letter forwarded to-day to..... .....on whose behalf the restraint was placed, notifying them that the Stock (Shares) is (are) about to be transferred.

Please acknowledge receipt.

Yours faithfully,

Secretary.

[*This notice should be sent by registered post.*]

FORM No. 27.—See p. 72.

REQUEST BY EXECUTORS OR ADMINISTRATORS TO BE PLACED ON REGISTER.

PROBATE.

No.....

To the 'A' COMPANY, LIMITED.

Name of deceased,.....

WE, the undersigned, *E. F.* and *G. H.*, Executors of the Will of the late ....., of ..... hereby request you to register us as members of your Company in respect of the ..... Shares numbered..... [or £..... Stock] of such Company, now standing in the name of the said deceased, ..., subject to the several conditions on which the deceased held the same.

Dated this ..... day of ....., 19.....

Full Names, Addresses and Descriptions	Usual Signatures.
Name.....	
Address.....	*E. F.*
Description	
Name	
Address.....	*G. H.*
Description	

NOTE.—The Share or Stock Certificates must be lodged at the Company's Offices with this request

[No stamp is necessary where above form is used.]

FORM No. 28.—See p. 72.

CERTIFICATE OF IDENTITY.

THE 'A' COMPANY, LIMITED.

(To be made by a Solicitor, Broker, or other authorised Agent.)

I, the undersigned, *A. B.*, of London, state that I have known and been well acquainted for ..... years and upwards now last past with *C. D.*, who is registered in the books of The 'A' Company, Limited, in the name of

.....

of .....,

as the Proprietor of .....Shares of..... ....

each, and that *C. D.*, mentioned in the* .....

..... herewith exhibited, and of which an Abstract is hereto subjoined, is the same person as the said .....

.....

Signature, A. B.

Address..... .....

Date.....19.....

*Deed of Transfer, Probate, certificate of death or marriage, or other document requiring identification.

FORM No. 29.—See p. 72.

LETTER OF INDEMNITY ON WAIVING PRODUCTION OF PROBATE OR LETTERS OF ADMINISTRATION IN SMALL ESTATES

To the .....

WHEREAS .....
late of .....
(hereinafter called the deceased) who died on ..... 19.....
was the registered proprietor of .....
shares in the .....
numbered .....
And whereas the whole property left by the deceased in the United Kingdom was under the value of £100 (One Hundred Pounds) And whereas there is no necessity so far as the English Revenue is concerned to take out a Grant of Representation to the deceased in this Country as certified by the letter dated ..... 19..... from the Estate Duty Office, Somerset House, London, W.C., to .....
And Whereas .....
is entitled according to ..... Law to administer the Estate of the deceased and to transfer the said shares as appears by the certificate of .....
Now Therefore in consideration of your waiving the production of an English Grant of Representation to the deceased and of your registering the transfer of the said shares from the name of .....
to that of .....executed
by ..... and issuing a certificate for the said shares in the name of .....
and paying to ..... the amount of any dividends which have accrued or which may hereafter accrue thereon We .....
of .....hereby agree to indemnify and hold you and each and every of you harmless and indemnified against all actions proceedings claims and demands costs charges and expenses which may be brought or made against you or any of you or which may be incurred or sustained by you or any of you in consequence of your so doing or in consequence of your permitting at any time hereafter a subsequent transfer of the said shares or any of them.

Dated this .....day of..... 19.....

(Signature) ..... 6d. English Stamp. .....

To be signed by a bank in the United Kingdom.

FORM No. 30.—See p. 75.

CALL LETTER.

[*Size* 13 *in. by* 8¼ *in., the docket one quarter of the total length of form.*]
(See note on p. 350.)

No.....

Space for Name and Address of Shareholder, to be filled in by the Company.

THE 'A' COMPANY, LIMITED,
LONDON, E.C.

.....19 ....

CALL OF PER SHARE ON ISSUE OF SHARES.
[1st, 2nd or 3rd call as case may be.]
MAKING THE SHARES PAID.

SIR OR MADAM,

I have to inform you that the Directors, by a Resolution of the Board dated....., have made a Call as set forth above.

The amount due from you in respect of the ..... Shares registered in your name is £..... which must be sent on or before ....., together with this *entire* Notice, to the Company's Bankers, the ..... .Bank, ... who will return the Notice duly receipted.

[Particulars should be given here if the Certificate requires endorsement, or the Articles of Association provide for any penalty for failure to pay on due date.]

By Order of the Board,

Secretary.

Cheques should be made payable to *Bearer* and crossed NOT NEGOTIABLE

If altered from 'Order' to 'Bearer' the alteration should be signed by the Drawer.

RECEIVED for account of The 'A' Company, Limited, the amount of the above-mentioned Call as stated.

For .....BANK,

Receipt Stamp

.....

Cashier.

Date.....19....

[PERFORATED]

No......

THE 'A' COMPANY, LIMITED.

CALL OF PER SHARE ON ISSUE OF SHARES.

..... £ - -

Date..... .....19....

FORM No. 31.—See p. 49.

SHARE REGISTER.

[THREE ACCOUNTS TO A PAGE.]

Name, A. B. *Address*.....

(Occupation).....

	£
(a) Deposit on Allotment	
1st call	
2nd call	
3rd call	
Total	

Shares Acquired						Shares Transferred					Balance
Date	Transfer No.	No. of Shares	(a) Paid or Credited on each Share	Distinctive Numbers	No. of Certificate	Date	Transfer No.	No. of Shares	Distinctive Numbers	No. of Certificate	
				From To					From To		

(a) Where shares are fully paid this can be omitted.

FORM No. 32.— See p. 51.

FORM OF REPLY TO BANKERS AND OTHERS *RE* NOTICE OF LIEN.

THE 'A' COMPANY, LIMITED,

LONDON WALL, E.C.

.....19.....

WITH reference to your communication dated the ....., which purports to be a notice of the deposit of certain Certificates of Stock [Shares] of this Company with your Bank, I beg to inform you that the Company and its Officers are unable to recognise, or in any way act upon, the said communication.

I return it herewith.

Secretary.

To the Manager

..... Bank.

(Per Registered Post.)

FORM No. 33.—See p. 52.

INDEX TO SHARE REGISTER.

Surname	Christian Name	Address	Payee, &c.	Holding							
				Debenture Stock		Preference Shares		Ordinary Shares	
				Folio	Amt.	Folio	No.	Folio	No.

FORM No. 34.—See p. 52.

CARD INDEX TO SHARE REGISTER.

Name.

Description.

Address.

Registration Number.

Ledger..... Folio.....

5% Deb. £.....

4½% do. £.....

Pref. Shares.....

Ord. do. .....

.....

DIVIDEND INSTRUCTIONS:

.....

.....

.....

REMARKS:

PLEASE SIGN
(Using Your Ordinary Signature)
IN SPACE PROVIDED.

Share/Stock holder's Specimen Signature:—

FORM No. 35.—See p. 156.

INDEMNITY AND REQUEST FOR DUPLICATE DIVIDEND WARRANT.

To THE 'A' COMPANY, LIMITED.

IN consideration of The 'A' Company issuing to me a duplicate Warrant for the [Interest or Dividend] to the [30 June or 31 December, 19.....], amounting to £..... on the [amount of holding, *e.g.* £100 ordinary stock] registered in my name, in lieu of the original Warrant No.....dated..... which has been lost, destroyed, or mislaid, I hereby undertake and engage for myself, my Executors, Administrators and Assigns, to hold the said Company, and the Directors and Officers thereof, harmless and indemnified against all losses and expenses which may arise in the event of the said original Warrant being paid or forthcoming at any future time, or otherwise in consequence of the said Company issuing a duplicate to me as aforesaid, and I request that such duplicate Warrant may be issued to me accordingly.

Dated this.....day of....., 19.....

Signature.....

6d. STAMP unless under £5

Address.....

Witness:

Signature .....

Address.....

Occupation .

FORM No. 36.—See p. 155.

DEB. SERIAL NO. *No.*.....

DEBENTURE STOCK NOTICE AND INTEREST WARRANT.

THE 'A' COMPANY, LIMITED,
LONDON, E.C. 2

....., 19....

To *For the a/c of*

SIR (*or* MADAM)

I beg to send you subjoined a Warrant in payment of Interest to ....., 19....., less Income Tax, payable on the ....., 19....., on Debenture Stock of the Company according to the Register of Stockholders on the ....., 19 ...., when the Transfer Books were closed.

	Registered Holding	Amount of Interest
	£	£ s. d.
5 % First Debenture Stock Interest for half-year to ....., 19		
4½ % Second Debenture Stock Interest for half-year to ....., 19.....		
Less Income (Tax at ..... in the £)		
Amount of Warrant	£	

I also certify that Income Tax on the profits out of which the above Interest is paid will be duly accounted for by the Company to the proper Officer for the receipt of Taxes.

Your obedient Servant,

.....*Secretary*.

N.B.—This statement will be required by the Inland Revenue as a voucher if repayment or abatement of Income Tax is claimed, and should therefore be carefully preserved by the Proprietor. A charge will be made for each duplicate issued.

PERFORATED

[*Continued on next page.*

IMPORTANT

Stockholders are particularly requested to communicate any change of address to the Secretary. They are strongly recommended to give instructions for the payment of Interest and Dividends direct to their Bankers, for which purpose the Company's own forms must be used. These can be obtained upon application.

A separate form must be signed for Debenture Stock and Shares respectively.

FORM No. 36 (*continued*).

(This form has been settled by the Council in conjunction with the Institute of Bankers.)

Warrant No. /.....

DEBENTURE WARRANT.

THE 'A' COMPANY, LIMITED.

LONDON, E.C..... .....19.....

& Co.

NOT NEGOTIABLE

To THE 'X' BANK, LD. (Revenue Stamp)

Lombard St., London, E.C.3.

Pay *to*....., *or* Order

For and on behalf of the 'A' Company, Limited.

£_____

Signature (*or Signatures*) .....

Signature of Payee .....

NOTE—This Warrant must be signed by the payee and presented to the Company's Banker's within six months of the date hereof.

Enter:—*T* (town), *M* (metropolitan), or *C* (country), whichever letter is applicable.

FORM No. 37.—See p. 155.

DIVIDEND NOTICE AND WARRANT.

P. Serial No.
O. Serial No.

No.....

THE 'A' COMPANY LIMITED.

LONDON E.C.2.....19.....

To *For the a/c of*

SIR (*or* MADAM),

I beg to send you subjoined a Warrant in payment of the balance Dividends for the year ended.....19..... on your holding of shares in this Company according to the Registrar of Shareholders on the .....19....., when the Transfer Books were closed, and as declared at the General Meeting of the Company held on..... .....19.....

	£	s.	d.
Preference Shares (Six per cent. Cumulative First)— (£.....in..... .....Shares of £.....each. Nos. 1 to .....) ..... per Share on.....Shares =			
Preference Shares (Eight per cent. Cumulative Second— (£..... in .... Shares of £..... each. Nos. ..... to .....) ..... per Share on.....Shares =			
Ordinary Shares— (£..... in ..... Shares of £..... each, Nos. ..... to .....) ..... per Share on.....Shares =			
Deduct Income Tax at ..... in the £			
AMOUNT OF WARRANT .. .. £			

I also certify that Income Tax on the profits out of which the above Dividends are paid has been or will be duly accounted for by the Company to the proper Officer for the receipt of Taxes.

Your obedient Servant,

.....*Secretary.*

N.B.—This Statement will be required by the Inland Revenue as a voucher if repayment or abatement of Income Tax is claimed. It should therefore be carefully preserved by the Proprietor. A charge will be made for each duplicate issued.

..... [PERFORATED] .....

IMPORTANT.

Shareholders are particularly requested to communicate any change of address to the Secretary. They are strongly recommended to give instructions for the payment of Interest and Dividends direct to their Bankers.

A separate form must be signed for Debenture Stock and Shares respectively.

[*Continued on next page.*

FORM No. 37 (*continued*).

Serial No..... Dividend Warrant No.....

DIVIDEND WARRANT.

THE 'A' COMPANY, LIMITED.

LONDON, E.C. 2.....19.....

To THE 'X' BANK, LTD. & Co. NOT NEGOTIABLE (Revenue Stamp)

Lombard St., London, E.C.3.

Pay *to*..... *or* Order

the sum of .....

For and on behalf of the 'A' Company, Limited.

£_____ *Signature*

(*or Signatures*) .....

Signature of Payee .....

NOTE.—This Warrant must be signed by the Payee and presented to the Company's Bankers within six months of the date hereof.

Enter :—*T* (town), *M* (metropolitan), or *C* (country), whichever letter is applicable.

[Size of warrant within 4 ins by 5½ ins. vertical, and 8½ ins. horizontal; or combined size of warrant and counterfoil within 8 ins. and 11 ins. vertical and 8½ ins. horizontal.]

FORM No. 38.—See p. 155.

DIVIDEND REQUEST.

Address.....

.....

..... 19.....

To THE 'A' COMPANY, LIMITED.

$\frac{\text{I}}{\text{We}}$ hereby request that you will transmit by post and pay the Dividends and Interest from time to time payable on the Stock and Shares standing registered, or which may hereafter stand registered, in $\frac{\text{my}}{\text{our}}$ name(s) in the books of your Company, to ..... whose receipt shall be your full and sufficient discharge.

Signature of Proprietor .....

NOTE.—In case of a joint account all holders must sign.

FORM No. 39.—See p. 155.

SPECIMEN SIGNATURE AND DIVIDEND REQUEST.

(This Form may be sent out with Certificate in the case of all new holdings.)

THE 'A' COMPANY, LIMITED,

No.....

LONDON WALL, E.C. .....19.....

To.....

(*Address*).....

FOR OFFICE USE ONLY	
No of Certificate	No. of Shares or Amount of Stock

Please favour me with a specimen of your ordinary signature below, returning this form to me.

If you desire that Dividends or Interest on your Shares [or Stock] should be paid to your Bankers direct, please also fill up and sign the form at foot hereof.

Secretary.

Ordinary Signature of Shareholder or Stockholder .....

.....

To THE 'A' COMPANY, LIMITED.

$\frac{\text{I}}{\text{We}}$ hereby request that you will transmit by post and pay the Dividends and Interest from time to time payable on the Stocks and Shares standing registered, or which may hereafter stand registered, $\frac{\text{my}}{\text{our}}$ name(s) in the books of your Company, to .....

.....whose receipt shall be your full and sufficient discharge.

Date.....19.....

(*Signed*).....

NOTE.—In the case of a joint account all holders must sign.

FORM No. 40.—See p. 165.

DEBENTURE STOCK REDEMPTION RECEIPT.

RECEIVED of the 'A' Company, Limited, the sum of.....
.....in full satisfaction and discharge of all moneys payable or to become payable in respect of the £..... Stock of the said Company of which $\frac{\text{I am}}{\text{we are}}$ the registered proprietor(s) referred to in the Certificate(s) numbered.....and of all claims and demands on account thereof. The said Certificate(s) $\frac{\text{is}}{\text{are}}$ delivered up by $\frac{\text{me}}{\text{us}}$ for cancellation of the £..... Stock therein referred to.

£.....

Dated the .....

Signature ..... 2d. STAMP .....

Address.....

.....

Signature .....

Address.....

.....

Signature .....

Address.....

.....

FORM No. 41.—See p. 217.

FORM TO BE SIGNED ON LODGMENT OF POWER OF ATTORNEY.

(*Address*) .....

..... 19.....

WITH reference to the Power of Attorney dated..... 19....., granted by me in favour of *C. D.*, and lodged at the Company's Office for registration, I beg to inform you that the following is the signature of my said Attorney, and that the Power is still in force.

Signature of Proprietor .....

Witness to Signature of Proprietor .....

Address.....

Occupation .....

Signature of Attorney .....

FORM No. 42.—See p. 217.

(See also Form 44.)

FORM TO BE SIGNED ON LODGMENT OF POWER OF ATTORNEY WHERE SIGNATURE OF DONOR IS UNOBTAINABLE.

....., 19.....

WITH reference to a Power of Attorney dated..... ....., granted to me, the undersigned, by....., and lodged at the Company's Office for registration, I beg to inform you that I desire to act upon the said Power of Attorney, which is unrevoked and in full force.

Signature ... .

$\frac{\text{I}}{\text{We}}$ the undersigned being the $\frac{\text{Solicitor}}{\text{Banker}}$ of the Donor of the Power, certify that $\frac{\text{I am}}{\text{we are}}$ acquainted with the Attorney above mentioned, and that the above is his signature.

Signature ....

Address.....

FORM No. 43.—See p. 228.

POWER OF ATTORNEY.

Standard form approved by the Chartered Institute of Secretaries.

[*Copies of this form may be obtained at the Depôts of the Solicitors Law Stationery Society Ltd., in London (22, Chancery Lane, London, W.C. 2; 27, Walbrook, E C. 4; 49, Bedford Row, W.C. 1; 45, Tothill Street, S.W. 1; and 15, Hanover Street, W. 1; and in Manchester (Chester Street, Oxford Road)*].

[10/- Impressed Stamp]

KNOW ALL MEN BY THESE PRESENTS, that I ..... of ..... hereby appoint .....

(*a*) jointly and severally to be my Attorneys and Attorney in my name and on my behalf to do or concur with others in doing all or any of the following acts and things to the intent that the powers hereby conferred shall extend to all matters in which I am or may become interested, whether solely or jointly and whether in my own right or as partner trustee, executor, administrator, or otherwise:—

(1) To demand, recover, enforce and give good and sufficient receipts, discharges and indemnities for and in respect of all property, money, securities and rights to which I am now or may hereafter become entitled, and to compound, compromise or abandon any claim in respect thereof and any claim against me.

(2) To apply and subscribe for (whether absolutely or conditionally), buy, accept or otherwise acquire, and to sell, assign, exchange or otherwise dispose of, stocks, funds, shares, debentures, debenture stock, securities and investments of every description, however constituted and wherever issued, and whether now existing or hereafter to be created, and any options or rights in respect thereof; to enter into underwriting and sub-underwriting agreements; and generally to manage and vary investments.

(*b*) (3) To operate on any banking account, and to open and operate on any new banking account, and to draw, sign and endorse cheques, bills of exchange and dividend and interest warrants.

(4) To buy and sell goods of all kinds, and to effect and maintain insurances on real and personal property, and insurances against loss and liability generally.

(5) To give, vary and revoke instructions as to the manner in which any moneys payable to or by me (whether periodically or otherwise) shall be paid or dealt with.

(6) To attend and vote or appoint any person to attend and vote as my proxy at meetings of the holders of any stocks, funds, shares, debentures, debenture stock, securities or investments in which I am or may become interested.

(7) To institute, defend, compromise, abandon or submit to judgment in, any legal proceedings, and to join in and submit to arbitration, to give security or indemnities for costs, to pay money into Court, and to obtain payment of money lodged in Court.

FORM No. 43 (*continued*).

(8) To present, support or oppose any petition for winding up or bankruptcy; to concur in or dissent from any composition or arrangement; to attend and vote or appoint any person to attend and vote as my proxy at any meetings of creditors; to make and file proofs of claim; and generally to represent me in any liquidation, bankruptcy or insolvency.

(9) To apply for Probate or Letters of Administration and any similar grants and to obtain or enter into any bond of suretyship in connection therewith.

(*c*) (10)

And for all or any of the above purposes to sign, seal, deliver, execute and do any deeds, transfers, documents, acts and things as effectually as I myself could do if personally present, and to employ and remunerate bankers, brokers, lawyers and agents.

And I hereby declare that these presents shall be irrevocable for (*d*) .....calendar months from the date hereof and shall at all times be conclusively binding in favour of third parties who have not received notice of revocation but so that the exercise by me in person from time to time of any of the powers hereby conferred shall not be deemed to be a revocation.

In witness whereof I have hereunto set my hand and seal this ..... day of .....One thousand nine hundred and .....

Signed, sealed and delivered by the above-named) L. S.

in the presence of)

Witness's signature

Address

Occupation or description.

NOTES.

(*a*) If only a single Attorney is appointed strike out the words 'jointly and severally' and 'Attorneys and,' and initial the alteration in the margin. If a power of substitution is required, this should be added in clause 10.

(*b*) The clause as printed does not authorise the acceptance of bills; if required, insert the word 'accept' after the word 'sign' and the words 'promissory notes' after the words 'bills of exchange,' and initial the alterations.

(*c*) The form as printed does not cover dealings with land or premises, nor does it confer certain other powers, *e.g.* to lend money, to borrow money, to pledge securities, to give guarantees, etc. Insert in clause 10 any supplementary powers, and initial the addition in the margin. Unused space should be closed up with a diagonal line.

(*d*) Insert the number of months, not exceeding twelve.

FORM No. 44.—See p. 223.

FORM OF STATUTORY DECLARATION *RE* POWER OF ATTORNEY.

(see Sec. 80 of the Law of Property Act, 1922.)

I .....

of .....

hereby solemnly and sincerely declare as follows:—

1. I am the person designated by the above name in the Power of Attorney expressed to be granted to me [and .....jointly and severally] by .....
   of .....
   and dated the ..... day of .....19.....

2. The said Power of Attorney bears the true signature of the said Grantor.

3. I have not received any notice or information of the revocation by death or otherwise of the said Power of Attorney and believe the same to be in full force.

And I make this Declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

DECLARED at .....
.....
this .....day of
..... 19.....

before me.....

A Commissioner for Oaths.

FORM No. 45.—See p. 217.

SPECIMEN SIGNATURE OF DONEE UNDER POWER OF ATTORNEY.

LONDON WALL, LONDON, E.C.2,.....

DEAR SIR,

A Power of Attorney executed by ..... in your favour, having been lodged here for registration, I shall be glad if you will kindly furnish me with a specimen of your signature on the attached form, which please return by next post, in the enclosed stamped envelope.

Yours faithfully,

Secretary.

..... [PERFORATED] .....

Specimen Signature of .....

the duly appointed Attorney of .....

FORM No. 46.—See pp. 87 and 94.

SHARE WARRANT.

THE 'A' COMPANY, LIMITED.

Incorporated under the Companies Acts 1908 to 1917.

CAPITAL £ .

Divided into Shares of each.

Share Warrant to Bearer for 100 Shares of each.

Share Warrant No.....

This is to Certify that the Bearer of this Warrant is entitled to 100 (one hundred) fully paid up Shares of each numbered as below, in THE 'A' COMPANY LIMITED, subject to the Regulations of the Company and to the conditions for the time being governing the holding of Share Warrants to Bearer issued by the Company.

Number of Shares	DISTINCTIVE NUMBERS (Inclusive) From	To

Given under the Common Seal of the Company. L. S

this.....day of.....192.....

..... *Director.*

.....*Secretary.*

NOTE.—This Warrant is issued subject to the Conditions for the time being governing the holding of Share Warrants in the Company as determined by the Board of Directors of the Company, such Conditions may be obtained free of charge at the Offices of the Company, London Wall, London, E.C.2.

THE 'A' COMPANY, LIMITED.

Share Warrant No.....

Talon for Fresh Supply of Coupons for Share Warrant to Bearer representing (100) *Shares.*

The Bearer of the above Warrant will receive in exchange for this Talon a fresh supply of Coupons when those below have fallen due.

.....*Secretary.*

THE 'A' COMPANY, LIMITED.

Dividend Coupon No..... on 100 Shares.

Included in the Share Warrant numbered as below for Dividend payable according to Advertisement to be issued by the Company.

No.....

Secretary.

FORM No. 47.—See pp. 89 and 93.

RECEIPT FOR DEPOSITED SHARE WARRANT.

THE 'A' COMPANY, LIMITED,

LONDON WALL, E.C.

THIS is to Certify that .....

of .....

has, in accordance with the regulations of the Company, deposited the under-mentioned Share Warrant(s) in respect of which he is entitled to attend the Extraordinary (or Ordinary) General Meeting of the Company to be held at .....

on the ..... day of ..... 19....

Dated the ..... day of ..... 19....

For THE 'A' COMPANY, LIMITED,

.....*Secretary.*

Denomination	Distinctive Nos. of Warrants	No. of Warrants (in words)	No. of Shares
One	A		
Five	B		
Ten	C		
Twenty	D		
One Hundred	E		
Two Hundred	F		
Five Hundred	G		
	Total No. of Warrants	..	
	Total No. of Shares		..

IMPORTANT.—The Warrants named herein will only be delivered in exchange for this Certificate, which must be carefully preserved.

FORM No. 48.—See p. 91.

APPLICATION FOR SHARE WARRANTS.

No......

To

THE 'A' COMPANY, LIMITED,
LONDON WALL, LONDON, E.C.

.....19.....

I/We the undersigned, request you to issue to me/us Share Warrants to Bearer as undernoted in respect of.....fully paid Shares, numbered as below, now registered in my/our name(s). Enclosed herewith is/are Share Certificate(s) Nos. ..... in respect of those Shares together with remittance for the amount of Stamp Duty and fees payable as hereunder.*

Please forward the Warrants by registered post to:—

Name .....

Address .....

No. of Shares	DISTINCTIVE NUMBERS From	To

SHAREHOLDER'S

Signature .....

Address .....

.....

Occupation .....

							Stamp Duty per Warrant £	Total Duty Payable
.....	Warrants, each for		1 Share,	.....	Shares			
.....	,,	,,	10 Shares,	.....	,,			
.....	,,	,,	20	,,	.....	,,		
.....	,,	,,	100	,,	.....	,,		
.....	,,	,,	200	,,	.....	,,		
.....	,,	,,	500	,,	.....	,,		
Total.....	.....Warrants.						£	

Application Fee 0 2 6

..... Warrants at 1*s.* per Warrant ..

N.B.—It cannot be guaranteed that Warrants will be issued in strict accordance with the above application.

FORM No. 49.—See p. 91.

SHARE WARRANT APPLICATION RECEIPT.

THE 'A' COMPANY, LIMITED,
LONDON WALL, E.C.

No.. .....

..... 19.....

RECEIVED from ..... the undermentioned Share Certificate(s) to be exchanged for Share Warrants to Bearer.

Share Certificate No.	Name of Shareholder	No. of Shares	Distinctive Numbers	
			From	To

This receipt is of no value except as a mere acknowledgment of the Share Certificate(s) and fees noted hereon.

The Share Warrants to Bearer in respect of the above-mentioned Shares will be delivered, when ready, in accordance with the instructions of the registered proprietor.

Secretary.

per.....

Fee and Stamp Duty paid £ : :

FORM No. 50.—See p. 93.

RECEIPT FOR SHARE WARRANTS DEPOSITED IN EXCHANGE FOR OTHER SHARE WARRANTS.

THE 'A' COMPANY, LIMITED,

No...... LONDON WALL, E.C.

.....19.....

RECEIVED from .....

of .....

the undermentioned Share Warrants to Bearer deposited in connection with application for other Share Warrants made by .....

of .....

No. of Warrants	Distinctive Nos. of Warrants	Denomination	No. of Shares	Distinctive Numbers of Shares	
				From	To
.....	A	One	.....	.....	.....
.....	B	Five	.....	.....	.....
.....	C	Ten	.....	.....	.....
.....	D	Twenty	.....	.....	.....
.....	E	One Hundred	.....	.....	.....
.....	F	Two Hundred	.....	.....	.....
.....	G	Five Hundred	.....	.....	.....

Total Number of Shares
(in words) .....

The New Share Warrants will be ready for delivery in exchange for this receipt within four weeks of the above date.

Fee paid.....

.....

Secretary.

FORM No. 51.—See p. 93.

THE 'A' COMPANY, LIMITED.

No......

.....19.....

RECEIVED *of* .....

NUMBERED

.....Warrants of 1 Share .....

..... ,, 5 Shares .....

..... ,, 25 ,, ...

Total ..... *Shares for Registration in the name of M* .....

Certificate to be ready .....

Fees paid £ : :

[PERFORATED]

RECEIPT FOR SHARE WARRANTS LODGED FOR REGISTRATION.

THE 'A' COMPANY, LIMITED,

No......

LONDON, E.C. .....19.....

RECEIVED *from* .....

..... Share Warrants, as under:—

..... Warrants of 1 Share each.

..... ,, 5 Shares each.

..... ,, 25 ,,

Total ..... *Shares left for Registration in the name of* .....

If the application is registered the Certificates will be ready for delivery at this Office, on or after ..... between 11 and 3 o'clock, Saturdays 11 and 1 o'clock, but they may be sent by post, at Shareholder's risk, on receipt of stamped registered envelope. In either case the Certificates will only be surrendered in exchange for this Receipt.

Fees paid £ : :

.....

Secretary.

FORM No. 52.—See p. 91.

REGISTER FOR ISSUE OF SHARE WARRANTS IN EXCHANGE FOR REGISTERED SHARES

Appl. No.	REGISTERED SHARES EXCHANGED.				SHARE WARRANTS ISSUED.						Remarks
					One			Five			
	Name of Shareholder	Folio Register of Members	No. of Shares	Distinctive Numbers From / To	No. of Warrants	Distinctive Numbers A From / To	No. of Shares	No. of Warrants	Distinctive Numbers B From / To	No of Shares	

FORM No. 53.—See p. 91.

REGISTER FOR ISSUE OF REGISTERED SHARES IN EXCHANGE FOR SHARE WARRANTS.

Appn. No.	SHARE WARRANTS SURRENDERED.								REGISTERED SHARES EXCHANGED.					Remarks
	One			Five					Name of Shareholder	Folio Register of Members	No. of Shares	Distinctive Numbers of Shares		
	No. of Warrants	Distinctive Numbers A	No. of Shares	No. of Warrants	Distinctive Numbers B		No. of Shares					From	To	
		From	To		From	To								

FORM No. 54.—See p. 91.

SHARE WARRANTS REGISTER.

(One book for each denomination.)

(Denomination), *e.g.* 100 SHARES.

No. of Warrant	Coupons attached Nos	Date of Issue	Distinctive Nos. of relative registered shares	Note of Directors' initials	Date of cancellation

FORM No. 55.—See p. 92.

RECEIPT FOR SHARE WARRANTS ISSUED IN EXCHANGE FOR SHARE CERTIFICATE.

THE 'A' COMPANY, LIMITED, *No.*.....
LONDON WALL, E.C. .....19.....

DEAR SIR (OR MADAM),

I have now the pleasure to hand you herewith (on behalf of .....
.....), in exchange for Share Certificate No. .....
Share Warrants as specified on the form of receipt attached hereto, with the relative Coupons Nos. 1 to 20 inclusive attached, representing in all ..... Shares of the Company.

Will you kindly acknowledge receipt of the Share Warrants on the Form below, returning it to me.

Yours faithfully,

Secretary.

To.....

.....

.....

..... [PERFORATED] .....

RECEIPT. *No.*.....

.....

.....

..... 19 .....

To THE 'A' COMPANY, LIMITED,
LONDON WALL, E.C.

SIR,

On behalf of .....

I beg to acknowledge having received from you the following Share Warrants with relative Coupons (Nos. 1 to 20 inclusive) attached, representing in all ..... Shares of the Company, viz.:—

.....	Share Warrants, each for			1	Share of £		Nos. A	to A .....
.....	,,	,,	,,	5	,,	,,	B	to B .....
.....	,,	,,	,,	10	,,	,,	C	to C .....
.....	,,	,,	,,	20	,,	,,	D	to D .....
.....	,,	,,	,,	100	,,	,,	E	to E .....
.....	,,	,,	,,	200	,,	,,	F	to F .....
.....	,,	,,	,,	500	,,	,,	G	to G .....

Total Share Warrants.

Yours faithfully,

Please detach this portion and return as directed.

FORM No. 56.—See p. 93.

APPLICATION FOR REGISTERED SHARES IN EXCHANGE FOR SHARE WARRANTS.

Application No. .....

New Share Cert. No. .....

To THE 'A' COMPANY, LIMITED,

I, the undersigned, being the holder of the under-mentioned Share Warrants to Bearer of your Company, representing .....Shares, hereby surrender the same to be cancelled, and request that you will register my name in the Company's books as the proprietor of the said Shares.

Please forward the new Share Certificate by post, at my risk, to ..... at .....

Enclosed is 2*s.* 6*d.*, being the fee required in accordance with the Conditions of Issue of Share Warrants.

Signature .....

Name in full .....

Address .....

Occupation .....

Date .....19..

No. of Warrants	Distinctive No. of Shares	Denomination	No. of Shares
.....	A	One	.....
.....	B	Five	.....
.....	C	Ten	.....
.....	D	Twenty	.....
.....	E	One Hundred.....	.....
.....	F	Two Hundred.....	.....
.....	G	Five Hundred.....	.....
		Total Shares	

FORM No. 57.—See p. 93.

APPLICATION FOR EXCHANGE OF SHARE WARRANTS FOR OTHER SHARE WARRANTS.

To the 'A' COMPANY, LIMITED.

I, the undersigned, being the holder of the under-mentioned Share Warrants to Bearer of your Company, representing .....Shares, hereby surrender the same to be cancelled, and request that you will issue to me Share Warrants to Bearer as under-noted in respect of the said Shares.

A remittance for £....., being 2*s.* 6*d.* Application Fee, 1*s.* per new Warrant, and Stamp Duty, is enclosed.

Please deliver or forward the Warrants by registered post to

.....at .....

Dated this ..... day of .....19.....

Usual Signature .....

Name (in full) .....

Address .....

Occupation .....

PARTICULARS OF SHARE WARRANTS SURRENDERED.

									Warrants numbered	Shares numbered From To
.....Warrants	each	for	1	Share	of	£	=	..... Shares	A	
.....	,,	,,	,, 5	,,	,,	,,	=	..... ,,	B	
.....	,,	,,	,, 10	,,	,,	,,	=	..... ,,	C	
.....	,,	,,	,, 20	,,	,,	,,	=	..... ,,	D	
.....	,,	,,	,, 100	,,	,,	,,	=	..... ,,	E	
.....	,,	,,	,, 200	,,	,,	,,	=	..... ,,	F	
.....	,,	,,	,, 500	,,	,,	,,	=	..... ,,	G	
Total Warrants.								Total Shares.		

PARTICULARS OF SHARE WARRANTS REQUIRED.

									Stamp Duty per Warrant 1 Share
.....Warrants	each	for	1	Share	of	£	=	..... Shares	
.....	,,	,,	,, 5	,,	,,	,,	=	..... ,,	5 ,,
.....	,,	,,	,, 10	,,	,,	,,	=	..... ,,	10 ,,
.....	,,	,,	,, 20	,,	,,	,,	=	..... ,,	20 ,,
.....	,,	,,	,, 100	,,	,,	,,	=	..... ,,	100 ,,
.....	,,	,,	,, 200	,,	,,	,,	=	..... ,,	200 ,,
.....	,,	,,	,, 500	,,	,,	,,	=	..... ,,	500 ,,
Total Warrants.								Total Shares.	

FORM No. 58.—See p. 63.

NOTICE TO BE ISSUED ON PRESENTATION OF TRANSFER WITH NOMINAL CONSIDERATION UNLESS ADJUDICATED OR PROPERLY ENDORSED.

THE 'A' COMPANY, LIMITED.

TRANSFERS made for nominal consideration must either (1) bear the Inland Revenue Adjudication Stamp, (2) be accompanied by a written explanation certified by an Official Deed Marking Officer, or (3) be accompanied by one of the following explanations signed by the transferor(s) *and* transferee(s) or by a Banker or Stock-Broker on their behalf:

(*a*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made by way of Security for a loan.

(*b*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made on re-transfer to the original transferor on repayment of a loan.

(*c*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made on the retirement of a Trustee.

(*d*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made on the appointment of a new Trustee of a pre-existing trust.

(*e*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made to a mere nominee of the transferor and that no beneficial interest passes.

(*f*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made to a residuary legatee of Stock (or Shares) forming part of the residue divisible under a Will.

(*g*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made to a beneficiary under a Will in satisfaction of a specific bequest of the Security transferred.

(*h*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made to the person(s) entitled to the Security as part of the Estate of a proprietor who died intestate.

(*i*) $\frac{\text{I}}{\text{We}}$ certify that this transfer is made to a beneficiary under a Settlement on the distribution of Trust Funds of stock, &c., forming the share, or part of the share, of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

APPENDIX G

[*Permission has been given for this reprint, but it does not purport to be 'by authority.'*]

Companies (Consolidation) Act, 1908.

[8 Edw. VII., c. 69.]

ARRANGEMENT OF SECTIONS

Part I.

Constitution and Incorporation.

Prohibition of large Partnerships.

1. Prohibition of partnerships exceeding certain number.

Memorandum of Association.

2. Mode of forming incorporated company.
3. Memorandum of company limited by shares.
4. Memorandum of company limited by guarantee.
5. Memorandum of unlimited company.
6. Stamp and signature of memorandum.
7. Restriction on alteration of memorandum.
8. Name of company and change of name.
9. Alteration of objects of company.

Articles of Association.

10. Registration of articles.
11. Application of Table A.
12. Form stamp and signature of articles.
13. Alteration of articles by special resolution.

General Provisions.

14. Effect of memorandum and articles.
15. Registration of memorandum and articles.
16. Effect of registration.
17. Conclusiveness of certificate of incorporation.
18. Copies of memorandum and articles to be given to members.

Associations not for Profit.

19. Restriction on charitable and other companies holding land.
20. Power to dispense with "limited" in name of charitable and other companies.

Companies limited by Guarantee.

21. Provision as to companies limited by guarantee.

Part II.

Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

Distribution of Share Capital.

22. Nature of shares.
23. Certificate of shares or stock.
24. Definition of member.
25. Register of members.
26. Annual list of members and summary.
27. Trusts not to be entered on register.
28. Registration of transfer at request of transferor.
29. Transfer by personal representative.
30. Inspection of register of members.
31. Power to close register.
32. Power of court to rectify register.
33. Register to be evidence.
34. Power for company to keep colonial register.
35. Regulations as to colonial register.
36. Stamp duties in case of shares registered in colonial registers.
37. Issue and effect of share warrants to bearer.
38. Forgery, personation, unlawfully engraving plates, &c.
39. Power of company to arrange for different amounts being paid on shares.
40. Power to return accumulated profits in reduction of paid-up share capital.
41. Power of company limited by shares to alter its share capital.
42. Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.
43. Effect of conversion of shares into stock.
44. Notice of increase of share capital or of members.
45. Re-organisation of share capital.

Reduction of Share Capital.

46. Special resolution for reduction of share capital.
47. Application to court for confirming order.
48. Addition to name of company of "and reduced."
49. Objections by creditors and settlement of list of objecting creditors.
50. Order confirming reduction.
51. Registration of order and minute of reduction.
52. Minute to form part of memorandum.
53. Liability of members in respect of reduced shares.
54. Penalty on concealment of name of creditor.
55. Publication of reasons for reduction.
56. Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

Registration of Unlimited Company as Limited.

57. Registration of unlimited company as limited.
58. Power of unlimited company to provide for reserve share capital on re-registration.

Reserve Liability of Limited Company.

59. Reserve liability of limited company.

Unlimited Liability of Directors.

60. Limited company may have directors with unlimited liability.
61. Special resolution of limited company making liability of directors unlimited.

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

62. Registered office of company.
63. Publication of name by a limited company.

Meetings and Proceedings.

64. Annual general meeting.
65. First statutory meeting of company.
66. Convening of extraordinary general meeting on requisition.
67. Provisions as to meetings and votes.
68. Representation of companies at meetings of other companies of which they are members.
69. Definitions of extraordinary and special resolution.
70. Registration and copies of special resolutions.
17. Minutes of proceedings of meetings and directors.

Appointment, Qualification, &c., of Directors.

72. Restrictions on appointment or advertisement of director.
73. Qualification of director.
74. Validity of acts of directors.
75. List of directors to be sent to registrar.

Contracts, &c.

76. Form of contracts.
77. Bills of exchange and promissory notes.
78. Execution of deeds abroad.
79. Power for company to have official seal for use abroad.

Prospectus.

80. Filing of prospectus.
81. Specific requirements as to particulars of prospectus.
82. Obligations of companies where no prospectus is issued.
83. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.
84. Liability for statements in prospectus.

Allotment.

85. Restriction as to allotment.
86. Effect of irregular allotment.
87. Restrictions on commencement of business.
88. Return as to allotments.

Commissions and Discounts.

89. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.
90. Statement in balance sheet as to commissions and discounts.

Payment of Interest out of Capital.

91. Power of company to pay interest out of capital in certain cases.

Certificate of Shares, &c.

92. Limitation of time for issue of certificates.

Information as to Mortgages, Charges, &c.

93. Registration of mortgages and charges in England and Ireland.
94. Registration of enforcement of security.
95. Filing of accounts of receivers and managers.

96. Rectification of register of mortgages.
97. Entry of satisfaction.
98. Index to register of mortgages and charges.
99. Penalties.
100. Company's register of mortgages.
101. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.
102. Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

Debentures and Floating Charges.

103. Perpetual debentures.
104. Power to re-issue redeemed debentures in certain cases.
105. Specific performance of contract to subscribe for debentures.
106. Validity of debentures to bearer in Scotland.
107. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

Statement to be published by Banking and certain other Companies.

108. Certain companies to publish statement in schedule.

Inspection and Audit.

109. Ivestigation of affairs of company by Board of Trade inspectors.
110. Power of company to appoint inspectors.
111. Report of inspectors to be evidence.
112. Appointment and remuneration of auditors.
113. Powers and duties of auditors.
114. Rights of preference shareholders, &c., as to receipt and inspection of reports, &c.

Carrying on Business with less than the legal minimum of Members.

115. Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

Service and Authentication of Documents.

116. Service of documents on company.
117. Authentication of documents.

Tables and Forms.

118. Application and alteration of tables and forms.

Arbitrations.

119. Arbitration between companies and others.

Power to Compromise.

120. Power to compromise with creditors and members.

Meaning of "Private Company."

121. Meaning of "private company."

PART IV.

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122. Modes of winding up.

Contributories.

123. Liability as contributories of present and past members.
124. Definition of contributory.
125. Nature of liability of contributory.
126. Contributories in case of death of member.
127. Contributories in case of bankruptcy of member.
128. Provision as to married women.

Winding Up by Court.

129. Circumstances in which company may be wound up by court.
130. Company when deemed unable to pay its debts.
131. Jurisdiction to wind up companies in England.
132. Conduct of winding-up business in High Court in England.
133. Transfer of proceedings.
134. Jurisdiction to wind up companies in Ireland.
135. Jurisdiction to wind up companies in Scotland.
136. Power in Scotland to remit winding up to Lord Ordinary.
137. Provisions as to applications for winding up.
138. Effect of winding-up order.
139. Commencement of winding up by court.
140. Power to stay or restrain proceedings against company.
141. Powers of court on hearing petition.
142. Actions stayed on winding-up order.
143. Copy of order to be forwarded to registrar.
144. Power of court to stay winding up.
145. Court may have regard to wishes of creditors or contributories.

Official Receiver.

146. Definition of official receiver.
147. Statement of company's affairs to be submitted to official receiver.
148. Report by official receiver.

Liquidators.

149. Appointment, remuneration, and title of liquidators.
150. Custody of company's property.
151. Powers of liquidator.
152. Meetings of creditors and contributories in English winding up.
153. Liquidator to give information to official receiver.
154. Payments of liquidator in English winding up into bank.
155. Audit of liquidator's accounts in English winding up.
156. Books to be kept by liquidator in English winding up.
157. Release of liquidators in England.
158. Exercise and control of liquidator's powers in England.
159. Control of Board of Trade over liquidators in England.

Committee of Inspection, Special Manager, Receiver.

160. Committee of inspection in English winding up.
161. Power in England to appoint special manager.
162. Power in England to appoint official receiver as receiver for debenture holders or creditors.

Ordinary Powers of Court.

163. Settlement of list of contributories and application of assets.
164. Powers to require delivery of property.
165. Power to order payment of debts by contributory.
166. Power of court to make calls.
167. Power to order payment into bank.
168. Order on contributory conclusive evidence.
169. Power to exclude creditors not proving in time.
170. Adjustment of rights of contributories.
171. Power to order costs.
172. Dissolution of company.
173. Delegation to liquidator of certain powers of court in England.

Extraordinary Powers of Court.

174. Power to summon persons suspected of having property of company.
175. Power in England to order public examination of promoters, directors, &c.

176. Power to arrest absconding contributory.
177. Powers of court cumulative.

Enforcement of and Appeal from Orders.

178. Power to enforce orders.
179. Order for calls on contributories in Scotland.
180. Enforcement of orders throughout United Kingdom.
181. Appeals from order.

Voluntary Winding Up.

182. Circumstances in which company may be wound up voluntarily.
183. Commencement of voluntary winding up.
184. Effect of voluntary winding up on status of company.
185. Notice of resolution to wind up voluntarily.
186. Consequences of voluntary winding up.
187. Notice by liquidator of his appointment.
188. Rights of creditors in a voluntary winding up.
189. Power to fill vacancy in office of liquidator.
190. Delegation of authority to appoint liquidators.
191. Arrangement when binding on creditors.
192. Power of liquidator to accept shares, &c., as consideration for sale of property of company.
193. Power to apply to court.
194. Power of liquidator to call general meeting.
195. Final meeting and dissolution.
196. Costs of voluntary liquidation.
197. Saving for rights of creditors and contributories.
198. Power of court to adopt proceedings of voluntary winding up.

Winding Up subject to Supervision of Court.

199. Power to order winding up subject to supervision.
200. Effect of petition for winding up subject to supervision.
201. Court may have regard to wishes of creditors and contributories.
202. Power for court to appoint or remove liquidators.
203. Effect of supervision order.
204. Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.

Supplemental Provisions.

205. Avoidance of transfers, &c., after commencement of winding up.

206. Debts of all descriptions to be proved.
207. Application of bankruptcy rules in winding up of insolvent English and Irish companies.
208. Ranking of claims in Scotland.
209. Preferential payments.
210. Fraudulent preference.
211. Avoidance of certain attachments, executions, &c., in case of company registered in England or Ireland.
212. Effect of floating charge.
213. Effect in case of company registered in Scotland of diligence within sixty days of winding up by or subject to supervision of court.
214. General scheme of liquidation may be sanctioned.
215. Power of court to assess damages against delinquent directors, &c.
216. Penalty for falsification of books.
217. Prosecution of delinquent directors, &c.
218. Penalty on perjury.
219. Meetings to ascertain wishes of creditors or contributories.
220. Books of company to be evidence.
221. Inspection of books.
222. Disposal of books and papers of company.
223. Power of court to declare dissolution of company void.
224. Information as to pending liquidations in England.
225. Judicial notice of signature of officers.
226. Special commission for receiving evidence.
227. Court may order examination of persons in Scotland.
228. Affidavits, &c., in United Kingdom and colonies.
229. Companies liquidation account defined.
230. Investment of surplus funds on general account.
231. Separate accounts of particular estates.
232. Certain receipts and fees to be applied in aid of expenditure.
233. Officers and remuneration.
234. Annual accounts of English winding up.
235. Returns by officers in English winding up.
236. Proceedings of Board of Trade.

Rules and Fees.

237. Rules and fees for winding up in England.
238. Powers to make rules of procedure.

Special Provisions as to Stannaries.

239. Attachment of debt due to contributory on winding up in stannaries court.
240. Preferential payments in stannaries cases.
241. Provisions as to mine club funds.

Removal of Defunct Companies from Register.

242. Registrar may strike defunct company off register.

PART V.

REGISTRATION OFFICE AND FEES.

243. Registration offices in England, Scotland, and Ireland.
244. Fees.

PART VI.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

245. Application of Act to companies formed under former Companies Acts.
246. Application of Act to companies registered under former Companies Acts.
247. Application of Act to companies re-registered under Companies Act, 1879.
248. Mode of transferring shares.

PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

249. Companies capable of being registered.
250. Definition of joint stock company.
251. Liability of bank of issue unlimited in respect of notes.
252. Requirements for registration by joint stock companies.
253. Requirements for registration by other than joint stock companies.
254. Authentication of statements of existing companies.
255. Registrar may require evidence as to nature of company.
256. On registration of banking company with limited liability, notice to be given to customers.
257. Exemption of certain companies from payment of fees.
258. Addition of "limited" to name.
259. Certificate of registration of existing companies.
260. Vesting of property on registration.
261. Saving for existing liabilities.
262. Continuation of existing actions.
263. Effect of registration under Act.
264. Power to substitute memorandum and articles for deed of settlement.
265. Power of court to stay or restrain proceedings.
266. Action stayed on winding-up order.

PART VIII.

WINDING UP OF UNREGISTERED COMPANIES.

267. Meaning of unregistered company.
268. Winding up of unregistered companies.
269. Contributories in winding up of unregistered company.
270. Power of court to stay or restrain proceedings.
271. Actions stayed on winding-up order.
272. Directions as to property in certain cases.
273. Provisions of Part of Act cumulative.

PART IX.

COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM.

274. Requirements as to companies established outside the United Kingdom.
275. Power of companies incorporated in British Possessions to hold lands.

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

276. Prosecution of offences.
277. Application of fines.
278. Costs in actions by certain limited companies.
279. Power of court to grant relief in certain cases.
280. Jurisdiction of stannaries court.
281. Penalty for false statement.
282. Penalty for improper use of word "Limited."

Report by Board of Trade.

283. Annual report by Board of Trade.

Authentication of Documents issued by Board of Trade.

284. Authentication of documents issued by Board of Trade.

Interpretation, &c.

285. Interpretation.

Repeal of Acts and Transitional Provisions.

286. Repeal of Acts and savings.
287. Saving of pending proceedings for winding up.
288. Saving of deeds.
289. Former registration offices, registers, official receivers, &c., continued.
290. Saving for existing rules of procedure, &c.
291. Substitution of provisions of this Act for provisions of repealed Acts.
292. Saving for 28 & 29 Vict. c. 78 s. 3.
293. Saving for Life Assurance Companies Acts.
294. Saving for 34 & 35 Vict. c. 31. s. 5.
295. Short title.
296. Commencement of Act.

SCHEDULES.

Companies (Consolidation Act), 1908.

[8 Edw. VII., c. 69.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.

Constitution and Incorporation.

Prohibition of large Partnerships.

Prohibition of partnerships exceeding certain number.

1.—(1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

Memorandum of Association.

Mode of forming incorporated company.

2.—Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any 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 this Act in respect of registration, form and incorporated company, with or without limited liability (that is to say), either—

(i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

Memorandum of company limited by shares.

3.—In the case of a company limited by shares—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) No subscriber of the memorandum may take less than one share;

(3) Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of company limited by guarantee.

4.—In the case of a company limited by guarantee—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment for the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) If the company has a share capital—

(i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) No subscriber of the memorandum may take less than one share;

(iii) Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of unlimited company.

5.—In the case of an unlimited company—

(1) The memorandum must state—

(i) The name of the company;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company.

(2) If the company has a share capital—

(i) No subscriber of the memorandum may take less than one share;

(ii) Each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum.

6.—The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Restriction on alteration of memorandum.

7.—A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

Name of company and change of name.

8.—(1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Alteration of objects of company.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

Articles of Association.

Registration of articles.

10.—(1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act.

(3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application of Table A.

11.—In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form, stamp, and signature of articles.

12.—Articles must—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively;

(*c*) bear the same stamp as if they were contained in a deed; and

(*d*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Alteration of articles by special resolution.

13.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or additions so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions.

Effect of memorandum and articles.

14.—(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a speciality debt.

Registration of memorandum and articles

15.—The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Effect of registration.

16.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

17.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary

of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

18.—(1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

Associations not for Profit.

Restriction on charitable and other companies holding land.

19.—A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land; 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.

Power to dispense with "Limited" in name of charitable and other companies.

20.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

21.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

22.—(1) The shares or other interests of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

23.—A certificate under the common seal of the company, specifying any shares or stock held by any member, shall be primâ facie evidence of the title of the member to the shares or stock.

Definition of member.

24.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

25.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) The date at which each person was entered in the register as a member;

(iii) The date at which any person ceased to be a member.

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Annual list of members and summary.

26.—(1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of

shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) The number of shares taken from the commencement of the company up to the date of return;

(*c*) The amount called up on each share;

(*d*) The total amount of calls received;

(*e*) The total amount of calls unpaid;

(*f*) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(*g*) The total number of shares forfeited;

(*h*) The total amount of shares or stock for which share warrants are outstanding at the date of the return;

(*i*) The total amount of share warrants issued and surrendered respectively since the date of the last return;

(*k*) The number of shares or amount of stock comprised in each share warrant;

(*l*) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called; and

(*m*) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those 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.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Trusts not to be entered on register.

27.—No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

Registration of transfer at request of transferor.

28.—On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Transfer by personal representative.

29.—A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Inspection of register of members.

30.—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

31.—A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of court to rectify register.

32.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification

of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section 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 members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Register to be evidence.

33.—The register of members shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

Power for company to keep colonial register.

34.—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

Regulations as to colonial register.

35.—(1) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exerciseable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

Stamp duties in case of shares registered in colonial registers.

36.—In relation to stamp duties the following provisions shall have effect:—

(*a*) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and unless executed in any part of the United Kingdom, shall be exempt from British stamp duty:

(*b*) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

Issue and effect of share warrants to bearer.

37.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares for stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(i) The fact of the issue of the warrant;

(ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

Forgery, personation, unlawfully engraving plates, etc.

38.—(1) If any person—

(i) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or *altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or

(ii) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) *If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Power of company to arrange for different amounts being paid on shares.

39.—A company, if so authorised by its articles, may do any one or more of the following things; namely,—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

(2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Power to return accumulated profits in reduction of paid-up share capital.

40.—(1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to

* Repealed by Forgery Act, 1913.

reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Power of company limited by shares to alter its share capital.

41.—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

42.—Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or reconversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

Effect of conversion of shares into stock.

43.—Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

44.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Reorganisation of share capital.

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

Special resolution for reduction of share capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(*c*) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to court for confirming order.

47.—Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

Addition to name of company of "and reduced."

48.—On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors, and settlement of list of objecting creditors.

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company 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, shall be entitled to object to the reduction.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount; (that is to say)—

(i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim:

(ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

Order confirming reduction.

50.—The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Registration of order and minute of reduction.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

53.—A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and

after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

54.—If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Publication of reasons for reduction.

55.—In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and if the court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

56.—A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

57.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

Power of unlimited company to provide for reserve share capital on re-registration.

58.—An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

(*a*) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

59.—A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

60.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

61.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company.

62.—(1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

Publication of name by a limited company.

63.—(1) Every limited company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible:

(*b*) shall have its name engraven in legible characters on its seal:

(*c*) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

Annual general meeting.

64.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

First statutory meeting of company.

65.—(1) Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, 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, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

(*a*) the total number of shares 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 allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Convening of extraordinary general meeting on requisition.

66.—(1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Provisions as to meetings and votes.

67.—In default of, and subject to, any regulations in the articles—

(i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule to this Act:

(ii) Five members may call a meeting:

(iii) Any person elected by the members present at a meeting may be chairman thereof:

(iv) Every member shall have one vote.

Representation of companies at meetings of other companies of which they are members.

68.—A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Definitions of extraordinary and special resolution.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (when, proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Registration and copies of special resolutions.

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution, to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of meetings and directors.

71.—(1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Appointment, Qualification, &c., of Directors.

Restrictions on appointment or advertisement of director.

72.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) Signed and filed with the registrar of companies a consent in writing to act as such director; and

(ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification of director.

73.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Validity of acts of directors.

74.—The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

List of directors to be sent to registrar.

75.—*(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.

(2) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts, &c.

Form of contracts.

76.—(1) Contracts on behalf of a company may be made as follows (that is to say):—

(i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged:

(ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged:

(iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto their heirs, executors, or administrators as the case may be.

(3) Any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested by witnesses or not.

Bills of exchange and promissory notes.

77.—A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad.

78.—A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

79.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal.

* See also Companies (Particulars as to Directors) Act, 1917.

of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) The authority of any such agent shall, as between the company and any persons dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus.

Filing of prospectus.

80.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Specific requirements as to particulars of prospectus.

81.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been 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; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(*b*) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions, and addresses of the directors or proposed directors; 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 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 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 subscriptions by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and

(*g*) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good will; and

(*h*) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*j*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or 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 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 connexion with the promotion or formation of the company; and

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or 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—

(*a*) the purchase money is not fully paid at the date of issue of the prospectus; or

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognisant thereof; or

(*b*) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (*m*) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall

not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Obligations of companies where no prospectus is issued.

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

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

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

83.—A company shall not 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.

Liability for statements in prospectus.

84.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised 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 of the company, and every person who has authorised 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 untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, 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 reports or valuation: Provided that the director, person named as director, promoter, or person who authorised 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 the 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 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 eighteenth day of August one thousand eight hundred and ninety, 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 had authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised 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 authorised 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.

(4) 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 authorised 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, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Allotment.

Restriction as to allotment.

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

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

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

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

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

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

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

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

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

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

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

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

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

Effect of irregular allotment.

86.—(1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be 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: Provided that proceedings to recover any such loss,

damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.

87.—(1) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(c) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

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

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

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

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

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

(6) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

Return as to allotments.

88.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

54 & 55 Vict. c. 39.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

Commissions and Discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

89.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) In the case of shares offered to the public for subscription, disclosed in the prospectus; or

(*b*) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance. to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to

the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Statement in balance sheet as to commissions and discounts.

90.—Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

91.—Where any shares of a company are issued for the purpose of raising 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, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(1) No such payment shall be made unless the same is authorised by the articles or by special resolution:

(2) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:

(3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:

(4) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:

(5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council:

(6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:

(8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies. 57 & 58 Vict. c. 12

Certificates of Shares, &c.

Limitation of time for issue of certificates.

92.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to Mortgages, Charges, &c.

Registration of mortgages and charges in England and Ireland.

93.—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or

(*e*) a mortgage or charge on any book debts of the company; or

(*f*) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

(i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and

(ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section, shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company; Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of enforcement of security.

94.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Filing of accounts of receivers and managers.

95.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

Rectification of register of mortgages.

96.—A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Entry of satisfaction.

97.—The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Index to register of mortgages and charges.

98.—The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Penalties.

99.—(1) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Company's register of mortgages.

100.—(1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

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101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects 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 to that jurisdiction, may by order compel an immediate inspection of the copies or register.

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102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

Debentures and Floating Charges.

'erpetual ebentures.

103.—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

'ower to re- ssue redeemed lebentures in :ertain cases.

104.—(1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles 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 person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had

power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its 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 debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings 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 the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(*a*) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures.

105.—A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Validity of debentures to bearer in Scotland

106.—Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

107.—(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the

time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid 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 in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

108.—(1) Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, 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 form marked C in the First Schedule to this Act, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

33 & 34 Vict. c. 61: 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41.

(6) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions.

Inspection and Audit.

Investigation of affairs of company by Board of Trade inspectors.

109.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

(i) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued:

(ii) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued:

(iii) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

Power of company to appoint inspectors.

110.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

Report of inspectors to be evidence.

111.—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Appointment and remuneration of auditors.

112.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days

before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Powers and duties of auditors.

113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the

company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine—

(*a*) if the company has branch banks beyond the limits of Europe, it shall be 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 transmitted to the head office of the company in the United Kingdom; and

(*b*) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

Rights of preference shareholders, &c., as to receipt and inspection of reports, &c.

114.—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight.

Carrying on Business with less than the legal Minimum of Members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

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

Service and Authentication of Documents.

Service of documents on company.

116.—A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Authentication of documents.

117.—A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Tables and Forms.

Application and alteration of tables and forms.

118.—(1) The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

(3) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Arbitrations.

Arbitration between companies and others. 22 & 23 Vict. c. 29.

119.—(1) A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference between itself and any other company or person.

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

Power to Compromise.

Power to compromise with creditors and members.

120.—(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.

Meaning of "Private Company."

Meaning of "Private company."

121.—(1) For the purposes of this Act the expression "private company" means a company which by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly they shall for the purposes of this section, be treated as a single member.

PART IV.

WINDING UP.

Preliminary.

Modes of winding up.

122.—(1) The winding up of a company may be either—

(i) by the court; or

(ii) voluntary; or

(iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up:

(ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:

(iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the com pany in the event of its being wound up:

(vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:

(vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a 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 purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to con-

tribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that—

(i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

124.—The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

125.—The liability of a contributory shall create 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 the liability.

Contributories in case of death of member.

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives 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 contributory, or either of them, and of compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

127.—If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to prove against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

128.—(1) 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 attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly. 45 & 46 Vict. c. 75. 44 & 45 Vict. c. 21.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Circumstances in which company may be wound up by court.

129.—A company may be wound up by the court—

(i) if the company has by special resolution resolved that the company be wound up by the court:

(ii) if default is made in filing the statutory report or in holding the statutory meeting:

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(v) if the company is unable to pay its debts:

(vi) if the court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

130.—A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if, in Scotland, the inducia of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(iv) if it is proved to the 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 shall take into account the contingent and prospective liabilities of the company.

Jurisdiction to wind up companies in England.

131.—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be 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 shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

53 & 54 Vict. c. 63.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

59 & 60 Vict. c. 45.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Conduct of winding-up business in High Court in England. 36 & 37 Vict. c. 66.

132.—Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Transfer of proceedings.

133.- [illegible] up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies in Ireland.

134.—The court having jurisdiction to wind up companies registered in Ireland shall be the High Court:

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

Jurisdiction to wind up companies in Scotland.

135.—The court having jurisdiction to wind up companies registered in Scotland shall be 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 time of vacation the Lord Ordinary on the bills

Power in Scotland to remit winding up to Lord Ordinary.

136.—Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Provisions as to applications for winding up.

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately; Provided that

(*a*) A contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, 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; and

(*b*) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(*c*) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such

security for costs has been given as the court thinks reasonable and until a primâ facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Effect of winding-up order.

138.—An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by court.

139.—A winding up of a company by the court shall be deemed to commence at the time for the presentation of the petition for the winding up.

Power to stay or restrain proceedings against company.

140.—At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(*a*) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Powers of court on hearing petition.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Actions stayed on winding-up order.

142.—When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Copy of order to be forwarded to registrar.

143.—On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

144.—The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit. Power of court to stay winding up.

145.—The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. Court may have regard to wishes of creditors or contributories.

Official Receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Definition of official receiver.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

147.—(1) Where the court in England has made a winding-up order, there 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. Statement of company's affairs to be submitted to official receiver.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order as the official receiver subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and 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 the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt

of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report by official receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

Appointment, remuneration, and title of liquidators.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(*a*) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed:

(*b*) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:

(*c*) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say):—

(*a*) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(*b*) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Powers of liquidator.

151.—(1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof:

(*c*) in the case of the winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction:

(*d*) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

(2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

(*a*) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels:

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary the company's seal:

(*c*) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:

(*d*) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(*e*) To raise on the security of the assets of the company any money requisite:

(*f*) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

(*g*) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

Meetings of creditors and contributories in English winding up.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(*a*) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

(*b*) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

Liquidator to give information to official receiver.

153.—Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Payments of liquidator in English winding up into Bank.

154.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in English winding up.

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Books to be kept by liquidator in English winding up.

156.—Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Release of liquidators in England.

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly

protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the 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 shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall 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 shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) 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 which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Exercise and control of liquidator's powers in England.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators in England.

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

Committee of inspection in English winding up.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power in England to appoint special manager.

161.—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

162.—Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Power to require delivery of property.

164.—The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primâ facie entitled.

Power to order payment of debts by contributory.

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the 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; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the 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.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only primâ facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Power to exclude creditors not proving in time.

169.—The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

170.—The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to order costs.

171.—The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Dissolution of company.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Delegation to liquidator of certain powers of court in England.

173.—General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved;

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

Power in England to order public examination of promoters, directors, &c.

175.—(1) When an order has been made in England for winding up a company by the court and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if

he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official 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 before whom the examination is held.

Power to arrest absconding contributory.

176.—The court, at any time either before or after making a winding-up 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 the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

177.—Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

Power to enforce orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

Order for calls on contributories in Scotland.

179.—Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

Enforcement of orders throughout United Kingdom.

180.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from order.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that—

(i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(ii) Every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

182.—A company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up 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.

Commencement of voluntary winding up.

183.—A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

Effect of voluntary winding up on status of company.

184.—When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

185.—When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

Consequences of voluntary winding up.

186.—The following consequences shall ensue on the voluntary winding up of a company:—

(i) The property of the company shall be applied in satisfaction of its liabilities pari passu, and subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company:

(ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them:

(iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof:

(iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court:

(v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves:

(vi) The list of contributories shall be primâ facie evidence of the liability of the persons named therein to be contributories:

(vii) When several liquidators are appointed, every power hereby given 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:

(viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator:

(ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by liquidator of his appointment.

187.—(1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Rights of creditors in a voluntary winding up.

188.—(1) Every liquidator appointed by a company in a voluntary winding up shall, 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 shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator.

189.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Delegation of authority to appoint liquidators.

190.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or

any of them, and of supplying vacancies among the liquidators, 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.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

191.—(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.

Power of liquidator to accept shares, &c., as consideration for sale of property of company.

192.—(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 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 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

8 & 9 Vict. c. 16.
8 & 9 Vict. c. 17.

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.

Power to apply to court.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

Power of liquidator to call general meeting.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Final meeting and dissolution.

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

196.—All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims. Costs of voluntary liquidation.

197.—The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up. Saving for rights of creditors and contributories.

198.—Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up. Power of court to adopt proceedings of voluntary winding up.

Winding Up subject to Supervision of Court.

199.—When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the 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 conditions as the court thinks just. Power to order winding up subject to supervision.

200.—A petition for the continuance of a voluntary winding up subject to the supervisions of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court. Effect of petition for winding up subject to supervision.

201.—The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. Court may have regard to wishes of creditors and contributories.

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator. Power for court to appoint or remove liquidators.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily. Effect of supervision order.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty,

one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.

204.—Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

Supplemental Provisions.

Avoidance of transfers, &c., after commencement of winding up.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Debts of all descriptions to be proved.

206.—In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to 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.

Application of bankruptcy rules in winding up of insolvent English and Irish companies.

207.—In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be 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 under the law of bankruptcy 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.

Ranking of claims in Scotland.

19 & 20 Vict. c. 79.

208.—In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

209.—(1) In a winding up there shall be paid in priority to all other debts— Preferential payments.

(*a*) All parochial or other local rates due from the company at the date hereinafter mentioned, 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 fifth day of April next before that date and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act. 6 Edw. 7 c. 58.

(2) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Fraudulent preference.

210.—(1) 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, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Avoidance of certain attachments, executions, &c., in case of company registered in England or Ireland.

211.—Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Effect of floating charge.

212.—Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Effect in case of company registered in Scotland of diligence within 60 days of winding up by or subject to supervision of court.

213.—In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect:—

(1) The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense bonâ fide incurred by him in such diligence:

(2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided:

(3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and

twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland: 19 & 20 Vict. c. 79.

(4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

General scheme of liquidation may be sanctioned.

214.—(1) The liquidator may, with the sanction following (that is to say)—

(*a*) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;

(*b*) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and

(*c*) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them:—

(i) Pay any classes of creditors in full;

(ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in 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, debts, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Power of court to assess damages against delinquent directors, &c.

215.—(1) 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, or 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 the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

46 & 47 Vict. c. 52.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section four of the Bankruptcy Act, 1883.

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

Penalty for falsification of books.

216.—If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, &c.

217.—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the 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.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty on perjury.

218.—If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Meetings to ascertain wishes of creditors or contributories.

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such

manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

Books of company to be evidence.

220.—Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded.

Inspection of books.

221.—After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of books and papers of company.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say):—

(*a*) In the case of a winding up by or subject to the supervision of the court in such way as the court directs;

(*b*) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of court to declare dissolution of company void.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to pending liquidations in England.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

46 & 47 Vict. c. 52.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

Judicial notice of signature of officers.

225. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Sessions, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Affidavits, &c., in United Kingdom and colonies.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Companies Liquidation Account defined.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

230.—(1) 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 shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Separate accounts of particular estates.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

Certain receipts and fees to be applied in aid of expenditure.

232.—The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

Officers and remuneration.

233.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under

this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

Annual accounts of English winding up.

234.—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section. 38 & 39 Vict. c. 77.

(2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

Returns by officers in English winding up.

235.—The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Proceedings of Board of Trade.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

Rules and fees for winding up in England.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being

empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

53 & 54 Vict. c. 63.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

Powers to make rules of procedure.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

(*a*) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England:

(*b*) As regards the Court of Session, by act of sederunt:

(*c*) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland:

(*d*) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

25 & 26 Vict. c. 89.

(2) The authority having power to make rules under this Section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

239.—When several companies are in course of liquidation by or under the superintendence of the Court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off counter-claim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

240.—In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

6 Edw. 7. c. 58.

Provisions as to mine club funds.

241.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

Removal of Defunct Companies from Register.

Registrar may strike defunct company off register.

242.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has

been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved: Provided 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.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribe the memorandum, addressed to him at the address mentioned in the memorandum.

PART V.

REGISTRATION OFFICE AND FEES.

Registration offices in England, Scotland, and Ireland.

243.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the

registration of companies under this Act, and may make regulations with respect to their duties; and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

(7) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(8) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

244.—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

PART VI.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application of Act to companies formed under former Companies Acts.

245.—In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the

case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee, and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

Application of Act to companies registered under former Companies Acts.

246.—This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

Application of Act to companies re-registered under Companies Act, 1879. 42 & 43 Vict. c. 76.

247.—This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

Mode of transferring shares.

248.—A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

249.—(1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

(2) Provided as follows:—

(*a*) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section:

(*b*) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in

pursuance of this section as an unlimited company or as a company limited by guarantee:

(*c*) A company that is not a joint stock company as herein after defined shall not register in pursuance of this section as a company limited by shares:

(*d*) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

(*e*) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

(*f*) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs 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.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(4) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

Definition of joint stock company.

250.—For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Liability of bank of issue unlimited in respect of notes.

251.—(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend

to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Requirements for registration by joint stock companies.

252.—Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say):—

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number:

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(*b*) The number of shares taken and the amount paid on each share;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof; and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

253.—Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

254.—The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

255.—The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

256.—(1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the

notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

257.—No fee shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Addition of "limited" to name.

258.—When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

259.—On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

Vesting of property on registration.

260.—All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

261.—Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing actions.

262.—All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

263.—When a company is registered in pursuance of this Part of this Act—

(i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the

company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles:

(ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) The regulations in Table A in the First Schedule to this Act shall not apply unless adopted by special resolution;

(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(*d*) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(*e*) The company shall not have power to alter any provision contained in a royal charter of letters patent with respect to the objects of the company;

(*f*) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply:

(iii) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company:

(iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:

(v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

265.—The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

266.—Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART VIII.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of unregistered company.

267.—For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or

13 & 14 Vict. 8c. 3.
32 & 33 Vict. c. 114.

26 & 27 Vict. c. 87.

under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, [and any limited partnership.]*

Winding up of unregistered companies.

268.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(*a*) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) If the company is unable to pay its debts;

(*c*) If the court is of opinion that it is just and equitable that the company should be wound up:

(iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be

* Repealed as to England. See Bankruptcy and Deeds of Arrangement Act, 1913, s. 24 (1) and (2); and Bankruptcy Act, 1914, s. 127, which repealed and re-enacted s. 24 (1) of the 1913 Act.

stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages, and expenses to be incurred by him by reason of the same;

(*c*) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(*d*) If in Scotland the inducia of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*e*) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867.

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court: 36 & 37 Vict. c. 66. 40 & 41 Vict. c. 57.

(vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company; 50 & 51 Vict. c. 47.

[(vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.]*

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Contributories in winding up of unregistered company.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute

* Repealed as to England. See footnote on p. 514.

to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of court to stay or restrain proceedings.

270.—The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

271.—Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Directions as to property in certain cases.

272.—If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of Part of Act cumulative.

273.—The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM.

Requirements as to companies established outside the United Kingdom.

274.—(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the registrar of companies—

(*a*) a certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or

defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(*b*) a list of the directors of the company;*

(*c*) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "place of business" includes a share transfer or share registration office;

The expression "director" includes any person occupying the position of director, by whatever name called; and

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

* See also Companies (Particulars as to Directors) Act, 1917. For Board of Trade regulations as to certification of copies and translations under s. 274, see *London Gazette* of 1st April, 1919.

Power of companies incorporated in British possessions to hold lands.

275.—A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in paragraphs (*a*), (*b*), and (*c*) of subsection (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act.

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

Prosecution of offences.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

(2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—

(*a*) the appointment of directors;
(*b*) the restrictions on commencement of business by a company;
(*c*) returns as to allotments;
(*d*) false statements in respect of which a penalty is provided by this Part of this Act;
(*e*) the filing of copies of a prospectus, and order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company;
(*f*) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager;
(*g*) general meetings;
(*h*) companies established outside the United Kingdom;
(*i*) the issue of debentures and certificates of shares and debenture stock;
(*j*) the issue, circulation, and publication of balance sheets;
(*k*) unqualified persons acting as directors;
(*l*) the inspection of registers of debenture holders and the furnishing of copies of trust deeds;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

Applications of fines.

277.—The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Costs in actions by certain limited companies.

278.—Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

279.—If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

Jurisdiction of stannaries court.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act. 59 & 60 Vict. c. 45.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

Penalty for false statement.

281.—If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

Penalty for improper use of word "Limited."

282.—If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Report by Board of Trade.

Annual report by Board of Trade.

283.—The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of Documents issued by Board of Trade.

Authentication of documents issued by Board of Trade.

284.—Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Interpretation, &c.

Interpretation.

285.—In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

19 & 20 Vict. c. 47.

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

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;

"Document" includes summons, notice, order, and other legal process, and registers;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Debenture" includes debenture stock;

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents;

"The registrar of companies," or when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

"The Gazette" means, as respects companies registered in England, the London Gazette; as respects companies registered in Scotland, the Edinburgh Gazette; and, as respects companies registered in Ireland, the Dublin Gazette;

"Real and personal," as respects Scotland, means heritable and moveable;

"General rules" means general rules made under this Act, and includes forms;

"Prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

"Director" includes any person occupying the position of director by whatever name called; *

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

Repeal of Acts and savings.

286.—(1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part:

Provided that the repeal shall not affect—

(*a*) The incorporation of any company registered under any enactment hereby repealed; nor

(*b*) Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(*c*) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor

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

52 & 53 Vict. c. 63.

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

Saving of pending proceedings for winding up.

287.—The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Acts or Acts under which the winding up commenced shall be deemed to remain in full force.

Saving of deeds.

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

* See also Companies (Particulars as to Directors) Act, 1917, s. 3.

Former registration offices registers, official receivers &c., continued.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

Saving for existing rules of procedure, &c.

290.—Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Substitution of provisions of this Act for provisions of repealed Acts.

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

Saving for 28 & 29 Vict. c. 78, s. 3.

292.—Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

Saving for Life Assurance Companies Acts.
33 & 34 Vict. c.61
34 & 35 Vict. c.58
35 & 36 Vict. c.41

293.—Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

Saving for 34 & 35 Vict. c. 31, s. 5.

294.—Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

Short title.

295.—This Act may be crted as the Companies (Consolidation) Act, 1908.

Commencement of Act.

296.—This Act shall come into operation on the first day of April nineteen hundred and nine.

Schedules

FIRST SCHEDULE

Sections 10, 11, 67, 263, 285.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versâ, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice

specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A.B. of in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the

ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of

forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such

fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new

shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution—

(*a*) Consolidate and divide its share capital into shares of larger amount than its existing shares:

(*b*) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908:

(*c*) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person:

(*d*) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company,

entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited.

"I of in the county of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated, if the director—

(*a*) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or

(*b*) holds any other office of profit under the company except that of managing director or manager; or

(*c*) becomes bankrupt; or

(*d*) is found lunatic or becomes of unsound mind; or

(*e*) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid,

or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period

since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving

of notices to them; and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES. Sections 244, 259.

I.—By a company having a share capital.

	£	s.	d.
For registration of a company whose nominal share capital does not exceed 2000*l.*	2	0	0
For registration of a company whose nominal share capital exceeds 2000*l.*, the following fees, regulated according to the amount of nominal share capital (that is to say):			
For every 1000*l.* of nominal share capital, or part of 1000*l.*, up to 5000*l.*	1	0	0
For every 1000*l.* of nominal share capital, or part of 1000*l.*, after the first 5000*l.*, up to 100,000*l.*	0	5	0
For every 1000*l.* of nominal share capital, or part of 1000*l.*, after the first 100,000*l.*	0	1	0
For registration of any increase of share capital made after the first registration of the company, the same fees per 1000*l.*, or part of a 1000*l.*, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	0	5	0

II.—By a company not having a share capital.

For registration of a company whose number of members, as stated in the articles, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100	5	0	0

	£	s.	d.
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles to be unlimited - -	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase - - - - - - - - - - -	0	5	0
Provided that no company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England - - - - - - - - - - -	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar - - -	0	5	0

FORM C.

Section 108. FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES, and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES.

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.
On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were—
Government securities [*stating them*]
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE

Section 82.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED.

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908.

Presented for filing by

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.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ 4. Consideration.
Names and addresses of (*a*) vendors of property purchased or acquired, or proposed to be (*b*) purchased or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash - - £ Shares - - £ Debentures - £ Goodwill - - £

(*a*) For definition of vendor, *see* Section 81 (2) of the Companies (Consolidation) Act, 1908.

(*b*) *See* Section 81 (3) of the Companies (Consolidation) Act, 1908.

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 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 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 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 authorised in writing.)

_____

_____

_____

THIRD SCHEDULE

Section 118.

FORM A.

MEMORANDUM of ASSOCIATION of a company limited by shares.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the "conveyance of passengers and goods in ships or boats between such "places as the company may from time to time determine, and the "doing all such other things as are incidental or conducive to the "attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers	Number of Shares taken by each Subscriber
"1. John Jones of in the county of merchant	200
"2. John Smith of in the county of -	25
"3. Thomas Green of in the county of -	30
"4. John Thompson of in the county of -	40
"5. Caleb White of in the county of -	15
"6. Andrew Brown of in the county of	5
"7. Cæsar White of in the county of	10
Total shares taken - - - - -	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by guarantee, and not having a share capital.

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the "mutual insurance of ships belonging to members of the company, "and the doing all such other things as are incidental or conducive "to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

ARTICLES of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION.

Number of Members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who ensures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the

company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

of in the county of

being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies (Consolidation) Act, 1908, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Companies (Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by guarantee, and having a share capital.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the "facilitating travelling in the Highlands of Scotland, by providing "hotels and conveyances by sea and by land for the accommodation "of travellers, and the doing all such other things as are incidental or "conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers	Number of Shares taken by each Subscriber
"1. John Jones of in the county of -	200
"2. John Smith of in the county of -	25
"3. Thomas Green of in the county of -	30
"4. John Thompson of in the county of -	40
"5. Caleb White of in the county of -	15
"6. Andrew Brown of in the county of -	5
"7. Cæsar White of in the county of -	10
Total shares taken - - - -	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

3. All the articles of Table A of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses, and Description of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No, 13, Hute Street, Clerkenwell, London.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited company having a share capital.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the 'working of a patent method of founding and casting stereotype 'plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers	Number of shares taken by each Subscriber
"1. John Jones of in the county of -	3
"2. John Smith of in the county of -	3
"3. Thomas Green of in the county of -	1
"4. John Thompson of in the county of -	2
"5. Caleb White of in the county of -	2
"6. Andrew Brown of in the county of -	1
"7. Abel Brown of in the county of -	1
Total shares taken - - - -	12

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the Articles of Table A of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

"1. John Jones of in the county of merchant·
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Abel Brown of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

Section 26.

FORM E, as required by Part II. of the Act.

SUMMARY of SHARE CAPITAL and SHARES of the COMPANY LIMITED, made up to the day of 19 (being the fourteenth day after the date of the first ordinary general meeting in 19).

Nominal share capital £ divided into[1] { shares of £ each. / shares of £ each.

Total number of shares taken up[1] to the day of 19 (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash ..

Number of shares issued as fully paid up otherwise than in cash ..

Number of shares issued as partly paid up to the extent of per share otherwise than in cash ..

[2]There has been called up on each of shares, £ .

There has been called up on each of shares, £ .

[2]There has been called up on each of shares, £ .

[3]Total amount of calls received, including payments on application and allotment..

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash .. £

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share £

Total amount of calls unpaid .. £

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary £

Total amount (if any) paid on[4] shares forfeited .. £

Total amount of shares and stock for which share warrants are outstanding .. £

Total amount of share warrants issued and surrendered respectively since date of last summary £

Number of shares or amount of stock comprised in each share warrant ..

Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight .. £

1 When there are shares of different kinds or amounts (*e.g.* Preference and Ordinary, or 10*l.* or 5*l.*) state the numbers and nominal values separately.

2 Where various amounts have been called or there are shares of different kinds state them separately.

3 Include what has been received on forfeited as well as on existing shares.

4 State the aggregate number of shares forfeited (if any).

(*a*) STATEMENT in the form of a balance sheet made up to the day of 19 containing the particulars of the capital, liabilities, and assets of the Company.

The Return must be signed at the end by the manager or secretary of the company.

Presented for filing by———————————

LIST OF PERSONS holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, (*b*) showing their names and addresses and an account of the shares so held.

Folio in Register Ledger containing Particulars	NAMES, ADDRESSES, AND OCCUPATIONS				ACCOUNT OF SHARES					Remarks
	Surname	Christian Name	Address	Occupation	† Number of Shares held by existing Members at Date of Return	§ Particulars of Shares transferred since the date of the last Return (*c*) by Persons who are still Members		§ Particulars of Shares transferred since the date of the last Return (*d*) by Persons who have ceased to be Members		
						Number ‡	Date of Registration of Transfer	Number	Date of Registration of Transfer	

(*a*) This statement is not required from a private company within the meaning of Sec. 121 (i) of the Companies (Consolidation) Act, 1908, as amended by the Companies Act, 1913, which complies with the provisions contained in its articles by which it is constituted a private company.

But s. 1 (3) of the Companies Act, 1913, requires that every Private Company shall send with this return a certificate signed by a Director or the Secretary that the Company has not, since the date of the last return, or in the case of a first return since the date of the incorporation of the Company, issued any invitation to the public to subscribe for any shares or debentures of the Company: and where the list of members discloses the fact that the number of members of the Company exceeds fifty, also a certificate so signed that such excess consists, as the case may be, wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company, were while in such employment and have continued after the determination of such employment to be members of the Company (*London Gazette*, 14th August, 1917).

(*b*), (*c*), (*d*) or (in the case of the first return) of the incorporation of the Company (Companies Act, 1913).

† The aggregate number of shares held and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the (*e*) Directors of the Limited on the day of 19 .

Names	Addresses

NOTE.—Banking companies must add a list of all their places of business.

(Signature)

(State whether manager or secretary)

Section 20.

FORM F.

LICENCE TO HOLD LANDS.

The Board of Trade hereby license the to hold the lands hereunder described (*insert description of lands*) [*or* to hold lands not exceeding in the whole acres].

The conditions of this licence are (*insert conditions, if any*).

Section 181.

FOURTH SCHEDULE

PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

Orders:—

s. 169. As to time for proving claims.

s. 174. As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

s. 219. As to meetings for ascertaining wishes of creditors or contributories.

s. 120. As to summoning meetings of creditors or contributories where a compromise is proposed.

s. 227. As to the examination of witnesses in regard to the property or affairs of a company.

(*e*) The following revised form was published in the *London Gazette* of 14th August, 1917: Names and Addresses of the Directors of the Company, on the day of 19 .

*† The present Christian Names or Names and Surname	‡ Any former Christian Name or Names or Surname	Nationality	Nationality of origin (if other than the present nationality)	Usual Residence	Occupations

* 'Director' includes any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

† 'Christian name' includes any forename. In the case of a peer or a person usually known by a British title different from his surname, the title by which he is known must be substituted for his surname.

‡ In the case of natural born British subjects, a former Christian name or surname should not be shown where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years: and in the case of a married woman the name or surname by which she was known previous to the marriage should not be given.

PART II.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT UNTIL RECLAIMING NOTE DISPOSED OF.

Orders:—

Restraining or permitting commencement or continuance of legal proceedings.	ss. 140, 142, 144, 266, 270, 271.
Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.	ss. 149, 186, 202.
Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property.	s. 151.
Requiring the delivery of property or documents to the official liquidator	s. 164.
As to the arrest and detention of an absconding contributory and his property.	s. 176.
Limiting the powers of provisional official liquidators.	s. 151 (5).
For continuance of winding-up under supervision.	s. 19.

FIFTH SCHEDULE

Section 281.

PROVISIONS REFERRED TO IN SECTION 281 OF THE ACT.

Provisions relating to—

The conclusiveness of certificates of incorporation;	s. 17.
Restrictions on appointments 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.
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Registration of mortgages and charges in England and Ireland;	s 93.
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Section 286.

SIXTH SCHEDULE

PART I.

ENACTMENTS REPEALED.

Session and Chapter	Short Title of Act	Extent of Repeal
25 & 26 Vict. c. 89.	The Companies Act, 1862	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Vict. c. 131.	The Companies Act, 1867.	The whole Act.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869.	Sections twenty-five, twenty six, and thirty-four.
33 & 34 Vict. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877.	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judicature (Ireland) Act, 1877.	Subsection (1) of section twenty-eight, so far as relates to the winding up of companies.
42 & 43 Vict. c. 76.	The Companies Act, 1879.	The whole Act.
43 Vict. c. 19.	The Companies Act, 1880.	The whole Act.
46 & 47 Vict. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict c. 23.	The Companies Act, 1886.	The whole Act.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887.	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section [being paragraph (2)]; and section thirty-one.
50 & 51 Vict. c. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.
52 & 53 Vict. c. 42.	The RevenueAct, 1889.	Section eighteen.
52 & 53 Vict. c. 60.	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies.
53 & 54 Vict. c. 62.	The Companies (Memorandum of Association) Act, 1890.	The whole Act.
53 & 54 Vict. c. 63.	The Companies (Winding up) Act, 1890.	The whole Act.

Session and Chapter	Short Title of Act	Extent of Repeal
53 & 54 Vict. c. 64.	The Directors Liability Act, 1890.	The whole Act.
56 & 57 Vict. c. 58.	The Companies (Winding up) Act, 1893.	The whole Act.
60 & 61 Vict. c. 19.	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole Act.
61 & 62 Vict. c. 26.	The Companies Act, 1898.	The whole Act.
63 & 64 Vict. c. 48.	The Companies Act, 1900.	The whole Act.
7 Edw. 7. c. 24.	The Limited Partnerships Act, 1907.	Subsection (4) of section six.
7 Edw. 7. c. 50.	The Companies Act, 1907.	The whole Act.
8 Edw. 7. c. 12.	The Companies Act, 1908.	The whole Act.

PART II.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 & 8 VICT. c. 113), s. 47.

Section 286.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

THE JOINT STOCK BANKING COMPANIES ACT, 1857, PART OF S. 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

APPENDIX H

[Permission has been given for this reprint, but it does not purport to be 'by authority.']

Companies Act, 1913

[3 & 4 Geo. V., c. 25]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment of the law relating to private companies. 8 Edw. 7. c. 69.

1.—(1) Where the articles of a company include the provisions which, by section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, as amended by this Act, are required to be included therein in order to constitute the company a private company for the purposes of that Act, and default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions of that Act mentioned in the Schedule to this Act, and thereupon the said provisions shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

(2) In subsection (1) of the said section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, for paragraph (*b*) the following paragraph shall be substituted:—

"(*b*) limits the number of its members (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company) to fifty; and"

(3) Every private company shall send with the annual list of members and summary required to be sent under section twenty-six of the Companies (Consolidation) Act, 1908, a certificate signed by a director or the secretary that the company has not, since the date of the last return, or in the case of a first return since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and, where the list of members discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that such excess consists wholly of persons who under section one hundred and twenty-one of that Act, as amended by this section, are to be excluded in reckoning the number of fifty.

2. This Act may be cited as the Companies Act, 1913, and shall be construed as one with the Companies (Consolidation) Act, 1908, and that Act and this Act may be cited together as the Companies Acts, 1908 and 1913. Short title and construction.

Schedule

PROVISIONS OF THE COMPANIES (CONSOLIDATION) ACT, 1908. Section 1.

Subsection (3) of section twenty-six (which relates to the making of an annual return in the form of a balance sheet).

Section one hundred and fourteen (which relates to the right of preference shareholders and debenture holders to receive and inspect balance sheets and reports).

Section one hundred and fifteen (which relates to the minimum number of members with which a company may continue to carry on business).

Paragraph (iv) of section one hundred and twenty-nine (which makes the reduction of the number of members of a company below the minimum a ground for the winding up of the company).

APPENDIX J

[Permission has been given for this reprint, but it does not purport to be 'by authority.']

Registration of Business Names Act, 1916

[6 & 7 Geo. V., c. 58]

ARRANGEMENT OF SECTIONS.

1. Firms and persons to be registered.
2. Registration by nominee, &c.
3. Manner and particulars of registration.
4. Statement to be signed by persons registering.
5. Time for registration.
6. Registration of changes in firm.
7. Penalty for default in registration.
8. Disability of persons in default.
9. Penalty for false statements.
10. Duty to furnish particulars to Board of Trade.
11. Registrar to file statement and issue certificate of registration.
12. Index to be kept.
13. Removal of names from register.
14. Misleading business names.
15. Registrar.
16. Inspection of statements registered.
17. Power for Board of Trade to make rules.
18. Publication of true names, &c.
19. Offences by Corporations.
20. Mode of action by the Board of Trade.
21. Remuneration for duties under this Act.
22. Interpretation of terms.
23. Application to Scotland.
24. Application to Ireland.
25. Short title.

SCHEDULE.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Firms and persons to be registered.

1. Subject to the provisions of this Act—

(*a*) Every firm having a place of business in the United Kingdom and carrying on business under a business name which does

not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;

(*b*) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof;

(*c*) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage;

shall be registered in the manner directed by this Act:

Provided that—

(i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and

(ii) where two or more individual partners have the same surname, the addition of an *s* at the end of that surname shall not of itself render registration necessary; and

(iii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and

(iv) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

Registration by nominee, &c.

2. Where a firm, individual, or corporation having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the schedule to this Act:

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.

Manner and particulars of registration.

3.—(1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the firm or person is situated a statement in writing in the prescribed form containing the following particulars:—

(*a*) The business name;

(*b*) The general nature of the business;

(*c*) The principal place of the business;

(*d*) Where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of

each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;

(*e*) Where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such individual;

(*f*) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office;

(*g*) If the business is commenced after the passing of this Act, the date of the commencement of the business.

(2) Where a business is carried on under two or more business names, each of those business names must be stated.

Statement to be signed by persons registering.

4. The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners, and by a director or the secretary of all corporations which are partners by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory: Provided that no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner; shall be evidence for or against any such other person in respect of his liability or non-liability as a partner, and that the High Court or a judge thereof may on application of any person alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this section.

Time for registration.

5. The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be: Provided that if such firm or person has carried on such business before the passing of this Act or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the passing of this Act, and that if at the expiration of the said two months the conditions affecting the firm or persons have ceased to be such as to require registration under this Act, the firm or person need not be registered so long as such conditions continue.

This section shall apply, in the case where registration is required in consequence of a change of name, as if for references to the date of the commencement of the business there were substituted references to the date of such change.

Registration of changes in firm.

6. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person such firm or person shall, within fourteen days after such change, or such longer period as the Board of Trade may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to the registrar in that part of the United Kingdom in which the aforesaid particulars are registered a statement in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified, in like manner as the statement required on registration.

Penalty for default in registration.

7. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the registrar within such time as may be specified in the order.

Disability of persons in default.

8.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise:

Provided always as follows:—

(*a*) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract;

(*b*) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(*c*) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim set off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section the expression "court" means the "High Court" or a judge thereof:

Provided that, without prejudice to the power of the High Court or a judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a county court, the county court may, as respects that contract, grant such relief as aforesaid.

Penalty for false statements.

9. If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

Duty to furnish particulars to Board of Trade.

10.—(1) The Board of Trade may require any person to furnish to the Board such particulars as appear necessary to the Board for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under this Act, or an alteration made in the registered particulars, and may also in the case of a corporation require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall on summary conviction be liable to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding twenty pounds or to both such imprisonment and fine.

(2) If from any information so furnished it appears to the Board of Trade that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Board may require the firm or person to furnish to the registrar the required particulars within such time as may be allowed by the Board, but, where any default under this Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Board under this section to furnish particulars to the registrar.

Registrar to file statement and issue certificate of registration.

11. On receiving any statement or statutory declaration made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not kept so exhibited, every partner in the firm or the person, as the case may be, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Index to be kept.

12. At each of the register offices hereinafter referred to the registrar shall keep an index of all the firms and persons registered at that office under this Act.

Removal of names from register.

13.—(1) If any firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or if he is dead his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

(2) On receipt of such a notice as aforesaid the registrar may remove the firm or individual from the register.

(3) Where the registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

(4) If the registrar either receives an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the notice receive an answer, he may remove the firm or individual from the register.

Misleading business names.

14.—(1) Where any business name under which the business of a firm or individual is carried on contains the word "British" or any other word which, in the opinion of the registrar, is calculated to lead to the belief that the business is under British ownership or control, and the registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, the registrar shall refuse to register such business name or, as the case may be, remove such business name from the register, but any person aggrieved by a decision of the registrar under this provision may appeal to the Board of Trade, whose decision shall be final.

(2) The registration of a business name under this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof could be prohibited.

Registrar.

15. There shall be offices in London, Edinburgh, and Dublin for the registration of firms and persons whose principal places of business are respectively situated in England and Wales, Scotland, and Ireland, and the registrar of companies in each of those cities or such other person as the Board of Trade may determine shall be the registrar for the purposes of this Act.

Inspection of statements registered.

16. At any time after the expiration of six months from the passing of this Act or of such longer period, not being more than nine months from the passing of this Act, as the Board of Trade may by order direct, any person may inspect the documents filed by the registrar on payment of such fees as may be prescribed not exceeding one shilling for each inspection; and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement to be certified by the registrar or assistant registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words, or in Scotland for each sheet of two hundred words, of the entry, copy, or extract.

A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy or extract under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar), shall, in all legal proceedings, civil or criminal, be received in evidence.

Power for Board of Trade to make rules.

17.—(1) The Board of Trade may make rules (but as to fees with the concurrence of the Treasury) concerning any of the following matters—

(*a*) The fees to be paid to the registrar under this Act, so that they do not exceed the sum of five shillings for the registration of any one statement;

(*b*) The forms to be used under this Act;

(*c*) The duties to be performed by any registrar under this Act;

(*d*) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;

(*e*) Generally the conduct and regulation of registration under this Act, and any matters incidental thereto.

(2) All fees payable in pursuance of any such rules shall be applied as the Treasury may direct.

Publication of true names, &c.

18.—(1) After the expiration of three months from the passing of this Act every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards, and business

letters, on or in which the business name appears and which are issued or sent by the individual or firm to any person in any part of His Majesty's dominions, have mentioned in legible characters—

(*a*) in the case of an individual, his present Christian name or the initials thereof and present surname, any former Christian name or surname, his nationality if not British, and if his nationality is not his nationality of origin his nationality of origin; and

(*b*) in the case of a firm, the present Christian names, or the initials thereof and present surnames, any former Christian names and surnames, and the nationality if not British, and if the nationality is not the nationality of origin the nationality of origin of all the partners in the firm or, in the case of a corporation being a partner, the corporate name.

(2) If default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable on summary conviction for each offence to a fine not exceeding five pounds.

Provided that no proceedings shall in England or Ireland be instituted under this section except by or with the consent of the Board of Trade.

Offences by corporations.

19. Where a corporation is guilty of an offence under this Act every director, secretary, and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

Mode of action by the Board of Trade.

20. Anything required or authorised by this Act to be done by the Board of Trade may be done by the President or a Secretary or Assistant Secretary of the Board, or any other person authorised in that behalf by the President of the Board.

Remuneration for duties under this Act.

21. There shall be paid out of moneys to be provided by Parliament such remuneration in respect of the duties performed under this Act as the Treasury may assign.

Interpretation of terms.

22. In the construction of this Act the following words and expressions shall have the meanings in this section assigned to them, unless there be something in the subject or context repugnant to such construction:—

"Firm" shall mean an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit, but shall not include any unincorporated company which was in existence on the second day of November eighteen hundred and sixty-two:

"Business" shall include profession:

"Individual" shall mean a natural person and shall not include a corporation:

"Christian name" shall include any forename:

"Initials" shall include any recognised abbreviation of a Christian name:

In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted in this Act for his surname:

References in this Act to a former Christian name or surname shall not, in the case of natural-born British subjects, include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years, and,

in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage:

References in this Act to a change of name shall not include, in the case of natural-born British subjects, a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years; or, in the case of a peer or a person usually known by a British title different from his surname, the adoption of or succession to the title:

"Business name" shall mean the name or style under which any business is carried on, whether in partnership or otherwise:

"Foreign firm" shall mean any firm, individual, or corporation whose principal place of business is situate outside His Majesty's dominions:

"Showcards" shall mean cards containing or exhibiting articles dealt with, or samples or representations thereof:

"Prescribed" shall mean prescribed by rules made in pursuance of this Act.

Application to Scotland.

23.—(1) In the application of this Act to Scotland—

"Court of Session" shall be substituted for "High Court";

"Sheriff court" shall be substituted for "county court";

"Trustee on a sequestrated estate" shall be substituted for "trustee in bankruptcy";

"Receiver or manager appointed by any court" shall include "judicial factor"; and

"Joint tenants" and "tenants in common" shall mean pro indiviso proprietors.

Application to Ireland.

24. In the application of this Act to Ireland the expression "trustee in bankruptcy" shall be construed as including an assignee in bankruptcy and a trustee of the estate of an arranging debtor.

Short title.

25. This Act may be cited as the Registration of Business Names Act, 1916.

Schedule

Section 2.

Description of Firm, &c.	The additional Particulars
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality, and, if that nationality is not the nationality of origin, the nationality of origin, and usual residence, or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on: Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on: Provided that if the business is carried on as agent for three or more foreign firms it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

APPENDIX K

[Permission has been given for this reprint, but it does not purport to be 'by authority.']

Companies (Particulars as to Directors) Act, 1917

[7 & 8 Geo. V., c. 28]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Obligation of companies to disclose particulars respecting directors.

1. In addition to the particulars with respect to the persons who are the directors, or occupy the position of directors, which by section twenty-six of the Companies (Consolidation) Act, 1908, are required to be included in the annual summary, or, in the case of a company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, are, by section two hundred and seventy-four of that Act, required to be included amongst the particulars to be filed with the Registrar of Companies, there shall be included such particulars with respect to those persons as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and the register required to be kept by a company under section seventy-five of the Companies (Consolidation) Act, 1908, shall include such particulars as aforesaid, and the obligation of the company under that section, or in the case of a company incorporated outside the United Kingdom under section two hundred and seventy-four of the said Act, from time to time to notify to the registrar any change among its directors shall include an obligation so to notify any change in any such particulars.

8 Edw. 7. c. 69.

6 & 7 Geo. 5. c. 58.

Additional obligations of companies.

2.—(1) Every company which has been registered between the twenty-second day of November, nineteen hundred and sixteen, and the passing of this Act, and every company incorporated outside the United Kingdom which has before the passing of this Act established a place of business within the United Kingdom, shall within one month after the passing of this Act, and every company registered after the passing of this Act shall, within one month of the registration of the company, send to the registrar of companies, in such form as may be prescribed by the Board of Trade, such particulars respecting the directors of the company and, except in the case of a company incorporated outside the United Kingdom, respecting the persons who since the registration of the company have been directors of the company, as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and if default is made in compliance with this section, the company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and every director, secretary, and

officer of the company who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

(2) Sections eighteen and nineteen of the Registration of Business Names Act, 1916, with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars, shall after the expiration of three months from the passing of this Act apply to every company which since the said twenty-second day of November, nineteen hundred and sixteen, has been registered or, in the case of a company incorporated outside the United Kingdom which has since the said twenty-second day of November, nineteen hundred and sixteen, established a place of business within the United Kingdom, or which may after the passing of this Act be registered or establish a place of business within the United Kingdom, as if the directors of the company were partners in a firm required to be registered under the first-mentioned Act:

Provided that if special circumstances exist which render it, in the opinion of the Board, expedient that such an exemption should be granted, the Board of Trade may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

Meaning of director.

3. For the purposes of this Act and of sections twenty-six, seventy-five, and two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by this Act, the expression "director" shall include any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

Short title and citation. 3 & 4 Geo. 5. c. 25. 7 & 8 Geo. 5. c. 18.

4. This Act may be cited as the Companies (Particulars as to Directors) Act, 1917; and the Companies Acts, 1908 and 1913, the Companies (Foreign Interests) Act, 1917, and this Act may be cited together as the Companies Acts, 1908 to 1917.

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