PALMER'S
COMPANY LAW

A PRACTICAL BOOK FOR LAWYERS
AND BUSINESS MEN

NINETEENTH EDITION

BY

HIS HONOUR A. F. TOPHAM, LL.M., K.C.
A Bencher of Lincoln's Inn

XM55 73 H9 (LFL)
54940

SOLE AGENTS FOR INDIA AND PAKISTAN
N. M. TRIPATHI LIMITED
PRINCESS STREET, BOMBAY

LONDON
STEVENS & SONS LIMITED
1949

First Edition	(1898)	By Sir Francis Beaufort Palmer.
Second Edition	(1898)	
Third Edition	(1901)	
Fourth Edition	(1902)	
Fifth Edition	(1905)	
Second Impression	(1907)	
Sixth Edition	(1909)	
Seventh Edition	(1909)	
Eighth Edition	(1910)	
Ninth Edition	(1911)	
Second Impression	(1912)	
Tenth Edition	(1916)	By Alfred F. Topham.
Eleventh Edition	(1921)	
Twelfth Edition	(1924)	
Thirteenth Edition	(1929)	
Fourteenth Edition	(1930)	By A. F. Topham and A. M. R. Topham.
Fifteenth Edition	(1933)	
Second Impression	(1934)	
Third Impression	(1935)	
Sixteenth Edition	(1938)	
Seventeenth Edition	(1942)	By His Honour Judge Topham.
Second Impression	(1943)	
Third Impression	(1944)	
Fourth Impression	(1945)	
Eighteenth Edition	(1948)	
Nineteenth Edition	(1949)	By His Honour A. F. Topham.

Y D

Published by
Stevens & Sons Limited
of 119 & 120 Chancery Lane
London - Law Publishers
and printed in Great Britain
by The Eastern Press Ltd.
of London and Reading

CONTENTS

Preface . . . . . *page* vii
Addenda viii
Table of Statutes ix
Table of Cases xvii

1. Preliminary 1
2. Formation and Registration 13
3. Memorandum of Association 18
4. Articles of Association 25
5. Certificate of Incorporation 38
6. Corporate Existence and Powers 41
7. Capital 64
8. Membership 81
9. Register of Members 102
10. Transfer and Transmission of Shares 106
11. Certificates of Shares 122
12. Calls 126
13. Forfeiture 130
14. Lien on Shares 134
15. General Meetings 139
16. Directors 157
17. Dividends and Profits 198
18. Accounts and Balance Sheets 209
19. Audit 228
20. Notices 221
21. Resolutions of General Meetings 224
22. Majority Rights of Members 228
23. Registered Office 231
24. Minutes 233
25. Name of Company 237
26. Contracts 243
27. The Common Seal 247
28. Secretary and other Officials 250
29. Bills of Exchange and Promissory Notes 255
30. Borrowing Powers 256
31. Debentures and Debenture Stock 272
32. Promoters 322
33. Underwriting 327
34. Prospectus and Statement in Lieu of Prospectus . . 333
35. Private Companies 355
36. Companies Limited by Guarantee 364
37. Unlimited Companies 367

38. Assurance Companies Act, 1909 369
39. Illegal Associations 373
40. Winding-up by the Court 375
41. Voluntary Winding-up 416
42. Winding-up under Supervision of Court 434
43. Reconstruction and Amalgamation 436
44. Pensions and Gratuities 444
45. Powers of Attorney 446
46. Foreign Companies 448
47. Income Tax and Sur-Tax 451

APPENDICES

1. Companies Act, 1948 457
2. Companies Act, 1947, Parts not Repealed 732
3. Tables of Comparison between the 1948 and the Earlier Acts 737
4. Rules of the Supreme Court, 1948, Order LIIIb . . . 745
5. The Companies (Winding-up) Rules, 1949 . . . 759

Index 807

PREFACE

THE eighteenth edition of this work was a stop-gap edition to meet the time during which company law was governed by the Act of 1929, as amended by the Act of 1947, which received the Royal Assent on August 6, 1947, and became law in part on December 1, 1947, but which, for the most part, did not take effect until July 1, 1948, when the greater part of it was immediately repealed. It was necessary that that edition should be brought out very rapidly and before the great changes effected by the Act of 1947 could be thoroughly considered and explained. On July 1, 1948, the new Companies Act, 1948, came into effect, and the whole of the 1947 Act was repealed, with certain important exceptions relating to the amendment of other Acts of Parliament, such as the Bankruptcy Act. These still remain part of the law.

It would have been extremely convenient if the present edition could have been produced on July 1, 1948, but that was of course impossible, as, apart from shortages and difficulties of all kinds, some of the official documents which were necessary for this volume were not published until much later. The last and the most important of these, the Winding-up Rules, did not become effective until February 1949. Some orders were not made until after most of this edition had gone to press prescribing certain Stock Exchanges as those qualified to exercise the important power of exempting certain prospectuses under section 39 and other powers under sections 38, 417 and 418. See *Addenda*. This delay had one advantage, that it has been possible to study more thoroughly the effect of the new legislation, which has become easier to appreciate now that it has been consolidated, particularly as

the consolidation has involved a certain amount of minor amendment. Some provisions have quietly disappeared, where they did not fit in with the law as altered.

Readers of this edition will notice a considerable change in the set-up of the work. In former editions cases, and references to cases, have been allowed to interfere to a great extent with the flow of the text; now the cases for the most part, and their references, have been relegated to the foot-notes. Extracts from the Companies Acts, hitherto printed in the same type as the text itself, have been printed in a distinctive type. Again, this edition includes a complete Table of Statutes, with page references in heavy type for the passages where sections are discussed or explained. References to the sections of the Act of 1948 are printed in bold type in order to avoid repeating the phrase 'of the Act of 1948'.

The Appendices form an integral part of this work, containing verbatim reprints of the Acts in force at the present time comparative tables of sections, the new R.S.C. Order LIIIB, and the new Companies (Winding-up) Rules, 1949.

A. F. T.

March, 1949.

ADDENDA

P. 111: An attempt to make the shares of directors pass to their widows without a transfer by a clause in the articles was held to be ineffective: see *Greene* v. *Greene* [1948] W.N. 499, a somewhat surprising result as regards the beneficial interest.

P. 171: In *Hastings and Folkestone Glassworks, Ltd*, v. *Kalson* [1949] 1 K.B. 214, it was held by the Court of Appeal, overruling Oliver J., that a director is 'convicted of an indictable offence' if he is convicted at a magistrates' court of an offence for which he could have been indicted, if the prosecution had elected to do so.

P. 209, (n) 4, *add*: See also section 168 as to when the report must be circulated.

P. 288: 'Prescribed Stock Exchange'. By the Companies (Stock Exchange) Orders (1948), No. 1592 and (No. 2) No. 2940, the following Stock Exchanges became prescribed Stock Exchanges, London, Birmingham, Edinburgh, Glasgow, Liverpool and Manchester, for the purposes of sections 88, 89, 417 and 418, and Bristol, Cardiff, Newcastle and Sheffield for the purposes of sections 88 and 417 only.

TABLE OF STATUTES

[Where a section of the 1948 Act is discussed the page number is shown in black type.]

1571—Fraudulent Conveyances, etc. Act (13 Eliz. c. 5) 410
1623—Limitation Act (21 Jac. 1, c. 16) 349
1677—Statute of Frauds (29 Car. 2, c. 3) 284, 245, 304
1709—Landlord and Tenant Act (8 Anne, c. 18) 404
1719—Bubble Act (6 Geo. 1, c. 18) 5
1746—Wales and Berwick Act (20 Geo. 2, c. 42), s. 3 19
1759, 1760—Bridgewater Canal Acts 3
1766—Trent Navigation Act (6 Geo. 3, c. 96) 3
1821—Stockton and Darlington Act 3
1834—Apportionment Act (4 & 5 Will. 4, c. 22) 169
1837—Chartered Companies Act (7 Will. 4 & 1 Vict. c. 73) 2
1844—Joint Stock Companies Act (7 & 8 Vict. c. 110) 5, 6, 8, 104, 308
1845—Companies Clauses Consolidation Act (8 & 9 Vict. c. 16) 4
Lands Clauses Consolidation Act (8 & 9 Vict. c. 18) 4
Railways Clauses Act (8 & 9 Vict. c. 20) 4
1846—Fatal Accidents Act (Lord Campbell's Act) (9 & 10 Vict. c. 93) 406
1847—Gas Works Clauses Act (10 & 11 Vict. c. 15) 4
Waterworks Clauses Act (10 & 11 Vict. c. 17) 4
Harbours and Docks and Piers Act (10 & 11 Vict. c. 27) 4
1856—Joint Stock Companies Act (19 & 20 Vict. c. 47) 35, 45
1861—Larceny Act (24 & 25 Vict. c. 96), s. 84 195
1862—Companies Act (25 & 26 Vict. c. 89) . . . 1, 8, 35, 45, 198, 205, 221, 222
s. 16 . . . . . 30 s. 79 378
s. 18 . . . . . 38 s. 82 380
s. 30 . . . . . 137 s. 161 . . . . 438, 441
s. 32 . . . . . 104 s. 162 437
s. 35 . . . . . 106 s. 165 410
s. 50 . . . . . 35 Part VII 17
s. 67 174
1863—Companies Clauses Act (26 & 27 Vict. c. 118) 66, 311
1867—Railway Companies Act (30 Vict. c. 127), s. 9 441
Companies Act (30 & 31 Vict. c. 131) 73, 77, 78, 98, 106, 120
s. 25 . . . . . 99 s. 38 . . . . . 350, 351
s. 37 244
1869—Bankruptcy Act (32 & 33 Vict. c. 71) 12
1870—Apportionment Act (33 & 34 Vict. c. 35) 168, 169, 205
Life Assurance Companies Act (33 & 34 Vict. c. 61) 369
ss. 3, 4–9 . . . . . 370 s. 14 371
Stamp Act (33 & 34 Vict. c. 97) 272
1871—Trade Unions Act (34 & 35 Vict. c. 31) 7, 20
1872—Life Assurance Companies Act (34 & 35 Vict. c. 58) 369
1873—Judicature Act (36 & 37 Vict. c. 66)—
s. 24 (5) . . . . . 404 s. 25 (6) 282
1874—Building Societies Act (37 & 38 Vict. c. 42) 6, 377
1875—Judicature Act (38 & 39 Vict. c. 77), s. 10 . . . . . 402, 403
1876—Trade Union Act (39 & 40 Vict. c. 22) 7, 20
1877—Companies Act (40 & 41 Vict. c. 26) 73, 77, 78, 303
1878—Bills of Sale Act (41 & 42 Vict. c. 31) 288, 308
Companies Act (42 & 43 Vict. c. 76) 376
1881—Conveyancing Act (44 & 45 Vict. c. 41) 285
s. 48 446
1882—Bills of Sale (Amendment) Act (45 & 46 Vict. c. 43) 272, 308
Bills of Exchange Act (45 & 46 Vict. c. 61) 11, 249
s. 26 . . . . . 257 s. 91 286
1883—Bankruptcy Act (46 & 47 Vict. c. 52), s. 44 12
1888—County Courts Act (51 & 52 Vict. c. 43), s. 120 376
Trustee Act (51 & 52 Vict. c. 59) 159
1889—Interpretation Act (52 & 53 Vict. c. 63)—
s. 26 . . . . . 223 s. 38 . . . . . 10, 270
1890—Lunacy Act (53 Vict. c. 5), ss. 123, 126–129 112
Partnership Act (53 & 54 Vict. c. 39) 2, 154, 272
Companies Memorandum of Association Act (53 & 54 Vict. c. 62) 59

1890—Companies (Winding up) Act (53 & 54 Vict. c. 63) 395
s. 8 . . . . 413 s. 10 410
Directors' Liability Act (53 & 54 Vict. c. 64) 342, 343
1891—Stamp Act (54 & 55 Vict. c. 39) . . . 14, 120, 125 n. 22, 294, 305, 447
s. 112 . . . . 366 sched. I 113, 305
Forged Transfer Act (54 & 55 Vict. c. 43) 116, 304
1892—Colonial Probates Act (55 Vict. c. 5) 119
Forged Transfer Act (55 & 56 Vict. c. 36) 116, 304
1893—Industrial and Provident Societies Act (56 & 57 Vict. c. 39) 6
Sale of Goods Act (56 & 57 Vict. c. 71) 245
1894—Thames Conservancy Act (56 & 57 Vict. c. 31) 11
Industrial and Provident Societies Act (57 Vict. c. 8) 6
Building Societies Act (57 & 58 Vict. c. 47) 6
1895—Industrial and Provident Societies Act (58 & 59 Vict. c. 30) 6
1896—Friendly Societies Act (59 & 60 Vict. c. 25) 7
1898—Friendly Societies Act (61 & 62 Vict. c. 15) 7
Companies Act (61 & 62 Vict. c. 26) 99
1899—Finance Act (62 & 63 Vict. c. 9), s. 9 90
Electric Lighting (Clauses) Act (63 & 64 Vict. c. 19) 4
1900—Companies Act (63 & 64 Vict. c. 48) . . 84, 142, 215, 342, 353, 355, 417
s. 1 . . . . 39 s. 16 329
s. 4 . . . . 84, 96 s. 25 434
s. 8 . . . . 330, 331 s. 27 365
s. 10 . . . . 99, 353 s. 33 99
s. 14 301
1906—Prevention of Corruption Act (6 Edw. 7, c. 34) 177
Trades Disputes Act (6 Edw. 7, c. 47) 7
1907—Limited Partnerships Act (7 Edw. 7, c. 24) 7, 359
Employers' Liability Insurance Companies Act (7 Edw. 7, c. 46) . . . 369
Companies Act (7 Edw. 7, c. 50) 208, 267
s. 1 . . . . 84 s. 14 301
s. 8 . . . . 330 s. 15 278
s. 9 . . . . 208 s. 28 380
s. 10 267
1908—Friendly Societies Act (8 Edw. 7, c. 32) 7
Companies (Consolidation) Act (8 Edw. 7, c. 69) 1, 9, 342, 400, 415, 441, 442
s. 82 . . . . 106 ss. 109, 110 . . . 213
s. 45 . . . . 80 s. 113 220
s. 66 . . . . 143 s. 120 437
s. 69 . . . . 226 s. 137 319
ss. 80, 81 . . . . 342, 343 s. 188 . . . . 417, 429
s. 104 . . . . 308 s. 192 . . . . 437, 438
s. 105 . . . . 310 s. 197 382
s. 106 . . . . 295 s. 212 297
s. 107 . . . . 318 s. 272 391
s. 108 . . . . 418 s. 285 . . . . 272, 437
1909—Assurance Companies Act (9 Edw. 7, c. 49) 372
s. 2 . . . . 369, 370 ss. 5–15 371
ss. 3, 4–9 370
1910—Finance (1909–1910) Act (10 Edw. 7 & 1 Geo. 5, c. 8) 113, 305
1913—Companies Act (3 & 4 Geo. 5, c. 25) 358
Industrial and Provident Societies Act (3 & 4 Geo. 5, c. 31) 6
1914—Government War Obligations Act (5 Geo. 5, c. 11) 269
Bankruptcy Act (4 & 5 Geo. 5, c. 59) 119
s. 1 . . . . 411 s. 48 281
s. 7 (2) . . . . 402 s. 54 . . . . 95, 119
s. 28 . . . . 326 s. 66 321
s. 30 . . . . 395 s. 76 450
s. 31 . . . . 8, 397, 409 s. 127 8
s. 44 . . . . 408, 409
1916—Registration of Business Names Act (6 & 7 Geo. 5, c. 58) . . . 237, 242
Finance Act (6 & 7 Geo. 5, c. 24), s. 43 452
1918—Income Tax Act (8 & 9 Geo. 5, c. 40), s. 33 . . . . . 366, 452
Sched. A . . . 368, 452, 453 Sched. D 452
1920—Finance Act (10 & 11 Geo. 5, c. 18) 113, 120, 125, 452
1922—Finance Act (12 & 13 Geo. 5, c. 17) 456
s. 21 . . . . 455 s. 21 (2) (6) . . . 454
s. 21 (1) 455
1924—Friendly Societies Act (14 & 15 Geo. 5, c. 11) 7
Finance Act (14 & 15 Geo. 5, c. 21), s. 38 208
1925—Trustee Act (15 Geo. 5, c. 19)—
s. 10 (c) . . . . 442 ss. 30, 61 390

1925—Law of Property Act (15 Geo. 5, c. 20)—
s. 40 234
s. 74 247
s. 87 302
ss. 101, 104, 106 . . 285
s. 107 . . . 283, 285
s. 109 285
s. 111 281
ss. 123–125, 126, 127 . . 446
s. 136 282
s. 146 402
s. 172 410
s. 174 402
Land Charges Act (15 Geo. 5, c. 22), s. 10 268
Judicature (Consolidation) Act (15 & 16 Geo. 5, c. 49) 62, 129
s. 219 446
Workmen's Compensation Act (15 & 16 Geo. 5, c. 84) . . 317, 399, 406, 424
1926—Law of Property (Amendment) Act (16 & 17 Geo. 5, c. 11) 446
1927—Finance Act (17 & 18 Geo. 5, c. 10) 454, 455, 456
s. 26 400
s. 31 (4) 455
s. 37 456
s. 55 439
s. 56 400
Moneylenders Act (17 & 18 Geo. 5, c. 21) 945
Trades Disputes Act (17 & 18 Geo. 5, c. 22) 7
Landlord and Tenant Act (17 & 18 Geo. 5, c. 36) 317
Superannuation and other Trust Funds (Validation) Act (17 & 18 Geo. 5, c. 41) 445
1928—Finance Act (18 & 19 Geo. 5, c. 17)—
s. 18 456
s. 31 439
Companies Act (18 & 19 Geo. 5, c. 45) 267, 278
1929—Companies Act (19 & 20 Geo. 5, c. 23) . . 273, 342, 357, 400, 417, 433, 449
s. 17 . . . . . 18, 19
s. 18 239
s. 27 358
ss. 30, 31 345
s. 38 342
s. 39 . . . . . 86, 345
s. 40 345
s. 46 68
s. 47 . . . . . 52, 97
s. 50 69
s. 56 78
s. 61 73
s. 64 400
s. 79 308
s. 84 267
s. 92 231
ss. 95, 97, 98 268
s. 110 356
s. 113 139
s. 115 144
s. 117 224
s. 122 209
s. 128 169
s. 130 357
s. 135 213
ss. 140, 144 162
s. 149 178
s. 150 176
s. 152 302
s. 155 . . . . . 442, 443
s. 164 62
s. 171 386
s. 266 297
s. 267 389
s. 268 407
s. 276 424
s. 334 62
s. 344 450
s. 356 . . . . . 351, 352
s. 372 193
s. 382 . . . . . 7, 25
Sched. IV 343
1930—Third Party (Rights Against Insurers) Act (20 & 21 Geo. 5, c. 25) . . . 406
Finance Act (20 & 21 Geo. 5, c. 28)—
ss. 34–38 456
ss. 41, 42 439
Road Traffic Act (20 & 21 Geo. 5, c. 43) 370
1933—Finance Act (23 & 24 Geo. 5, c. 19), s. 41 . . . . . 14, 71, 366
1934—Administration of Justice (Appeals) Act (24 & 25 Geo. 5, c. 40) . . . 376
Workmen's Compensation (Coal Mines) Act (24 & 25 Geo. 5, c. 23) . . . 399
Law Reform (Miscellaneous Provisions) Act (24 & 25 Geo. 5, c. 41), s. 1 . 349, 412
1935—Law Reform (Married Women and Tortfeasors) Act (25 & 26 Geo. 5, c. 30) . 92, 112, 197
Unemployment Insurance Act (25 & 26 Geo. 5, c. 8) 398
1936—National Health Insurance Act (26 Geo. 5 & 1 Edw. 8, c. 32) 398
Widows', Orphans' and Old Age Contributory Pensions Act (26 Geo. 5 & 1 Edw. 8, c. 38) 398
Finance Act (26 Geo. 5 & 1 Edw. 8, c. 34), s. 19 455
Air Navigation Act (26 Geo. 5 & 1 Edw. 8, c. 44) 369
1937—Finance Act (1 Edw. 8 & 1 Geo. 6, c. 54), s. 14 . . . . . 455, 456
1938—Finance Act (1 & 2 Geo. 6, c. 46) 454, 456
1939—Prevention of Fraud (Investments) Act (2 & 3 Geo. 6, c. 16) 10, 362
Limitation Act (2 & 3 Geo. 6, c. 21) 115, 128, 159, 205
s. 2 349
s. 5 284
s. 19 159
s. 26 326
Finance Act (2 & 3 Geo. 6, c. 41) 454
ss. 13–17 . . . . . 455, 456
Building Societies Act (2 & 3 Geo. 6, c. 55) 6
Courts (Emergency Powers) Act (2 & 3 Geo. 6, c. 67) 312
Finance (No. 2) Act (2 & 3 Geo. 6, c. 109), s. 12 . . . . . 455, 456

1940—Finance Act (3 & 4 Geo. 6, c. 29), s. 26 456
Courts (Emergency Powers Amendment) Act (3 & 4 Geo. 6, c. 37) . . . 312
1941—Liabilities (War-Time Adjustment) Act (4 & 5 Geo. 6, c. 24), s. 26 . . 312
Finance Act (4 & 5 Geo. 6, c. 30), s. 28 456
1944—Reinstatement in Civil Employment Act (7 & 8 Geo 6, c. 15) . . . 398
1946—Assurance Companies Act (9 & 10 Geo. 6, c. 28) 369, 370
Trade Disputes and Trade Unions Act (9 & 10 Geo 6, c. 52) . . . 7, 71
Finance Act (9 & 10 Geo. 6, c. 64), s. 36 456
National Insurance Act (9 & 10 Geo. 6, c. 67) 398, 400
National Insurance (Industrial Injuries) Act (9 & 10 Geo. 6, c. 67) . 398, 399
1947—Finance Act (10 & 11 Geo. 6, c. 35) 113, 120, 144, 145, 207, 305
s. 30 456
s. 52 . . 90, 113, 294, 305
s 60 207
Finance (No. 2) Act (11 & 12 Geo. 6, c. 9), s. 7 456
Companies Act (10 & 11 Geo. 6, c. 47)—
s. 5 158
s. 9 . . . . 379, 408
s. 11 443
s. 12 209
s. 22 . . . . 216, 219
s. 26 157
ss. 30, 31 184
s. 35 169
s. 36 176
s. 37 178
s. 40 440
s. 41 . . . 178, 440, 441
ss. 46, 47 103
s. 50 . . . . 102, 107
s. 59 88
s. 60 44
s. 63 341
s. 64 337
s 68 . . 334, 336
s. 69 102
s. 70 118
s. 71 68
s. 72 202
s. 73 52
s. 75 . . . 118, 302
s. 76 118
s. 77 . . . . . 23, 56
s. 80 93
s. 81 364
s. 82 118
s 83 313
ss. 84, 85, 86 314
s. 87 . . . 286, 313, 314
s. 89 . . . . 264, 265
s. 90 378
s. 91 398
s. 92 . . . . 408, 439
s. 93 297
s. 94 417
s. 96 . . . 62, 406, 415
s. 97 . . 414, 415, 416, 418
s. 98 414
ss. 99, 100 415
s. 101 409
s. 105 162
s. 106 78
s. 110 . . . 114, 448
s 111 449
s. 117 352
s 120 . . 13, 208, 297
1948—Companies Act (11 & 12 Geo. 6, c. 38) . 1, 5, 8, 12, 57, 311, 342, 375, 376, 386, 444
s. 1 . . . 20, 23, 39
s. 2 . . . 13, 18, 64, 365, 367
s. 3 23
s. 4 . . . 23, 46, 55
s. 5 . 56, 59, 63, 225, 262
s. 6 . 13, 25, 89, 364, 367
s. 7 . . . . 364, 367
s. 7 (2) (3) 364
s. 8 . . . . 25, 27
s. 9 . . . . 14, 25
s. 10 . 26, 27, 35, 36, 57, 225
s. 11 . . . . 365, 367
s. 12 14
s. 13 . . 14, 41, 44, 57, 247
s. 14 . . . 57, 240, 365
s. 15 . . 14, 39, 252, 361
s. 16 . . . . 367, 368
s. 17 . . . . 18, 238
s. 18 . 18, 55, 57, 225, 239
s. 19 . 62, 239, 240, 241, 365
s. 20 . 27, 29, 30, 95, 98, 126, 134, 137
s. 21 365
s. 22 62
s. 23 . . 23, 56, 65, 72
s. 24 . . . 25, 58, 62
s. 25 62
s. 26 . . . . 31, 62
s. 27 93
s. 28 . 15, 23, 356, 357, 358, 361
s. 28 (1) (a) . . . 361
s. 29 358
s. 30 . . . . 196, 363
s. 30 (1) 358
s. 30 (3) 363
s. 30 (5) 396
s. 31 . . 43, 44, 58, 358
s. 32 . . 57, 244, 247, 252
s. 33 255
s. 34 . . . 57, 249, 446
s. 35 . . . . 249, 446
s. 36 222
s. 37 . . . 15, 333, 352
s. 38 . 15, 58, 69, 325, 326, 334, 336, 337, 338, 343, 344, 352, 353
s. 39 . . . 88, 337, 338
s. 40 . . . . 333, 341
s. 41 . . . 15, 58, 333
s. 42 . . 140, 337, 338, 354
s. 43 . 197, 334, 341, 347, 348, 349, 350, 352
s. 43 (2) 347
s. 43 (3) 341
s. 43 (4) 197
s. 44 196
s. 45 342
s. 46 . . . . 196, 336

1948—Companies Act—continued.
s. 47 . 15, 44, 58, 85, 86, 87, 105
s. 48 . . 16, 58, 84, 85, 86, 105, 353, 354, 356
s. 49 . . 86, 87, 105, 354
s. 50 . . . . . 15, 88
s. 51 . . . . . 44, 88
s. 52 . 58, 96, 126, 246, 252, 325, 361, 365
s. 53 . 57, 97, 330, 331, 357, 361, 367
s. 54 . . . . . 52, 367
s. 55 334
s. 56 . . . . 202, 208, 331
s. 57 . . . . . 52, 97
s. 58 . . . . . 57, 68
s. 59 . . . . . 198, 199
s. 60 . . . 57, 80, 225, 260
s. 61 . 55, 57, 64, 69, 70, 71, 72, 75
s. 62 . . . . 58, 68, 71, 75
s. 63 . . . . . 58, 71
s. 64 . . . . . 260, 368
s. 65 . . . . . 200, 208
s. 66 . 55, 57, 64, 73, 74, 76, 77, 225, 365, 367
s. 67 . . . . . 76, 79
s. 68 79
s. 69 79
s. 72 73
s. 73 . . . . . 64, 108
s. 74 . . . . . 64, 102, 120
s. 75 . 111, 118, 281, 304, 307
s. 76 118
s. 77 110
s. 78 122
s. 79 . . . . 117, 118, 251
s. 80 . . . . 58, 122, 273
s. 81 . . . . 122, 226, 247
s. 82 118
s. 83 . . . . 57, 120, 247
s. 84 121
s. 86 280
s. 87 280
s. 88 . . . . . 302, 303
s. 89 . . . . . 273, 301
s. 90 . . . . . 278, 308
s. 92 . . . . . 310, 329
s. 93 295
s. 94 . . . . . 309, 317
s. 95 . 58, 264, 267, 268, 269, 303, 306, 307, 331, 361, 365
s. 96 266
s. 97 . . . . . 266, 268
s. 98 . . . . . 266, 268
s. 100 267–269
s. 101 . . . . . 269, 307
s. 102 . . . . 271, 318
s. 103 292
s. 104 . 58, 232, 263, 264
s. 105 . . . . 58, 264
s. 106 448
s. 107 . . . 19, 58, 231
s. 108 . 56, 158, 231, 237, 238, 247, 256
s. 109 . 16, 17, 44, 58, 68, 140, 243, 244, 252, 264, 354, 361
s. 110 . 57, 58, 102, 232, 260, 365
s. 111 103
s. 112 120
s. 113 . . 58, 103, 104
s. 115 103
s. 116 . 91, 105, 106, 107
s. 117 . . 102, 103, 135, 136, 137
s. 118 . . . 104, 226
s. 119 57
s. 120 107
s. 123 107
s. 124 . 58, 100, 101, 120, 331, 361, 365, 367
s. 125 . . . 101, 367
s. 126 . . . 101, 252
s. 127 . . . 101, 361
s. 128 357
s. 129 . 100, 356, 358, 361
s. 130 . 58, 87, 139, 357
s. 131 . . 58, 141, 363
s. 132 . 142, 143, 361, 365
s. 133 . . . . 144, 145
s. 134 . 142, 148, 149, 150, 161
s. 135 . . . 144, 148
s. 136 . . . 153, 154
s. 137 . . . 152, 153
s. 138 152
s. 139 . 149, 151, 155, 368
s. 140 148
s. 141 . 26, 145, 147, 148, 149, 224, 226, 416
s. 142 146
s. 143 . 26, 58, 227, 365
s. 144 156
s. 145 . 173, 174, 233, 236
s. 146 . . . 232, 233
s. 147 . . . 209, 210
s. 148 . 167, 211, 212, 357
s. 149 . . 202, 210
ss. 150, 151, 152 . . . 210
s. 153 210
s. 154 . . . 210, 211
s. 155 210
s. 156 210
s. 157 209
s. 158 . 210, 212, 213, 357
s. 159 . . 58, 213, 361
ss. 159–162 . . . 58
s. 160 145
s. 161 216
s. 162 . . 215, 216, 219
ss. 164–175 . . 213–214
s. 166 214
ss. 169, 170 . . . 214
ss. 172, 173 . . . 103
s. 176 . . 157, 357, 362
s. 177 250
ss. 178, 179 . . . 250
s. 180 . 161, 173–174, 175
s. 181 . 15, 16, 24, 160, 162, 334, 356, 358, 363
s. 182 . 121, 164, 165, 361
s. 183 161
s. 184 . . . 145, 183
s. 185 . . . 145, 185
s. 186 185
s. 187 . . . 171, 173
s. 188 . . . 171, 185
s. 189 167
s. 190 . . . 169, 170
ss. 191, 192 . . . 176
s. 193 . . . 176, 177
s. 194 177

1948—Companies Act—*continued.*
s. 195 . . . **178**, 179
s. 196 . . . . **211**
s. 197 . . . 170, 219
s. 199 . . . . **178**
s. 200 58, **162**, 232, 250, 361, 365, 448
ss. 201, 204 162
s. 205 . . . **192**, 218
s. 206 . 55, 72, 80, 310, 389, 407, 420, 436, 437, **439**, 440, 441
s. 207 440
s. 208 441
s. 209 442
s. 210 . . 214, **229**, 379
s. 211 . . . . . **375**
s. 212 . 21, 95, 98, 111, 117, 367, 392, 393, 397
s. 213 . . 10, 392, 423
s. 215 423
s. 218 . . . 375, 376
s. 222 . 140, 358, **377**, 383
s. 223 377
s. 224 . 319, 358, 379, 380, 381, **382**, 405, 426, 433
s. 225 . . 140, **379**, 380, 385, 386
s. 226 . . 404, 406, 430
s. 227 116, 198, 386, 404, 405, **406**
s. 228 . . . 402, 432
s. 229 386
s. 230 387
s. 231 . 404, 405, 430, 434
ss. 233, 234 387
s. 235 . . . 387, 388
ss. 236, 237 388
ss. 238, 239 . . 387, 388
s. 240 . . . 388, 431
s. 242 . . 388, 391, 430
s. 243 . . . . . **432**
s. 244 . 389, 391, **432**, 449
s. 245 . 389, 391, 407, 419, **421**, 425, 431
ss. 248, 249 390
s. 251 . . . 414, 428
s. 252 . . . 391, 432
s. 253 . . 391, 392, 422
s. 255 407
s. 256 . . . . . **414**
s. 257 . . 91, 392, 423
s. 258 427
s. 259 . . . 397, 455
s. 260 393
s. 261 395
s. 264 396
s. 266 212
s. 268 . **412**, 414, 428, 496
s. 270 . . . **413**, 414
s. 273 398
s. 274 . . . 414, 415
s. 278 . . . . 379, 416
s. 279 416
s. 280 . . . 386, 416
s. 281 416
s. 282 116
s. 283 . . . . . **417**
s. 285 . . 131, 194, 418, 425, 429
s. 286 . 418, 425, 431, 436, **437**, 441, 449
s. 287 . 26, 419, 425, **431**, **436**, 437, 441, 449
s. 288 . . . . . **417**
ss. 289, 290 . . . . **418**
s. 291 417
s. 293 . . . **418**, 425
s. 294 . . . . . **418**
s. 295 . . . 419, 422
s. 296 . . 131, 194, 429
s. 297 . . . 419, 425
s. 298 419
s. 299 . . 417, 419, 425
s. 300 . . . 417, 419
s. 302 394
s. 303 . . 419, 421, 422, 423, **427**, 428, **429**, 431, 432
s. 304 . . . . . **428**
s. 305 . . . . . **418**
s. 306 . . **420**, 430, 442
s. 307 . . 406, 412, **420**, 422, 423, 426, 427, 428, 430, 431, 432, 434
s. 309 . . 423, 429
s. 310 . . **381**, 382, 407
ss. 311, 314 434
s. 315 435
s. 317 . . 303, 320, 395, 396, 402
s. 319 . . 309, **398**, 407
s. 320 . . **407**, 409, 442
s. 321 . . . 408, **409**
s. 322 . . . . . **297**
s. 323 . . . 390, 424
s. 325 . 390, 401, 405, 406
s. 326 . . . 405, 406
s. 329 . . . **196**, 252
s. 330 410
s. 331 211
s. 332 409
s. 333 . **195**, 218, **411**, 412, 424, 426, 431
s. 334 . . **195**, 414, 428
ss. 335, 336 388
s. 343 . . . 414, 420
s. 346 . 385, 407, 426, 434
s. 352 . . . 415, 433
s. 353 . . . **50**, 375
s. 354 . . . . **413**
ss. 355, 356 415
s. 359 401
s. 360 432
s. 362 . . . 425, 432
ss. 366, 367, 368 . . 313
s. 369 . . . **286**, 313
s. 370 . . . **285**, 313
ss. 371, 372, 373 . . 314
s. 374 . . **286**, 314, 318
s. 375 314
s. 378 376
s. 379 376
s. 382 . . . . 9, 17
ss. 384–394 17
s. 388 . . . . 17, 239
s. 395 . . . . 61, **62**
s. 398 . . . 376, 449
ss. 399, 400 449
s. 406 . . . . **443**, 449
s. 407 . . **443**, 449, 450
s. 408 449

1948—Companies Act—*continued.*
ss. 410, 411, 416 . . 448
ss. 417–425 . . . 449
s. 426 . . . 14, 89
s. 428 99
s. 429 373
s. 433 232
s. 434 373
s. 435 . . . 2, 6, 17
s. 436 233
s. 437 . 19, 170, 222, 223
s. 438 196
s. 439 . . . 18, 241
s. 440 . . 10, 71, 194
s. 441 196
s. 447 387
s. 448 . . 192, 193, 195
s. 454 . . . 13, 210
s. 455 . 9, 10, 25, 157, 193, 216, 222, 252, 273, 333, 337, 376
s. 456 352
s. 459 . . 7, 10, 20, 25
Schedule I . 13, 18, 23, 25, 27, 34, 47, 108, 119, 125, 127, 129, 141, 361, 365–367
Schedule III . . . 363
Schedule IV . 325, 326, 331, 336, 338–341, 348, 350, 352, 353
Schedule V 16, 18, 331, 354
Schedule VI . 100, 101, 190, 331, 356, 357
Schedule VII . . . 356
Schedule VIII . . 58, 202, 210, 331
Schedule IX . 216, 219, 220
Schedule XII . . 14, 365, 366, 367
Schedule XIV . . . 17
Schedule XV . . . 196
Schedule XVI . . . 352
1948—Industrial Insurance and Friendly Societies Act (11 & 12 Geo. 6, c. 39) . . 6, 7

TABLE OF CASES

A Company, *Re* [1894] 2 Ch. 349; 63 L.J.Ch. 565; 71 L.T. 15; 42 W.R. 585; 1 Mans. 151 (under name of Coy.) 384
Al Biscuit Co., *Re* [1899] W.N. 115; 43 S.J. 657 166
Aaron's Reefs *v.* Twiss [1896] A.C. 273; 65 L.J.P.C. 54; 74 L.T. 794; 44 W.R. Dig. 30 . . . . . 182, 335, 347
Abbott (J. W.) & Co., *Re*, Abbott *v.* J. W. Abbott & Co. [1913] W.N. 284; 30 T.L.R. 13 317
Aberdeen Ry. *v.* Blaikie Bros. (1854) 1 Macq.(H.L.) 461; 2 Eq.Reps. Part II, 1281; 23 L.T.(o.s.) 315 175
Abrahams (S.) & Sons, *Re* [1902] 1 Ch. 695; 71 L.J.Ch. 307; 86 L.T. 290; 50 W.R. 284; 18 T.L.R. 336 270
Abrath *v.* N. E. Ry. (1886) L.R. 11 App.Cas. 247; 55 L.J.Q.B. 457; 55 L.T. 63; 34 W.R.Dig. 115; 2 T.L.R. 416 56
Accidental and Marine Insurance Corporation, *Re*. *See* Bridger's Case; Neill's Case.
Ackerman *v.* Lockhart, *Re* Hawkes [1898] 2 Ch. 1; 67 L.J.Ch. 284; 78 L.T. 336; 46 W.R. 445 212
Adam Eyton, *Re* (1887) 36 Ch.D. 299 429
Adams *v.* Morgan & Co., Ltd. (1924) 40 T.L.R. 70 458
—— *v.* Thrift [1915] 2 Ch. 21; 84 L.J.Ch. 729; 113 L.T. 569 349
Adamson's Case, Paraguassu Steam Tramway Co., *Re* (1874) L.R. 18 Eq. 670; 44 L.J.Ch. 125; 22 W.R. 820 178
Addinell's Case, Leeds Banking Co., *Re* (1865) L.R. 1 Eq. 225; 35 L.J.Ch. 75; 13 L.T. 456; 14 W.R. 72; 11 Jur.(N.S.) 965 88
Addis *v.* Gramophone Co. [1909] A.C. 488; 78 L.J.K.B. 1122; 101 L.T. 466 . . 253
Addlestone Linoleum Co., *Re* (1887) 37 Ch.D. 191; 57 L.J.Ch. 249; 58 L.T. 428; 36 W.R. 57, 227; 4 T.L.R. 140 99
Adelaide Electric Co. *v.* Prudential Assurance Co. [1934] A.C. 122; [1934] W.N. 3; 103 L.J.Ch. 85; 150 L.T. 281; 39 Com.Cas. 119; 50 T.L.R. 147 . 207, 287
Adler (William) & Co., *Re* [1935] 1 Ch. 138; [1934] W.N. 231; 104 L.J.Ch. 58; [1934] B. & C.R. 150; 152 L.T. 251 423
Ador, *Ex p.*, Browne and Wingrove, *Re* [1891] 2 Q.B. 574; 61 L.J.Q.B. 15; 65 L.T. 485; 40 W.R. 71; 8 Morr. 264; 7 T.L.R. 747 404
African Association and Allen, *Re* [1910] 1 K.B. 396; 79 L.J.K.B. 259; 102 L.T. 129; 26 T.L.R. 234 253
African Gold Concessions, etc., Co., *Re*. *See* Markham and Darter's Case.
Agency, Land and Finance Co. of, Australia, *Re* Bosanquet *v.* The Company (1908) 20 T.L.R. 41 . . . . . 131, 260
Aggs *v.* Nicholson (1856) 1 H. & N.Exch.Reps. 165; 25 L.J.Ex. 348; 28 L.T.(o.s.) 66; 4 W.R. 776 185
Agra and Masterman's Bank, *Re*, Asiatic Banking Corporation, *ex p.* (1867) L.R. 2 Ch.App. 391; 36 L.J.Ch. 222; 16 L.T. 162; 15 W.R. 414 . . . . 282, 291
Agricultural Wholesale Society, *Re* [1929] 2 Ch. 261; [1929] W.N. 122; 45 T.L.R. 467; 98 L.J.Ch. 396; 141 L.T. 551 391
Agriculturist Cattle Insurance Co., *Re*. *See* (1870) Baird's Case, and (1865) Stanhope's Case.
Aidall, Ltd., *Re* [1933] 1 Ch. 323; 102 L.J.Ch. 150; 148 L.T. 233; [1933] B. & C.R. 56 . . . . . 391, 455
Airdale Co-operative Society, *Re* [1933] 1 Ch. 639; [1933] W.N. 100; 149 L.T. 92; 49 T.L.R. 365; 102 L.J.Ch. 229; [1933] B. & C.R. 114 262
Alabama, New Orleans, Texas and Pacific Ry., *Re* [1891] 1 Ch. 213; 60 L.J.Ch. 221; 64 L.T. 127; 39 W.R.Dig. 49; 2 Meg. 377; 7 T.L.R. 171 . . . 439, 440
Albert Road, Norwood (Nos. 56 and 58), *Re* [1916] 1 Ch. 289; 85 L.J.Ch. 187; 114 L.T. 357. (*See* 12th edit. 447.)
Albion Steel and Wire Co., *Re* (1878) 7 Ch.D. 547; 47 L.J.Ch. 229; 38 L.T. 207; 26 W.R. 348 396
Albion Steel and Wire Co. *v.* Martin (1875) 1 Ch.D. 580; 45 L.J.Ch. 173; 33 L.T. 660; 24 W.R. 134 175
Alderson *v.* Maddison (1883) 8 App.Cas. 467 (H.L.(E.)); 52 L.J.Q.B. 737; 49 L.T. 303; 31 W.R. 820; 47 J.P. 821 347
Alexander Drew & Co., *Re* [1935] 1 Ch. 93; [1934] W.N. 226; 104 L.J.Ch. 76; 51 T.L.R. 113; 152 L.T. 281; [1934-35] B. & C.R. 230 455
Alexander *v.* Automatic Telephone Co. [1900] 2 Ch. 56; 69 L.J.Ch. 428; 82 L.T. 400; 48 W.R. 546; 16 T.L.R. 339; 44 S.J. 372, 407 . 82, 125, 126, 172, 191
—— *v.* Simpson (1889) 43 Ch.D. 139; 59 L.J.Ch. 137; 61 L.T. 708; 38 W.R. 161; 1 Meg. 457; 6 T.L.R. 72 . . . . . 146, 147

Alexandra Palace Co., *Re* (1882) 21 Ch.D. 149; 51 L.J.Ch. 655; 46 L.T. 730; 30 W.R. 771 . . . . . 191, 197, 208
Alfred Melson & Co., *Re* [1906] 1 Ch. 841; 75 L.J.Ch. 509; 94 L.T. 641; 54 W.R. 468; 22 T.L.R. 500; 13 Mans. 190 380
Alison's Case. *See* **Campbell's Case.**
Allen, Craig & Co. (London), Ltd. [1934] 1 Ch. 483; [1934] W.N. 68; 103 L.J.Ch. 193; 50 T.L.R. 301; 151 L.T. 323 216
Allen *v.* **Gold Reefs of West Africa** [1900] 1 Ch. 656; 69 L.J.Ch. 266; 82 L.T. 210; 48 W.R. 452; 16 T.L.R. 213; 7 Mans. 417 . 35, 72, 130, 134, 145, 146, 222
—— *v.* **Hyatt** (1914), 30 T. L. R. 444 160
Alliance Film Corporation *v.* **Knoles** (1927) 43 T.L.R. 678 397
Alliance Marine Assurance, *Re* [1892] 1 Ch. 300; 61 L.J.Ch. 176; 65 L.T. 554; 40 W.R. 329 60
Allsopp & Sons, *Re* (1903) 51 W.R. 644; 19 T.L.R. 637; 47 S.J. 638, 684, 709 (C.A.) 77
Alma Spinning Co., *Re*, Bottomley's Case (1880) 16 Ch.D. 681; 50 L.J.Ch. 167; 43 L.T. 620; 29 W.R. 133 163
Alsbury, *Re*, Sugden *v.* Alsbury (1890) 45 Ch.D. 237; 60 L.J.Ch. 29; 63 L.T. 576; 39 W.R. 136; 2 Meg. 346 . . . . . 206, 453
Amalgamated Properties of Rhodesia, *Re* (1914) 30 T.L.R. 405 . . . . 391, 429
Amalgamated Properties of Rhodesia (1913), Ltd., *Re* [1917] 2 Ch. 115; 86 L.J.Ch. 530; 33 T.L.R. 414 380
Amalgamated Syndicates, *Re* [1897] 2 Ch. 600; 66 L.J.Ch. 783; 77 L.T. 431; 46 W.R. 75; 4 Mans. 308 54
Amalgamated Syndicates, Ltd., *Re* [1901] 2 Ch. 181 430
Ambergate, etc., Eastern Junction Ry. *v.* **Norcliffe** (1851) 6 Exch.Reps. 629; 20 L.J.(N.S.)Exch. 234 127
American Pastoral Co., *Re* (1890) 62 L.T. 625; 38 W.R.Dig. 32; 2 Meg. 80 . . 77
American Pioneer Leather Co., *Re* [1918] 1 Ch. 556; 87 L.J.Ch. 493; 118 L.T. 695 378
Ammonia Soda Co. *v.* **Chamberlain** [1918] 1 Ch. 266; 87 L.J.Ch. 193; 118 L.T. 48; 34 T.L.R. 60 . . . . . 200, 202
Amor *v.* **Fearon** (1839) 9 Ad. & El. 548; 8 L.J.Q.B. 95 253
Anderson's Case, 7 Ch.D. 75 26
Anderson's Case, Scottish Petroleum Co., *Re* (1881) 17 Ch.D. 373; 50 L.J.Ch. 269; 43 L.T. 723; 29 W.R. 372 . . . . . 106, 346
Andreae *v.* **Zinc Mines of Great Britain, Ltd.**, [1918] 2 K.B. 454; 87 L.J.K.B. 1019; 34 T.L.R. 488 331
Andrew *v.* **Thomas.** *See* Thomas, *Re*.
Andrews and Alexander's Case. *See* London Marine Insurance Association, *Re*.
Andrews *v.* **Brown and Gregory, Brown and Gregory, Ltd.**, *Re* [1904] 1 Ch. 627; 73 L.J.Ch. 430; 52 W.R. 412; 11 Mans. 218; on appeal, [1904] 2 Ch. 448; 73 L.J.Ch. 770; 11 Mans. 402 283
—— *v.* **Gas Meter Co.** [1897] 1 Ch. 361; 66 L.J.Ch. 246; 76 L.T. 132; 45 W.R. 321; 13 T.L.R. 199 . . . . . 35, 65, 70, 71, 72, 199
—— *v.* **Mockford** [1896] 1 Q.B. 372, 378; 65 L.J.Q.B. 302; 73 L.T. 726; 44 W.R. Dig. 30; 12 T.L.R. 139 348
Anglo-American Telegraph Co., *Re* [1911] W.N. 248; 105 L.T. 947; 56 S.J. 141 . 61
Anglo-Austrian Printing and Publishing Union, *Re*, Bradbourne *v.* Same [1895] 2 Ch. 891; 65 L.J.Ch. 38; 73 L.T. 442; 44 W.R. 186; 2 Mans. 614; 12 T.L.R. 39 423
Anglo-Austrian Printing and Publishing Union. *See* **Isaac's Case.**
Anglo-Baltic and Mediterranean Bank *v.* **Barber & Co.** [1924] 2 K.B. 410; 93 L.J. K.B. 1135; 132 L.T. 1; [1924] B. & C.R. 224 405
Anglo-Canadian Lands (1912), Ltd., *Re*, Park *v.* The Company [1918] 2 Ch. 287; 87 L.J.Ch. 592; 119 L.T. 366 303
Anglo-Continental Corporation of Western Australia, *Re*, [1898] 1 Ch. 327; 67 L.J.Ch. 179; 78 L.T. 157; 46 W.R. 413; 14 T.L.R. 218 394
Anglo-Continental Supply Co., *Re* [1922] 2 Ch. 723; 91 L.J.Ch. 658; 128 L.T. 59; 66 S.J. 710 . . . . . 437, 441
Anglo-Danubian Steam Navigation and Colliery Co., *Re* (1875) L.R. 20 Eq. 339; 44 L.J.Ch. 502; 33 L.T. 118; 23 W.R. 783 . . . . . 172, 259, 305
Anglo-French Co-operative Society, *Re*, Pelly, *ex p.* (1882) 21 Ch.D. 492; 47 L.T. 638; 31 W.R. 177 . . . . . 192, 197
Anglo-French Exploration Co., *Re* [1902] 2 Ch. 845; 71 L.J.Ch. 800; 51 W.R. 8; 18 T.L.R. 750; 9 Mans. 432 77
Anglo-French Music Co., Ltd. *v.* **Nicoll** [1921] 1 Ch. 386; 90 L.J.Ch. 183; 124 L.T. 592 67
Anglo-International Bank [1943] Ch. 233; 112 L.J.Ch. 305; 169 L.T. 82; 59 T.L.R. 312 222
Anglo-Italian Bank *v.* **Davies** (1878) 9 Ch.D. 275; 47 L.J.Ch. 833; 39 L.T. 244; 27 W.R. 3 401
Anglo-Moravian-Hungarian Junction Ry., *Re*. *See* **Forbes' Case; Dent's Case.**
Anglo-Moravian, etc., Ry., *Ex p.* Watkin (1875) 1 Ch. D. 130, 136 423

Anglo-Oriental Carpet Manufacturing Co., *Re* [1908] 1 Ch. 914; 72 L.J.Ch. 458; 88 L.J. 391; 51 W.R. 634; 10 Mans. 207 270
Anson's Settlement, *Re*, Lovelace (Earl of) *v.* Anson [1907] 2 Ch. 424; 76 L.J.Ch. 641; 97 L.T. 472 206
Anstis and McLeans' Claims. *See* National Motor Mail Coach Co., *Re*.
Anthony *v.* Seger (1789) 1 Hagg.Consist.Reps. 9 152
Antofagasta (Chili) and Bolivia Ry. Co.'s Trust Deed [1939] Ch. 782; 55 T.L.R. 642; 100 L.T. 571; 108 L.J.Ch. 314 306
Antwerp Waterworks Co., *Re*, [1931] W. N. 186 79
Appleton, French and Scrafton, Ltd., *Re* [1905] 1 Ch. 749; 74 L.J.Ch. 471; 93 L.T. 8; 53 W.R. 601; 12 Mans. 335 414
Appleyard *v.* New London and Suburban Omnibus Co., New London and Suburban Omnibus Co., *Re* [1908] 1 Ch. 621; 77 L.J.Ch. 358; 98 L.T. 663; 15 Mans. 154 267
Aramayo Francke Mines *v.* Public Trustee [1922] 2 A.C. 406; 91 L.J.Ch. 643; 127 L.T. 661; 38 T.L.R. 756; 66 S.J. 611 199
Archer's Case (1901). *See* London and Northern Bank, *Re*, and Archer's Case (1892) North Australian Territory Co., *Re* [1892] 1 Ch. 322; 61 L.J.Ch. 129; 65 L.T. 800; 40 W.R. 212; 8 T.L.R. 90 . . . . . 164, 165, 166, 191
Argus Life Assurance Co., *Re* (1888) 39 Ch.D. 571; 58 L.J.Ch. 166; 59 L.T. 689; 37 W.R. 215; 4 T.L.R. 746 . . . . . 31, 32, 36
Argylls, Ltd. *v.* Coxeter (1913) 29 T.L.R. 355 395
Arkwright *v.* Newbold (1881) 17 Ch.D. 301, 322; 50 L.J.Ch. 372; 44 L.T. 393; 29 W.R. 455 . . . . . 347, 351
Armitage *v.* Garnett, Armitage, *Re* [1893] 3 Ch. 337; 63 L.J.Ch. 110; 69 L.T. 619; 7 R. 290; 9 T.L.R. 630 206
Armorduct Manufacturing Co. *v.* General Incandescent Co. [1911] 2 K.B. 143; 80 L.J.K.B. 1005; 104 L.T. 805; 18 Mans. 292 . . . . . 406, 432
Armour *v.* Corporation of Liverpool [1939] Ch. 422 374
Armstrong Whitworth Securities, Ltd. [1947] Ch. 678; [1947] 2 All E.R. 479 . 389, 424
Army and Navy Hotel, *Re* (1886) 31 Ch. D. 644; 55 L.J.Ch. 870; 34 W.R. 389; 2 T.L.R. 349 384
Army and Navy and Civil Service Co-operative Society of India *v.* Craig (1892) 8 T.L.R. 227 351
Arnison *v.* Smith (No. 1) (1889) 40 Ch.D. 567; 58 L.J.Ch. 335; 60 L.T. 206; 37 W.R. 405 346
—— *v.* —— (No. 2) (1889) 41 Ch.D. 348, 372; 61 L.T. 63, 66; 37 W.R. 789; 1 Meg. 388; 5 T. L. R. 413 346
Arnot *v.* United African Lands, Ltd. [1901] 1 Ch. 518; 70 L.J.Ch. 306; 84 L.T. 309; 49 W.R. 322; 8 Mans. 179; 17 T.L.R. 245 . . . . . 149, 226
Arnot's Case, Barangah Oil Refining Co., *Re* (1887) 36 Ch.D. 702; 57 L.J.Ch. 195; 57 L.T. 353; 36 W.R.Dig. 34; 3 T.L.R. 727 91
Arthur Average Association for British, etc., Ships, *Re*, Hargrove, *ex p.* (1875) L.R. 10 Ch.App. 542; 44 L.J.Ch. 569; 32 L.T. 525; 23 W.R. 939 . . . 240
Artizans' Land and Mortgage Corporation, *Re* [1904] 1 Ch. 796; 73 L.J.Ch. 581; 52 W.R. 330 . . . . . 76, 206
Artistic Colour Printing Co., *Re* (1880) 14 Ch.D. 502; 49 L.J.Ch. 526; 42 L.T. 802; 28 W.R. 943 . . . . . 405, 430
Ashbury Railway Carriage and Iron Co. *v.* Riche (1875) L.R. 7 H.L. 653; 44 L.J. Exch. 185; 33 L.T. 450; 24 W.R. 794 . . . 26, 46, 47, 49, 53, 55, 147, 160
Ashbury *v.* Watson (1885) 30 Ch.D. 376; 54 L.J.Ch. 985; 54 L.T. 27; 33 W.R. 882; 1 T.L.R. 639 . . . . . 26, 65, 199
Ashby, Warner & Co. *v.* Simmons [1936] W.N. 212; 52 T.L.R. 613; 155 L.T. 371 267
Ashley's Case, Estates Investment Co., *Re* (1870) L.R. 9 Eq. 263; 39 L.J.Ch. 354; 22 L.T. 83; 18 W.R. 395 344
Ashley and Smith, Ltd., *Re*, Ashley *v.* The Company [1918] 2 Ch. 378; 88 L.J.Ch. 7; 119 L.T. 674; 34 T.L.R. 585 401
Ashurst *v.* Mason (1875) L.R. 20 Eq. 225; 44 L.J.Ch. 337; 23 W.R. 506 . 197, 234
Ashworth *v.* Drummond. *See* Drummond, *Re*.
Ashworth's Claim. *See* Owen and Ashworth's Claim.
Asiatic Banking Corporation, *Ex p.* (1867). *See* Agra and Masterman's Bank, *Re*.
Asiatic Banking Corporation, *Re* (1870). *See* Symon's Case.
Asphaltic Wood Pavement Co., *Re*, Copland, *ex p.* (1888) 49 L.T. 159; 32 W.R. 16 308
Assets Co. *v.* Forbes (Surveyor of Taxes) (1897) 24 Sc.Ct. of Sess. (4th ser.) 578; 34 Sc.L.R. 486; 3 Tax Cas. 542 452
Astley *v.* New Tivoli Co. [1899] 1 Ch. 151; 68 L.J.Ch. 90; 79 L.T. 541; 47 W.R. 326; 6 Mans. 64 171
Athenæum Life Assurance Society, *Re*. *See* Richmond's Case.
Athenæum Life Assurance Society *v.* Pooley (1858) 3 De G. & J. 294; 1 Giff. 102; 28 L.J.Ch. 119; 32 L.T.(o.s.) 247; 7 W.R. 167; 5 Jur.(n.s.) 129 . . 282
Atkin & Co. *v.* Wardle (1889) 58 L.J.Q.B. 377; 61 L.T. 23; 38 W.R.Dig. 84; on appeal (1889) 5 T.L.R. 734 . . . . . 237, 256

Atlantic and Pacific Fibre Importing and Manufacturing Co., *Re*, Burnham (Lord) *v.* The Company [1928] Ch. 836; 97 L.J.Ch. 369; 140 L.T. 18; 44 T.L.R. 702; 72 S.J. 598 284
Att.-Gen., *Ex p.* *See* Higginson and Dean, *Re*.
Att.-Gen. *v.* Ashton Gas Co. [1906] A.C. 10; 75 L.J.Ch. 1; 93 L.T. 676; 54 W.R. Dig. 59; 22 T. L. R. 82 453
—— *v.* Davy (1741) 2 Atk. 212 228
—— *v.* G.E. Ry. (1880) L.R. 5 App.Cas. 473; 49 L.J.Ch. 545; 42 L.T. 810; 28 W.R. 769 47
—— *v.* G.N. Ry. (1860) 1 Dr. & Sm. 154; 2 L.T. 653; 8 W.R. 556; 6 Jur.(N.S.) 1006 51
—— *v.* Jameson [1904] 2 Ir.R. 644 362
—— *v.* Manchester Corporation [1906] 1 Ch. 643; 75 L.J.Ch. 330; 54 W.R. 307; 22 T.L.R. 261 51
—— *v.* New York Breweries Co. [1898] 1 Q.B. 205; 67 L.J.Q.B. 86; 78 L.T. 61; 46 W.R. 198; 62 J.P. 132; 14 T.L.R. 119; affirmed on appeal [1899] A.C. 62; 68 L.J.Q.B. 135; 79 L.T. 568; 48 W.R. 32; 63 J.P. 179; 15 T.L.R. 94 119
—— *v.* North-Eastern Ry. [1906] 2 Ch. 675; 76 L.J.Ch. 5; 95 L.T. 512; 22 T.L.R. 695 51
——, Robson *v.* *See* Customs and Excise, etc., Fund, *Re*.
Attwood *v.* Munnings (1827) 7 B. & C. 278; 1 Man. & Ry. 66; 6 L.J. (O.S.) K.B. 9; 31 R.R. 194 446
Atwool *v.* Merryweather (1868) L.R. 5 Eq. 464, n.; 37 L.J.Ch. 35 37
Auriferous Properties, Ltd., *Re* [1898] 1 Ch. 691; 67 L.J.Ch. 367; 79 L.T. 71; 46 W.R.Dig. 34; 14 T.L.R. 390 397
Austin's Case, Phosphate of Lime Co., *Re* (1871) 24 L.T. 932; 19 W.R.Ch.Dig. 54–55 127
Australian Auxiliary Steam Clipper Co. *v.* Mounsey (1858) 4 K. & J. 733; 27 L.J. Ch. 729; 31 L.T.(O.S.) 246; 6 W.R. 734; 4 Jur.(N.S.) 1224 259
Australian Estates and Mortgage, etc., Co., *Re* [1910] 1 Ch. 414; 79 L.J.Ch. 202; 102 L.T. 458 80
Australian Joint Stock Bank, *Re* [1897] W.N. 48 378
Automatic Bottle Makers, *Re*, Osborne *v.* Automatic Bottle Makers [1926] Ch. 412; 95 L.J.Ch. 185; 134 L.T. 517; 70 S.J. 402 279
Automatic Self-Cleansing Filter Syndicate Co. *v.* Cuninghame [1906] 2 Ch. 34; 75 L.J.Ch. 437; 94 L.T. 651; 22 T.L.R. 378 178
Auto-Piano Co. *v.* Kastner & Co. *See* Kastner & Co., *Re*.

BADMAN, *Ex p.* *See* Portuguese Consolidated Copper Mines, *Re*.
Baelz *v.* Public Trustee [1926] Ch. 863; 95 L.J.Ch. 400; 135 L.T. 763; 42 T.L.R. 696; 70 S.J. 818 231
Baglan Hall Colliery Co., *Re* (1870) L.R. 5 Ch.App. 346; 39 L.J.Ch. 591; 23 L.T. 60; 18 W.R. 499 . . . . . 55, 96
Bagnall *v.* Carlton (1877) 6 Ch.D. 371; 47 L.J.Ch. 30; 37 L.T. 481; 26 W.R. 243 323
Bagot Pneumatic Tyre Co. *v.* Clipper Pneumatic Tyre Co. [1902] 1 Ch. 146; 71 L.J.Ch. 158; 85 L.T. 652; 50 W.R. 177; 9 Mans. 56; 19 R.P.C. 69; 18 T.L.R. 161 243
Bahia and San Francisco Ry., *Re* (1868) L.R. 3 Q.B. 584; 37 L.J.Q.B. 176; 18 L.T. 467; 16 W.R. 862; 9 B. & S. 844 . . . . . 91, 106, 108, 115, 123
Bailey *v.* Sweeting (1861) 9 C.B.(N.S.) 843; 30 L.J.C.P. 150; 9 W.R. 273 . . 246
Baillie *v.* Oriental Telephone and Electric Co. [1915] 1 Ch. 503; 84 L.J.Ch. 409; 112 L.T. 569; 31 T.L.R. 140 . . . . . 146, 155, 230
Baillie's Case, International Society of Auctioneers and Valuers, *Re* [1898] 1 Ch. 110; 67 L.J.Ch. 81; 77 L.T. 523; 46 W.R. 187; 4 Mans. 393 105
Baily *v.* British Equitable Assurance Co. [1906] A.C. 35; 75 L.J.Ch. 73; 94 L.T. 1; 22 T.L.R. 152; 13 Mans. 13 . . . . . 31, 37
Bainbridge *v.* Smith (1889) 41 Ch.D. 462; 60 L.T. 879; 37 W.R. 594; 5 T.L.R. 375 28, 183, 252
Baird's Case, Agriculturist Cattle Insurance Co., *Re* (1870) L.R. 5 Ch.App. 725; 23 L.T. 454; 18 W.R. 1094 . . . . . 118, 295
Balaghât Gold Mining Co., *Re* [1901] 2 K.B. 665; 70 L.J.K.B. 866; 85 L.T. 8; 49 W.R. 625 (C.A.); 17 T.L.R. 660 . . . . . 103, 212
Balkis Consolidated Co., *Re* [1888] W.N. 8; 58 L.T. 300; 36 W.R. 392; 4 T.L.R. 204 112
—— *v.* Tomkinson [1893] A.C. 396; 63 L.J.Q.B. 134; 69 L.T. 598; 42 W.R. 204; 9 T.L.R. 597; 1 R. 178; 37 S.J. 729 (H.L.(E.)) 115, 124
Bamford, *Re* [1910] 1 Ir.R. 390 383
Bangor and Portmadoc Slate and Slab Co., *Re* (1875) L.R. 20 Eq. 59; 32 L.T. 389; 23 W.R. 785 67

Bank of Africa *v.* **Salisbury Gold Mining Co.** [1892] A.C. 281; 61 L.J.P.C. 34; 66 L.T. 237; 41 W.R. 47; 8 T.L.R. 322 134
Bank of Egypt, Ltd., *Re* [1913] 1 Ir.R. 502 199
Bank of England *v.* **Vagliano** [1891] A.C. 107, 144; 60 L.J.Q.B. 145; 64 L.T. 353; 39 W.R. 657; 55 J.P. 676 11
Bank of Gibraltar and Malta, *Re* (1865) L.R. 1 Ch.App. 69; 35 L.J.Ch. 49; 13 L.T. 386; 14 W.R. 69; 11 Jur.(N.S.) 916 382
Bank of Hindustan, China and Japan, *Re* (1873). *See* Campbell's Case.
——, *Re* (1865). *See* Higgs' Case.
——, *Re* (1871). *See* Rogers' Case.
Bank of Ireland *v.* **Evans' Charity Trustees in Ireland** (1855), 5 H.L.C.(Clark) 389; 25 L.T.(O.S.) 272; 3 W.R. 573 248
Bank of London and National Provident Insurance Association, *Re*. *See* Muggeridge, *Re*.
Bank of South Australia (No. 2), *Re* [1895] 1 Ch. 578; 64 L.J.Ch. 397; 72 L.T. 273; 43 W.R. 359; 12 R. 166; 2 Mans. 129 . . . . . 376, 421
Bank of Syria, *Re*, Owen and Ashworth's Claim; Whitworth's Claim [1901] 1 Ch. 115; 70 L.J.Ch. 82; 83 L.T. 547; 49 W.R. 100; 8 Mans. 105; 17 T.L.R. 84 163, 179, 180
Bannatyne *v.* **Direct Spanish Telegraph Co.** (1886) 34 Ch.D. 287; 56 L.J.Ch. 107; 55 L.T. 716; 35 W.R. 125; 3 T.L.R. 104 77
Barangah Oil Refining Co., *Re*. *See* Arnot's Case.
Banque Belge pour L'Etranger *v.* **Hambrouck** [1921] 1 K.B. 321 410
Bargate *v.* **Shortridge** (1855) 5 H.L.Cas.(Clark) 297; 24 L.J.Ch. 457; 3 W.R. 423; 1 Jur.(N.S.)Dig. 181 38
Baring Gould *v.* **Sharpington Combined Pick and Shovel Syndicate** [1899] 2 Ch. 80; 68 L.J.Ch. 429; 80 L.T. 739; 47 W.R. 564 . . . . . 26, 437
Barker *v.* **Ivimey**. *See* Turner, *Re*.
Barker's Case. *See* Chapman and Barker's Case.
Barned's Bank, *Re*. *See* Helbert *v.* Banner.
Barned's Banking Co., *Re* (1866) 14 L.T. 451; 14 W.R. 722 434
——, *Re*, Peel's Case (1867). *See* Peel's Case.
——, *Re*, Kellock's Case (1868). *See* Kellock's Case.
——, *Re*, The Contract Corporation, *ex p.* (1867) L.R. 3 Ch.App. 105; 37 L.J.Ch. 81; 17 L.T. 269; 16 W.R. 193 . . . . . 48, 93, 246
Barnes, G. S., *Ex p.* [1896] A.C. 146; 65 L.J.Ch. 394; 74 L.T. 153; 44 W.R. 433; 12 T.L.R. 239; 3 Mans. 63 (*sub nom.* English and Scottish Mercantile Investment Trust, *Re*) 413
Barnett, Hoares & Co. *v.* **South London Tramways Co.** (1887) 18 Q.B.D. 815; 56 L.J.Q.B. 452; 57 L.T. 436; 35 W.R. 640; 3 T.L.R. 611 251
Baroness Wenlock *v.* **River Dee Co. (No. 2)** (1887) 19 Q.B.D. 155; 56 L.J.Q.B. 589; 57 L.T. 320; 35 W.R. 822; 3 T.L.R. 603 262
Barrett, *Ex p.* *See* Leeds Banking Co., *Re*.
Barrett's Case, Moseley Green Coal and Coke Co., *Re* (1864) 4 De G. J. & S. 416; 33 L.J.Ch. 617; 10 L.T. 594; 12 W.R. 925; 10 Jur.(N.S.) 711 88
Barron *v.* **Potter, British Seagumite Co.,** *Re* [1914] 1 Ch. 895; 83 L.J.Ch. 646; 110 L.T. 929; 30 T.L.R. 401; 58 S.J. 516 161
Barrow Hæmatite Steel Co., *Re* (1888) 39 Ch.D. 582; 58 L.J.Ch. 148; 59 L.T. 500; 37 W.R. 249; 4 T.L.R. 775 . . . . . 32, 36, 77, 79
——, *Re* [1901] 2 Ch. 746; 71 L.J.Ch. 15; 85 L.T. 593; 50 W.R. 71; 18 T.L.R. 9; 9 Mans. 35 79
Barrow *v.* **Paringha Mines (1909), Ltd.** [1909] 2 Ch. 658; 78 L.J.Ch. 728; 101 L.T. 346 351
Barrow's Case (No. 2), Stapleford Colliery Co., *Re* (1880) 49 L.J.Ch. 253 (*sub nom.* Chatteris, *Ex p.*); 42 L.T. 12; 28 W.R. 341 252
Barry and Staines Linoleum, Re [1924] Ch. 227; 103 L.J.Ch. 113; 150 L.T. 254 . 165
Bartlett *v.* **Mayfair Property Co., Mayfair Property Co.,** *Re* [1898] 2 Ch. 28; 67 L.J.Ch. 337; 78 L.T. 202; 46 W.R. 465; 14 T.L.R. 336; 5 Mans. 126 . . 260
Barton *v.* **L. & N.W. Ry.** (1888) 38 Ch.D. 144; 57 L.J.Ch. 676; 59 L.T. 122; 36 W.R. 452; 4 T.L.R. 420 . . . . . 115, 123
—— *v.* —— (1889) 24 Q.B.D. 77; 59 L.J.Q.B. 33; 62 L.T. 164; 38 W.R. 197; 6 T.L.R. 70 . . . . . 91, 112, 119
—— *v.* **North Staffordshire Ry.** (1888) 38 Ch.D. 458; 57 L.J.Ch. 800; 58 L.T. 549; 36 W.R. 754; 4 T.L.R. 403 119
Barton's (Ezekiel) Trust, *Re* (1868) L.R. 5 Eq. 238; 37 L.J.Ch. 194; 17 L.T. 594; 16 W.R. 392 206
Barton-upon-Humber and District Water Co., *Re* (1889) 42 Ch.D. 585; 58 L.J.Ch. 613; 61 L.T. 368; 38 W.R. 8 376
Barwick *v.* **English Joint Stock Bank** (1867) L.R. 2 Ex. 259; 36 L.J.Ex. 147; 16 L.T. 461; 15 W.R. 877 . . . . . 56, 57
Bassford, Jackson and, *Re*. See Jackson and Bassford, *Re*.

Baster *v.* London and County Printing Works [1899] 1 Q.B. 901; 68 L.J.Q.B. 622; 80 L.T. 757; 47 W.R. 639; 63 J.P. 439; 15 T.L.R. 331 253
Bateman *v.* Mid-Wales Ry. (1866) L.R. 1 C.P. Cas. 499; 35 L.J.C.P. 205; 14 W.R. 672; 12 Jur.(N.S.) 453; Har. & Ruth. Reps. 508 255
Bates, *Re,* Mountain *v.* Bates [1928] Ch. 682; 97 L.J.Ch. 240; 139 L.T. 162 . 206, 207
Bath *v.* Standard Land Co. [1911] 1 Ch. 618; 80 L.J.Ch. 426; 104 L.T. 867; 27 T.L.R. 393; 55 S.J. 482; 18 Mans. 258 178
Bath's Case, Norwich Provident Insurance Society, *Re* (1878) 8 Ch.D. 334; 47 L.J.Ch. 601; 38 L.T. 267; 26 W.R. 441 . . . . . 47, 50
Bayley and Hanbury, *Ex p. See* London Celluloid Co., *Re.*
Baylis, *Ex p. See* European Banking Co., *Re.*
Beattie *v.* Beattie [1938] Ch. 708; 159 L.T. 220; 54 T.L.R. 964; 107 L.J.Ch. 333 80
—— *v.* Ebury (Lord) (1874) L.R. 7 H.L. (E. & Ir.App.) 102; 44 L.J.Ch. 20; 30 L.T. 581; 22 W.R. 897 . . . . . 263, 347
Bechuanaland Exploration Co. *v.* London Trading Bank [1898] 2 Q.B. 658; 67 L.J.Q.B. 986; 79 L.T. 270; 47 W.R.Dig. 29; 14 T.L.R. 587; 3 Com.Cas. 285 293, 294, 295
Beckwith, *Ex p.*, New British Iron Co., *Re* [1898] 1 Ch. 324; 67 L.J.Ch. 164; 78 L.T. 155; 46 W.R. 376; 5 Mans. 168; 14 T.L.R. 196 . . . . 31, 166
Bede Steam Shipping Co., *Re* [1917] 1 Ch. 123; 86 L.J.Ch. 65; 115 L.T. 580; 33 T.L.R. 13; 61 S.J. 26 109
Beer *v.* London and Paris Hotel Co. (1875) L.R. 20 Eq. 412; 32 L.T. 715; 23 W.R.Dig. 92 244
Beeton & Co., Ltd., *Re* [1913] 2 Ch. 279; 82 L.J.Ch. 464; 108 L.T. 918 . . . 401
Belbridge Property Trust, *Re* [1941] W.N. 85; 57 T.L.R. 447; 110 L.J.Ch. 155 . 312
Belgrave *v.* Mills (1927) Chancery Court of Lancaster, October 13, 1927 . . . 235
Bell Bros., *Re,* Hodgson, *ex p.* (1891) 65 L.T. 245; 40 W.R.Dig. 44; 7 T.L.R. 689 109
Bellairs *v.* Tucker (1884) 13 Q.B.D. 562; 33 W.R.Dig. 137 347
Bellerby *v.* Rowland and Marwoods Steamship Co. [1902] 2 Ch. 14; 71 L.J.Ch. 541; 86 L.T. 671; 50 W.R. 566; 9 Mans. 291; 18 T.L.R. 582 . . . . 75, 106
Belton *v.* Bass, Ratcliffe & Gretton, Ltd. [1922] 2 Ch. 449; 91 L.J.Ch. 216; 127 L.T. 357 114
Belvedere Fish Guano Co., Ltd., Rainham Chemical Works, Ltd. *v.* [1921] 2 A.C. 465; 90 L.J.K.B. 1252; 126 L.T. 70; 37 T.L.R. 973; 66 S.J. & W.R 7; 19 L.G.R. 657 41
Benabo *v.* Jay & Partners, Ltd. [1941] 1 Ch. 52; 57 T.L.R. 65 41
Beni Felkai Mining Co., *Re* [1934] Ch. 406; 150 L.T. 370; 103 L.J.Ch. 187; [1934] B. & C.R. 14 430
Bentham Mills Spinning Co., *Re* (1879) 11 Ch.D. 900; 48 L.J.Ch. 671; 41 L.T. 10; 28 W.R. 26 . . . . . 119, 120
Bentinck *v.* London Joint Stock Bank [1893] 2 Ch. 120; 62 L.J.Ch. 358; 68 L.T. 315; 42 W.R. 140; 3 R. 120; 9 T.L.R. 262 294
Bentley (Henry) & Co. and Yorkshire Breweries, *Re,* Harrison, *ex p.* (1893) 69 L.T. 204 . . . . . 83, 328
Berry and Stewart *v.* Tottenham Hotspur Football, etc. Co. [1935] Ch. 718; [1935] W.N. 155; 104 L.J.Ch. 342 109
Bethell *v.* Trench Tubeless Tyre Co., Trench Tubeless Tyre Co., *Re* [1900] 1 Ch. 408; 69 L.J.Ch. 213; 82 L.T. 247; 48 W.R. 310; 16 T.L.R. 207 (C.A.) . 147, 417
Betts & Co. *v.* Macnaghten [1910] 1 Ch. 430; 79 L.J.Ch. 207; 100 L.T. 922; 25 T.L.R. 552; 17 Mans. 71; 53 S.J. 521 . . . . . 155, 233, 234
Bevan *v.* Webb [1901] 2 Ch. 59; 70 L.J.Ch. 536; 84 L.T. 609; 49 W.R. 548; 17 T.L.R. 440 103
Biddulph and District Agricultural Society *v.* Agricultural Wholesale Society [1927] A.C. 76; 95 L.J.Ch. 576; 136 L.T. 163; 42 T.L.R. 761 62
Biggerstaff *v.* Rowatts Wharf [1896] 2 Ch. 93; 65 L.J.Ch. 536; 74 L.T. 473; 44 W.R. 536 . . . . . 33, 296
Bigg's Case, East Kongsberg Co., *Re* (1865) L.R. 1 Eq. 309; 35 L.J.Ch. 216; 13 L.T. 627; 14 W.R. 244; 12 Jur.(N.S.) 89 131
Bignold, *Ex p. See* Norwich Yarn Co., *Re.*
Binney *v.* Ince Hall Coal, etc., Co. (1866) 35 L.J.Ch. 363; 14 L.T. 392; 14 W.R. Ch.Dig. 24 260
Bird *v.* Bird's Patent Deodorising and Utilising Sewage Co. (1874) L.R. 9 Ch.App. 358; 43 L.J.Ch. 399; 30 L.T. 281; 22 W.R.Dig. 49 436
Birkbeck Permanent Benefit Building Society, *Re* [1913] 1 Ch. 400; 82 L.J.Ch. 232; 108 L.T. 211; 29 T.L.R. 256 50
Birkbeck Permanent Benefit Building Society, *Re,* The Official Receiver *v.* Licenses Insurance Corporation [1913] 2 Ch. 34; 82 L.J.Ch. 386; 108 L.T. 664; 57 S.J. 559; [1913] W.C. & I. Rep. 566 396
Birkett *v.* Cowper-Coles (1919) 35 T.L.R. 298 112
Birmingham Banking Co., *Ex p.* See Patent File Co., *Re.*
Bisgood *v.* Henderson's Transvaal Estates, Ltd. [1908] 1 Ch. 743; 77 L.J.Ch. 486; 98 L.T. 809; 24 T.L.R. 510; 52 S.J. 412; 15 Mans. 163 . . . . 49, 438

Bishop (E.) & Sons, Ltd., *Re* [1900] 2 Ch. 254; 69 L.J.Ch. 513; 82 L.T. 756; 48 W.R. Dig. 43; 7 Mans. 342 . . . . . 381, 438
Bishop *v.* Smyrna and Cassaba Ry. [1895] 2 Ch. 596; 64 L.J.Ch. 806; 73 L.T. 337; 44 W.R.Dig. 28; 2 Mans. 575 202
Black & Co.'s Case, Paraguassu Steam Tramroad Co., *Re* (1872) L.R. 8 Ch.App. 254; 42 L.J.Ch. 404; 28 L.T. 50; 21 W.R. 249 398
Black *v.* Homersham (1878) 4 Ex.D. 24; 48 L.J.Ex. 79; 39 L.T. 671; 27 W.R 171 205
Blackburn, Low & Co. *v.* Vigors (1887) 12 App.Cas. 531; 57 L.J.Q.B. 114; 57 L.T. 730; 36 W.R. 449; 6 Asp.M.C. 216; 3 T.L.R. 837 223
Blackburn (W.) & Co., *Re*, Buckley's Case [1899] 2 Ch. 725; 68 L.J.Ch. 764; 81 L.T. 520; 48 W.R. 186; 7 Mans. 47 408
Blackburn Building Society *v.* Cunliffe, Brooks & Co. (1883) 22 Ch.D. 61; (1884) L.R. 9 App.Cas. 857; 54 L.J.Ch. 876; 52 L.T. 225; 33 W.R. 309 . . 262
Blackpool *v.* Hampson (1882) 23 Ch.D. 1 28
Blackpool Motor Car Co., *Re*, Hamilton *v.* The Company [1901] 1 Ch. 77; 70 L.J.Ch. 61; 49 W.R. 124; 8 Mans. 193 408
Blaina Colliery, *Re* [1926] W.N. 30, 70 S.J. 404 406
Blair Open Hearth Furnace Co., *Re* [1914] 1 Ch. 390; 83 L.J.Ch. 313; 109 L.T. 149, 839; 21 Mans. 49; 58 S.J. 172 354
Blair Open Hearth Furnace Co. *v.* Reigart (1913) 108 L.T. 665; 29 T.L.R. 449; 57 S.J. 500 161
Blake, *Ex p.* (1879) 11 Ch.D. 572 404
Blakely Ordnance Co., *Re*, New Zealand Banking Corporation, *Ex p.* (1867) L.R. 3 Ch.App. 154; 37 L.J.Ch. 418; 18 L.T. 132; 16 W.R. 533 . . 282, 288
Blakely Ordnance Co., *Re* (1871). *See* Brett's Case.
—, *Re* (1869). *See* Creyke's Case.
—, *Re* (1868). *See* Lumsden's Case.
—, *Re* (1868). *See* Stocken's Case
Blaker *v.* Herts and Essex Waterworks Co. (1889) 41 Ch.D. 399; 58 L.J.Ch. 497; 60 L.T. 776; 37 W.R. 601; 1 Meg. 217; 5 T.L.R. 421 285
Blériot Manufacturing Aircraft Co., *Re* (1916) 32 T.L.R. 253 378
Bloomenthal *v.* Ford [1897] A.C. 156; 66 L.J.Ch. 253; 76 L.T. 205; 45 W.R. 449; 13 T.L.R. 240; 4 Mans. 156 . . . . . 57, 115, 124
Bloxam's Case, New Theatre Co., *Re* (1864) 33 Beav. 529; on appeal (1864) 4 De G.J. & S. 447; 33 L.J.Ch. 574; 10 L.T. (N.S.) 772; 12 W.R. 995 . . . 83
Bodega Co., *Re* [1904] 1 Ch. 276; 73 L.J.Ch. 198; 89 L.T. 694; 52 W.R. 249; 11 Mans. 95 170
Bolivia (Republic of) Exploration Syndicate, Ltd., *Re* [1914] 1 Ch. 139; 83 L.J.Ch. 235; 109 L.T. 741; 110 L.T. 141; 30 T.L.R. 78; 21 Mans. 67; 58 S.J. 173, 321 217
Bolsom Bros. (1928) Ltd., *Re* [1935] W.N. 9 (varied with consent) [1935] W.N. 50; [1935] Ch. 413; 152 L.T. 477; 104 L.J.Ch. 267 61
Bolton (R.) & Co., *Re*. *See* Salisbury-Jones and Dale's Case.
Bolton, *Re* [1930] 2 Ch. 48; 99 L.J.Ch. 209; 143 L.T. 425; [1929–30] B. & C.R. 141 132
Bomore Road (No. 9), *Re* [1906] 1 Ch. 359; 75 L.J.Ch. 157; 94 L.T. 403; 54 W.R. 312; 13 Mans. 68 415
Bond *v.* Barrow Hæmatite Steel Co. [1902] 1 Ch. 353; 71 L.J.Ch. 246; 86 L.T. 10; 50 W.R. 295; 18 T.L.R. 249; 9 Mans. 69 . . . . . 203, 205
Boord *v.* African Consol. Land and Trading Co. [1898] 1 Ch. 596; 67 L.J.Ch. 451; 77 L.T. 553; 46 W.R. 150; 14 T.L.R. 116 . . . . . 103, 212
Booth *v.* New Africander Gold Mining Co. [1903] 1 Ch. 295; 72 L.J.Ch. 125; 87 L.T. 509; 51 W.R. 193; 19 T.L.R. 67; 10 Mans. 56 331
— *v.* Walkden Spinning and Manufacturing Co. [1909] 2 K.B. 368; 78 L.J.K.B. 764; 16 Mans. 225 441
Borax Co., *Re*, Foster *v.* Borax Co. [1901] 1 Ch. 326; 70 L.J.Ch. 162; 83 L.T. 638; 49 W.R. 212; 17 T.L.R. 159 . . . . . 49, 296, 315
Borland's Trustee *v.* Steel Brothers & Co. [1901] 1 Ch. 279; 70 L.J.Ch. 51; 49 W.R. 120; 17 T.L.R. 45 . . . . . 108, 120, 135, 137, 362
Borough Commercial Society, *Re* [1893] 2 Ch. 242 367
Bosanquet, *Ex p.* *See* Portuguese Consolidated Copper Mines, *Re*.
Bosanquet *v.* Agency Land and Finance Co. of Australia. *See* Agency Land, etc. Co. of Australia, *Re*.
— *v.* St. John D'El Rey Mining Co. (1897) 77 L.T. 206; 46 W.R.Dig. 24; 13 T.L.R. 525 202
Boschoek Proprietary Co. *v.* Fuke [1906] 1 Ch. 148; 75 L.J.Ch. 261; 94 L.T. 398; 54 W.R. 359; 22 T.L.R. 196; 13 Mans. 100 . . . . . 142, 165, 167
Boston Deep Sea Fishing and Ice Co. *v.* Ansell (1888) 39 Ch.D. 339; 59 L.T. 345; 37 W.R.Dig. 117 . . . . . 177, 191, 253
Bottomley's Case. *See* Alma Spinning Co., *Re*.
Bouch *v.* Sproule (1887) 12 App.Cas. 385; 56 L.J.Ch. 1037; 57 L.T. 345; 36 W.R. 193 206

Bowen *v.* Brecon and Merthyr Tydvil Junction Ry., Howell, *Ex p.* (1867) L.R. 3 Eq. 541; 36 L.J.Ch. 344; 16 L.T. 6; 15 W.R. 482 307
—— *v.* Defries (N.) & Co., Defries (N.) & Co., *Re* [1904] 1 Ch. 87; 73 L.J.Ch. 1; 52 W.R. 253 270
Bower *v.* Foreign and Colonial Gas Co. [1877] W.N. 222 309
Bowerbank and others, *Ex p.* *See* Contract Corporation, *Re*.
Bowes *v.* Hope Mutual Life Insurance and Guarantee Society (1865) 11 H.L.Cas. (Clark) 389; 35 L.J.Ch. 574; 12 L.T. 680; 13 W.R. 790; 11 Jur. (N.S.) 643 . 380
Bowkett *v.* Fuller's United Electric Works [1923] 1 K.B. 160; 92 L.J.K.B. 412; 128 L.T. 303; [1923] B. & C.R. 75 . . . . . 405, 442
Bowman *v.* Secular Society, Ltd. [1917] A.C. 406; 86 L.J.Ch. 568; 117 L.T. 161; 33 T.L.R. 376; 61 S.J. 478 . . . . . 20, 39, 40
Boyle's Case, Land Loan, Mortgage, etc. Trust Co. of South Africa (1885) 54 L.J. Ch. 550; 52 L.T. 501; 33 W.R. 450; 1 T.L.R. 331 92
Bradbourne *v.* Anglo-Australian Printing Union. *See* Anglo-Australian Printing Union, *Re*.
Bradbury *v.* English Sewing Cotton Co. [1923] A.C. 744; 92 L.J.K.B. 736; 129 L.T. 546; 39 T.L.R. 590; 67 S.J. 678 451
Bradford Banking Co. *v.* Briggs, Son & Co. (1886) L.R. 12 App.Cas. 29; 56 L.J.Ch 364; 56 L.T. 62; 35 W.R. 521; 3 T.L.R. 170 . . . . . 27, 134, 136, 137
Bradshaw, *Ex p.* *See* Colonial Trusts Corporation, *Re*.
Brailey *v.* Rhodesia Consolidated, Ltd. [1910] 2 Ch. 95; 79 L.J.Ch. 494; 102 L.T. 805; 54 S.J. 475; 17 Mans. 222 436
Braintree and Bocking Gas Co., *Re* [1920] 2 Ch. 12, 89 L.J.Ch. 624; 123 L.T. 266; 84 J.P. 117 63
Bramah *v.* Roberts (1837) 3 Bing.N.C. 963; 6 L.J.C.P. 346 255
Brandao *v.* Barnett (1846) 12 Cl. & Fin. 787; 3 C.B. 519 296
Braunstein and Marjolaine, Ltd., *Re*, Philipson *v.* The Company [1914] W.N. 335; 112 L.T. 25; 58 S.J. 755 315
Bray *v.* Ford [1896] A.C. 44; 65 L.J.Q.B. 213; 73 L.T. 609; 44 W.R.Dig. 131; 12 T.L.R. 119 . . . . . 175, 177, 447
Brazilian Rubber Plantations and Estates, *Re* [1911] 1 Ch. 425; 80 L.J.Ch. 221; 103 L.T. 697; 18 Mans. 177; 27 T.L.R. 109 . . . . . 186, 197
Brett's Case, Blakely Ordnance Co., *Re* (No. 1) (1871) L.R. 6 Ch.App. 800; 40 L.J.Ch. 497; 25 L.T. 47; 19 W.R. 687 393
——, *Re* (No. 2) (1873) L.R. 8 Ch.App. 800; 43 L.J.Ch. 47; 29 L.T. 256; 22 W.R. 22 393
Brewery Assets Corporation, *Re*. *See* Truman's Case.
Bridger's Case and Neill's Case, Accidental and Marine Insurance Corporation, *Re* (1869) L.R. 4 Ch.App. 266; 38 L.J.Ch. 201; 19 L.T. 621; 17 W.R. 216 . 132
Bridger's Case, General Provident Assurance Co., *Re* (1870) L.R. 5 Ch.App. 305; 39 L.J.Ch. 478; 22 L.T. 737; 18 W.R. 412 92
Bridgewater Engineering Co., *Re* (1879) 12 Ch.D. 181 403
Bridgwater Navigation Co., *Re*, Birch *v.* Cropper (1889) L.R. 14 App.Cas. 525; 59 L.J.Ch. 122; 61 L.T. 621; 38 W.R. 401; 1 Meg. 372; 5 T.L.R. 722 . 66, 199, 394
—— *Re* [1891] 2 Ch. 317; 60 L.J.Ch. 415; 64 L.T. 576; 39 W.R.Dig. 56; 7 T.L.R. 360; 35 S.J. 328 394
Bridport Old Brewery Co., *Re* (1867) L.R. 2 Ch.App. 191; 15 L.T. 643; 15 W.R. 291 223
Briggs, *Ex p.* Hop and Malt Exchange and Warehouse Co., *re* (1866) 35 Beav. 273; L.R. 1 Eq. 483; 35 L.J.Ch. 320; 14 L.T. 39; 14 W.R.Ch.Dig. 57; 12 Jur. (N.S.) 322 344
Brinsmead (T. E.) & Sons, *Re* [1897] 1 Ch. 406; 66 L.J.Ch. 290; 76 L.T. 100; 45 W.R.Dig. 35; 4 Mans. 70; 13 T.L.R. 232 . . . . . 378, 381, 385
Brinsmead & Sons, *Re*. *See* Tomlin's Case.
Bristol United Breweries *v.* Abbot [1908] 1 Ch. 279; 77 L.J.Ch. 136; 98 L.T. 22; 24 T.L.R. 91; 15 Mans. 82 268
Britannia Fire Association, *Re*. *See* Coventry's Case.
British-America Nickel Corporation *v.* O'Brien, M. J. [1927] A.C. 369; 96 L.J.P.C. 57; 136 L.T. 615; 43 T.L.R. 195 310
British-American Continental Bank, *Re*, Crédit Général Liegeois' Claim [1922] 2 Ch. 589; 91 L.J.Ch. 765; 127 L.T. 284; 38 T.L.R. 464; 66 S.J. 388 . . 396
——, Goldzieher and Penso's Claim [1922] 2 Ch. 575; 91 L.J.Ch. 760; 38 T.L.R. 465, 785; 66 S.J. 388, 647 396
——, Lisser and Rosenkranz's Claim [1923] 1 Ch. 276; 92 L.J.Ch. 241; 128 L.T. 727 396
British and American Trustee and Finance Corporation *v.* Couper [1894] A.C. 399; 63 L.J.Ch. 425; 70 L.T. 882; 42 W.R. 652; 1 Mans. 256; 6 R. 146 . 35, 51, 75, 76, 77
British and Foreign Cork Co., *Re*. *See* Leifchild's Case.
British and Foreign Railway Plant Co. *v.* The Ashbury Carriage and Iron Co. (1869) 20 L.T. 360; 17 W.R.Ch.Dig. 91–2, 141 55
British Asbestos Co. *v.* Boyd [1903] 2 Ch. 439; 73 L.J.Ch. 81; 88 L.T. 763; 51 W.R. 667; 11 Mans. 88 . . . . . 142, 168, 174
British Building Stone Co., *Re* [1908] 2 Ch. 450; 77 L.J.Ch. 752; 99 L.T. 608 . 436

British Burmah Lead Co., *Re*, Vickers, *ex p.* [1887] W.N. 101; 56 L.T. 815; 35 W.R.Dig. 44 347
British Columbian Exploitation and Gold Estates, *Re* [1899] W.N. 32 106
British Columbian Fisheries, *Ex p.* *See* Pacific Coast Syndicate, *Re*.
British Consolidated Oil Corporation, *Re*, Howell *v.* The Company [1919] 2 Ch. 81; 88 L.J.Ch. 260; 120 L.T. 665; 63 S.J. 431; 35 T.L.R. 337 303
British Cycle Manufacturing Co., *Re* (1898) 77 L.T. 683 384
British Equitable Assurance Co. *v.* Baily [1906] A.C. 35; 75 L.J.Ch. 73; 94 L.T. 1; 54 W.R.Dig. 21; 22 T.L.R 152; 13 Mans. 13 . . . . . 36, 488
British Equitable Bond and Mortgage Corporation, *Re* [1910] 1 Ch. 574; 79 L.J.Ch. 288; 102 L.T. 421; 17 Mans. 177 380
British Games, *Re* [1938] Ch 240; 107 L.J.Ch. 81; 158 L.T. 239 245
British Guardian Assurance Co., *Re* (1880) 14 Ch.D. 335 412
British India Steam Navigation Co. *v.* Commrs. of Inland Revenue (1881) 7 Q.B.D. 165; 50 L.J.Q.B. 517; 44 L.T. 378; 29 W.R. 610 . . . . . 272, 277
British Murac Rubber Syndicate *v.* The Alperton Rubber Co. [1915] 2 Ch. 186; 84 L.J.Ch. 665; 113 L.T. 373; 31 T.L.R. 391; 59 S.J. 494 . . 31, 37, 161, 252
British Mutual Banking Co. *v.* Charnwood Forest Ry. (1886) 55 L.J.Q.B. 399; 34 W.R. 718, on appeal (1887) 18 Q.B.D. 714; 56 L.J.Q.B. 449; 57 L.T. 833; 35 W.R. 590; 52 J.P. 150 251
British Nation Life Assurance Association (Liquidators of), *Ex p.* European Society Arbitration Acts, *Re* (1878) 8 Ch.D. 679, 701; 48 L.J.Ch. 118; 39 L.T. 136; 27 W.R. 88 . . . . . 48, 51
British Power, Traction and Lighting Co., *Re*, Halifax Joint Stock Banking Co. *v.* The Company [1906] 1 Ch. 497, 75 L.J.Ch. 248; 94 L.T. 479; 54 W.R. 387; 22 T.L.R 268, 13 Mans. 74 317
——*v.* The British Power, etc., Co. [1910] 2 Ch. 470; 79 L.J.Ch. 666; 103 L.T. 451; 54 S.J. 749 318
British Provident Life and Fire Assurance Society, *Re* (1863). *See* Lane's Case.
—— (1864). *See* Stanley's Case.
British Provident Life and Guarantee Association, *Re*. *See* De Ruvigne's Case.
British Salicylates, Ltd., *Re* [1919] 2 Ch. 155; 88 L.J.Ch. 258; 121 L.T. 77 . . 404
British Seamless Paper Box Co., *Re* (1881) 17 Ch.D. 467; 50 L.J.Ch. 497; 44 L.T. 498; 29 W.R. 690 . . . . . 324, 355
British South Africa Co. *v.* De Beers Consolidated Mines [1912] A.C. 52; 81 L.J.Ch. 137; 105 L.T. 683; 28 T.L.R. 114; 56 S.J. 134, 175 261
British Sugar Refining Co., *Re* Faris's Case (1857) 3 K. & J. 408; 26 L.J.Ch. 369; 5 W.R. 379 146
British Tea Table Co. (1907), Ltd., *Re*, Pearce *v.* The Company (1909) 101 L.T. 707 317
British Thomson-Houston Co. *v.* Federated European Bank [1932] 2 K.B. 176 33
Briton Medical and General Life Association, *Re* (1888) 39 Ch.D. 61; 57 L.J.Ch. 874, 59 L.T. 134; 37 W.R. 52; 4 T.L.R. 531 101
Briton Medical and General Life Association *v.* Jones (2) (1889) 61 L.T. 384 . 174
Broad's Patent Night Light Co., *Re* [1892] W.N. 5 384
Broadbent, Re. *See* Homan, *Ex p.*
Broken Hill Proprietary Co *v.* Latham [1933] Ch. 373; [1933] W.N. 12; 49 T.L.R. 137; 102 L.J.Ch. 163; 148 L.T. 412 287
Bromley, *Re* Sanders *v.* Bromley (1886) 55 L.T. 115 206
Brookes *v.* Hansen [1906] 2 Ch. 129; 75 L.J.Ch. 450; 94 L.T. 728; 54 W.R. 502; 22 T.L.R. 475; 13 Mans. 172 353
Broome *v.* Speak (*sub nom* Shepheard *v.* Broome) [1904] A.C. 342; 73 L.J.Ch. 608; 91 L.T. 178; 53 W.R. 111; 20 T.L.R. 540; 11 Mans. 283 351
Brotex Cellulose Fibrex Ltd. *v.* I.R.C. [1933] 1 K.B. 158; 148 L.T. 116; 102 L.J.K.B. 211 439
Brown, Bayley and Dixon, *Re* (1881) 18 Ch.D. 649 408
Brown and Green, Ltd. *v.* Hays (1920) 36 T.L.R. 330 165
Brown and Gregory, Ltd., *Re*. See Andrews *v.* Brown and Gregory, Ltd.
——, *Re*, Shepheard *v.* Brown and Gregory, Ltd.; Andrews *v.* Brown and Gregory, Ltd. [1904] 2 Ch. 448; 73 L.J.Ch. 770; 11 Mans. 402 278
Brown (John) Ltd., *Re* Tredegar Iron and Coal Co., Ltd., *Re* [1914] W.N. 434; 84 L.J.Ch. 245; 112 L.T. 232; 59 S.J. 146 61
Brown (S.) & Co. (General Warehousemen), Ltd. [1940] Ch. 961; 56 T.L.R. 1000; 109 L.J.Ch. 463 312
Brown *v.* British Abrasive Wheel Co. [1919] 1 Ch. 290; 88 L.J.Ch. 143; 120 L.T. 529; 35 T.L.R. 268; 63 S.J. 373 87
Brown's Case, Metropolitan Public Carriage and Repository Co., *Re* (1873) L.R. 9 Ch.App. 102; 43 L.J.Ch. 153; 29 L.T. 562; 22 W.R. 171 164
Browne and Wingrove, *Re* Ador, *ex p.* [1891] 2 Q.B. 574; 61 L.J.Q.B. 15; 65 L.T. 485; 40 W.R. 71; 8 Morr. 264; 7 T.L.R. 747 321
Browne *v.* La Trinidad (1887) 37 Ch.D. 1; 57 L.J.Ch. 292; 58 L.T. 137; 36 W.R. 289; 4 T.L.R. 14 . . . . . 28, 30, 142, 156, 170

Browning *v.* Great Central Mining Co. of Devon (1860) 5 H. & N. 856; 29 L.J.Ex. 399; 9 W.R.C.L.Dig. 15 244
Brunton *v.* Electrical Engineering Corporation [1892] 1 Ch. 434; 61 L.J.Ch. 256; 65 L.T. 745; 40 W.R.Dig. 33; 8 T.L.R. 158 . . . . . 279, 309
Brussels Palace of Varieties *v.* Prockter (1893) 10 T.L.R. 72 328
Brutton and Burney, *Re* Burney's New Cross Brewery Co., *Re* [1901] 1 Ch. 637; 70 L.J.Ch. 309; 84 L.T. 180; 49 W.R. 360; 17 T.L.R. 272 99
Bryant, Powis and Bryant *v.* La Banque du Peuple [1893] A.C. 170; 62 L.J.P.C. 68; 68 L.T. 546; 41 W.R. 600; 1 R. 336; 9 T.L.R. 322 447
Bryon *v.* Metropolitan Saloon Omnibus Co. (1858) 3 De G. & J. 123; 27 L.J.Ch. 685; 6 W.R. 817; 4 Jur.(N.S.) 1262 258
Buchan's Case, City of Glasgow Bank in Liquidation (1879) L.R. 4 App.Cas. 547, 549, 583 (H.L.(Sc.)) 118
Buck *v.* Robson (1870) L.R. 10 Eq. 629; 39 L.J.Ch. 821; 23 L.T. 391; 19 W.R.Ch.Dig. 55 393
Buckley's Case. *See* Blackburn & Co., *Re*.
Budden and Roberts, *Ex p.* *See* West of England Bank, *Re*.
Buenos Ayres Great Southern Ry., *Re* [1947] Ch. 384; 176 L.T. 468; [1947] 1 All E.R. 729 . . . . . 204, 208, 222
Building Estates Brickfields Co., *Re*. *See* Parbury's Case.
Building Societies Trust, *Re* (1890) 44 Ch.D. 140; 59 L.J.Ch. 638; 62 L.T. 360; 38 W.R. 458; 2 Meg. 81 383
Bulawayo Market and Offices Co., *Re* [1907] 2 Ch. 458; 76 L.J.Ch. 673; 97 L.T. 752; 23 T.L.R. 714 157
Bultfontein Sun Diamond Mine, *Re* [1896] 12 T.L.R. 461; on appeal (1897) 75 L.T. 669; 45 W.R.Dig. 30; 13 T.L.R. 156 328
Bunn's Case, Electric Telegraph Co. of Ireland, *Re* (1860) 2 De G.F. & J. 275; 9 W.R. 43; 6 Jur.(N.S.) 1175 98
Burdett *v.* Standard Exploration Co. (1899) 16 T.L.R. 112 . . . . . 29, 122
Burdett-Coutts *v.* True Blue (Hannan's) Gold Mine [1899] 2 Ch. 616; 68 L.J.Ch. 692; 81 L.T. 29; 48 W.R. 1; 7 Mans. 85 (C.A.) 437
Burgess's Case, Hull and County Bank, *Re* (1880) 15 Ch.D. 507; 49 L.J.Ch. 541; 43 L.T. 45; 28 W.R. 792 345
Burkinshaw *v.* Nicolls (1878) 3 App.Cas. 1004; 48 L.J.Ch. 179; 39 L.T. 308; 26 W.R. 819 . . . . . 57, 123, 124, 488
Burland *v.* Earle [1902] A.C. 83; 71 L.J.P.C. 1; 85 L.T. 553; 50 W.R. 241; 9 Mans. 17; 18 T.L.R. 41 . . . . . 29, 43, 150, 166
Burn *v.* London and South Wales Coal Co [1890] W.N. 209; 7 T.L.R. 118 . 212
—— *v.* Winget. *See* Winget, *Re*.
Burnes *v.* Pennell (1849) 2 H.L.C. 497; 13 Jur. 897 . . . . . 195, 200
Burney's New Cross Brewery Co., *Re*. *See* Brutton and Burney, *Re*.
Burnham (Visct.) *v.* Atlantic and Pacific Fibre Importing and Manufacturing Co., Ltd. See Atlantic, etc., Co., *Re*.
Burns *v.* Siemens Bros. Dynamo Works, Ltd. (No. 1) [1918] 2 Ch. 324; 87 L.J.Ch. 572; 119 L.T. 352 301
—— *v.* —— (No. 2) [1919] 1 Ch. 225; 88 L.J.Ch. 21; 120 L.T. 211; 35 T.L.R. 83 107, 151
Burns' Application. *See* Pacaya Rubber and Produce Co., *Re*.
Burrows *v.* Pethick, Dix & Co. *See* Pethick, Dix and Co., *Re*.
Burt, Boulton and Hayward *v.* Bull [1895] 1 Q.B. 276; 64 L.J.Q.B. 232; 71 L.T. 810; 43 W.R. 180; 2 Mans. 94; 11 T.L.R. 90 317
Burton (James) & Son, Ltd., *Re* [1927] 2 Ch. 132; 96 L.J.Ch. 457; 137 L.T. 564; 71 S.J. 491 354
Burton *v.* Bevan [1908] 2 Ch. 240; 77 L.J.Ch. 591; 99 L.T. 342; 15 Mans. 272 45, 86, 87. 250
Bush, *Re* [1930] 2 Ch. 202; [1930] W.N. 126; 143 L.T. 700; 99 L.J.Ch. 503; [1929–30] B. & C.R. 216 321
Bushell, *Re*. *See* Izard, *Ex p.*
Bute's (Marquis of) Case, Cardiff Savings Bank, *Re* [1892] 2 Ch. 100; 61 L.J.Ch. 357; 66 L.T. 317; 40 W.R. 538; 8 T.L.R. 383 190
Butler *v.* Manchester, Sheffield and Lincolnshire Ry. (1888) 21 Q.B.D. 207; 57 L.J.Q.B. 564; 60 L.T. 89; 36 W.R. 726; 52 J.P. 612; 4 T.L.R. 607 . . 57
Byrne *v.* Leon Van Tienhoven & Co. (1880) 5 C.P.D. 344; 49 L.J.C.P. 316; 42 L.T. 371; 28 W.R.Dig. 55; 44 J.P. 667 88

Cachar Co., *Re*, Lawrence's Case; Russian (Vyksounsky) Ironworks Co., *Re*, Kincaird's Case (1867) L.R. 2 Ch.App. 412; 36 L.J.Ch. 490; 16 L.T. 222; 15 W.R. 571 344
Cackett *v.* Keswick [1902] 2 Ch. 456; 71 L.J.Ch. 641; 87 L.T. 11; 51 W.R. 69; 18 T.L.R. 650; 9 Mans. 388 . . . . . 343, 351
Caerphilly Colliery Co., *Re*. *See* Pearson's Case.

Cairney v. Back [1906] 2 K.B. 746; 75 L.J.K.B. 1014; 96 L.T. 111; 14 Mans. 58; 22 T.L.R. 776 401
Caldwell v. Caldwell & Co. (Papermakers), Ltd. (H.L.(Sc.)) [1916] W.N. 70; [1916] Sess.Cas. (H.L.) 120 (No. 10) 79
Californian Copper Syndicate, Ltd. and Reduced v. Harris (Surveyor of Taxes) (1904) 6 Fr. (Scott, Ct. of Sess.) 5th ser. 894 (No. 148); 41 Sc.L.R. 691 . 451
Callan's Case. *See* Whitley's Partners, *Re*.
Cambrian Peat and Fuel Co., *Re*, Mott's Case and Turner's Case [1875] W.N. 6; 31 L.T. 773; 23 W.R. 405 . . . . . 149, 226
Cambrian Ry., *Ex p.* *See* Manchester and Milford Ry., *Re*.
Campbell v. Australian Mutual Provident Society (1908) 77 L.J.P.C. 117; 99 L.T. 3; 24 T.L.R. 623 . . . . . 50, 54
— v. London Pressed Hinge Co. *See* London Pressed Hinge Co., *Re*
— v. Maund (1836) 5 Ad. & El. 865; 1 Nev. & Per. 558; 2 H. & W. 457; 6 L.J.M.C. 145 152
— v. Rofe [1933] A.C. 91; [1932] W.N. 266; 49 T.L.R. 156; 148 L.T. 230; 102 L.J.P.C. 1 70
Campbell's Case, Bank of Hindustan, China and Japan, *Re*; Hippisley's Case, Alison's Case (1873) 9 Ch.App. 1; 43 L.J.Ch. 1; 29 L.T. 519; 22 W.R. 113 32, 70, 71, 74, 148
—, Compagnie Générale de Bellegarde, *Re* (1876) 4 Ch.D. 470; 35 L.T. 900; 25 W.R. 299 . . . . . 175, 305
Canada North-Western Land Co., *Re* [1885] W.N. 61 79
Canadian Land Reclaiming and Colonising Co., *Re*. *See* Coventry and Dixon's Case.
Canadian Oilworks Corporation, *Re*. *See* Hay's Case.
Canning Jarrah Timber Co. (Western Australia), Ltd., *Re* [1900] 1 Ch. 708; 69 L.J.Ch. 416; 82 L.T. 409; 48 W.R.Dig. 36; 7 Mans. 439 (C.A.) 441
Cannon, *Ex p.* *See* Leicester Club and County Racecourse Co., *Re*.
Cape Breton Co., *Re*, *sub nom.* Cavendish-Bentinck v. Fenn (1887) 12 App. Cas. 652; 57 L.J.Ch. 552; 57 L.T. 773; 36 W.R. 441 . . . 176, 191, 411
Capel & Co. v. Sims' Ships' Composition Co. [1888] W.N. 97; 57 L.J.Ch. 713; 58 L.T. 807; 36 W.R. 689; 4 T.L.R. 458 . . . . . 346, 351
Capital Fire Insurance Association, *Re* (1883) 24 Ch.D. 408; 53 L.J.Ch. 71; 49 L.T. 697; 32 W.R. 260 . . . . . 212, 310, 427
Capper's Case, China Steamship and Labuan Coal Co., *Re* (1868) L.R. 3 Ch.App. 458; 16 W.R. 1002 . . . . . 93, 94
Caratal (New) Mines, Ltd., *Re* [1902] 2 Ch. 498; 71 L.J.Ch. 883; 87 L.T. 437; 50 W.R. 572; 18 T.L.R. 640; 9 Mans. 414 . . . . . 150, 226
Cardiff Savings Bank, *Re*. *See* Bute's (Marquis of) Case.
Cardiff Workmen's Cottage Co., *Re* [1906] 2 Ch. 627; 75 L.J.Ch. 769; 95 L.T. 669; 13 Mans. 382; 22 T.L.R. 799 269
Cargill v. Bower (1878) 10 Ch.D. 502; 47 L.J.Ch. 649; 38 L.T. 779; 26 W.R. 716 . 186
Caribbean Co., *Re*. *See* Crickmer's Case.
Caridad Copper Mining Co. v. Swallow [1902] 2 K.B. 44; 71 L.J.K.B. 601; 86 L.T. 699; 50 W.R. 565; 18 T.L.R. 601; 9 Mans. 336 169
Carlill v. Carbolic Smoke Ball Co. [1893] 1 Q.B. 256; 62 L.J.Q.B. 257; 67 L.T. 837; 41 W.R. 210; 57 J.P. 325; 9 T.L.R. 124; 4 R. 176 291
Carling, Hespeler and Walsh's Cases, Western of Canada Oil Lands and Works Co., *Re* (1875) 1 Ch.D. 115; 45 L.J.Ch. 5; 33 L.T. 645; 24 W.R. 165 . 393, 411
Carmichael's Case. *See* Hannan's Empress, etc., Co., *Re*.
Carriage Co-operative Supply Association, *Re* (1884) 27 Ch.D. 322; 53 L.J.Ch. 1154; 51 L.T. 286; 33 W.R. 411 . . . . . 166, 191, 192
Carriage Co-operative Supply Association, *Re* (1884) 23 Ch.D. 154 403
Carruth v. Imperial Chemical Industries [1937] A.C. 707 441
Carshalton Park Estate, *Re*, Graham v. The Company; Turnell v. The Company [1908] 2 Ch. 62; 77 L.J.Ch. 550; 99 L.T. 12; 24 T.L.R. 547; 15 Mans. 228 315
Carter v. White (1883) 25 Ch.D. 666; 54 L.J.Ch. 138; 50 L.T. 670; 32 W.R. 692 328
Carter's Case. *See* Great Western Forest of Dean Coal Consumers' Co., *Re*.
Cartmell's Case, County Palatine Loan and Discount Co., *Re* (1874) L.R. 9 Ch. App. 691; 43 L.J.Ch. 588; 31 L.T. 52; 22 W.R. 697 . . . . . 94, 244
Carton, *Re* (1923) 29 T.L.R. 194; 128 L.T. 629 430
Castell and Brown, Ltd., *Re*, Roper v. Castell and Brown, Ltd. [1898] 1 Ch. 315; 67 L.J.Ch. 169; 78 L.T. 109; 46 W.R. 248; 14 T.L.R. 194 . 279, 396, 300, 309
Castner-Kellner Alkali Co. [1930] 2 Ch 349; [1930] W.N. 207; 46 T.L.R. 592; 99 L.J.Ch. 453 448
Catalinas Warehouses and Mole Co. [1947] 1 All E.R. 51 66
Catesby v. Burnett [1916] 2 Ch. 325; 85 L.J.Ch. 745; 114 L.T. 1022; 32 T.L.R. 380 161
Cave v. Cave (1880) 15 Ch.D. 639; 49 L.J.Ch. 505; 42 L.T. 780; 28 W.R. 798 . 293
Cavendish-Bentinck v. Fenn. *See* Cape Breton Co., *Re*.

Cawley & Co., *Re* (1889) 42 Ch.D. 209; 58 L.J.Ch. 633; 61 L.T. 601; 37 W.R. 692; 1 Meg. 251; 5 T.L.R. 549 . . . . . 127, 236
C. B. & M. (Tailors), Ltd., *Re* [1932] 1 Ch. 17; [1931] W.N. 238; 101 L.J.Ch. 6; 146 L.T. 118 423
Central De Kaap Gold Mines, *Re* [1899] W.N. 216, 235; 69 L.J.Ch. 18; 7 Mans. 82 168
Central Ry. of Venezuela (Directors of) *v.* Kisch (1867) L.R. 2 H.L. (E. & Ir.App.) 99; 36 L.J.Ch. 849; 16 L.T. 500; 15 W.R. 821 . . . . . 335, 345
Centrifugal Butter Co., *Re* [1913] 1 Ch. 188; 82 L.J.Ch. 87; 108 L.T. 24; 57 S.J. 211; 20 Mans. 34 420
Chapel House Colliery Co., *Re* (1883) 24 Ch.D. 259; 52 L.J.Ch. 934; 49 L.T. 575; 31 W.R. 933 . . . . . 319, 380, 385, 407
Chapleo *v.* Brunswick Permanent Building Society (1881) 6 Q.B.D. 696; 50 L.J.Q.B. 372; 44 L.T. 449; 29 W.R. 529 . . . . . 178, 263
Chapman and Barker's Case, Imperial Mercantile Credit Association, *Re* (1867) L.R. 3 Eq. 361; 15 L.T. 528; 15 W.R. 334 98
Chapman *v.* Smethurst [1909] 1 K.B. 927; 78 L.J.K.B. 654; 100 L.T. 465; 16 Mans. 171; 14 Com.Cas. 94; 53 S.J. 340; 25 T.L.R. 383 257
Chapman's Case, General Rolling Stock Co., *Re* (1866) L.R. 1 Eq. 346; 14 W.R. Ch.Dig. 151; 12 Jur. (N.S.) 44 253
Chapman's Case. *See* Theatrical Trust, *Re*.
Charitable Corporation *v.* Sutton (1742) 2 Atk. 400; 9 Mod. 349 . . . 158, 190
Charles Lafitte & Co., *Re*. *See* De Rosaz's Case.
Charles (L. H.) & Co., Ltd. [1935] W.N. 15 270
Charlesworth *v.* Mills [1892] A.C. 231; 61 L.J.Q.B. 830; 66 L.T. 690; 41 W.R. 129; 56 J.P. 628; 8 T.L.R. 484 269
Charterland Goldfields, *Re* (1909) 26 T.L.R. 132 429
Chatteris, *Ex p.* *See* Barrow's Case (No. 2).
Cherry *v.* Boultbee (1839) 4 My. & Cr. 442; 9 L.J.Ch. 118; 3 Jur. 1116 278
Cheshire Banking Co., *Re*, Duff's Executors' Case (1886) 32 Ch.D. 301; 54 L.T. 558; 34 W.R.Dig. 33; 2 T.L.R. 440 116
Chester (Edward) & Co., *Re* (1903) 52 W.R. 189 384
Chesterfield and Boythorpe Colliery Co. *v.* Black (1877) 37 L.T. 740; 26 W.R. 207 176
Chida Mines, Ltd. *v.* Anderson (1905) 23 T.L.R. 27 . . . . 107, 110, 176, 251
Child *v.* Edwards [1909] 2 K.B. 753; 78 L.J.K.B. 1061; 101 L.T. 422; 25 T.L.R. 706 145
Chillington Iron Co., *Re* (1885) 29 Ch.D. 159; 54 L.J.Ch. 624; 52 L.T. 504; 33 W.R. 442; 1 T.L.R. 250 152
China Steamship Co., *Re*, Mackenzie, *ex p.* (1869) L.R. 7 Eq. 240; 38 L.J.Ch. 199; 19 L.T. 667; 17 W.R. 343 304
China Steamship Co., *Re*. *See* Dawes' Case.
China Steamship and Labuan Coal Co., *Re*. *See* Capper's Case.
Chippendale, *Ex p.* *See* German Mining Co., *Re*.
Christie *v.* Hayman, Christie and Lilly. *See* Hayman, Christie and Lilly, *Re*.
—— *v.* Taunton, Delmard, Lane & Co. *See* Taunton, Delmard, Lane & Co., *Re*.
Christineville Rubber Estates, *Re* [1911] W.N. 216; 81 L.J.Ch. 63; 106 L.T. 260; 28 T.L.R. 38 344
Cinnamond Park & Co., *Re* [1930] N.Ir. 47 166
City and County Bank, *Re* (1875) L.R. 10 Ch.App. 470; 44 L.J.Ch. 716; 33 L.T. 844; 23 W.R. 936 . . . . . 384, 385
City and County Investment Co., *Re* (1879) 13 Ch.D. 475; 49 L.J.Ch. 195; 42 L.T. 803; 28 W.R. 933 437
City Bank, *Ex p.*, General Estates Co., *re* (1868) L.R. 3 Ch.App. 758; 18 L.T. 894; 16 W.R. 919 . . . . . 258, 275
City Equitable Fire Insurance Co., *Re* [1925] Ch. 407; 94 L.J.Ch. 445; 133 L.T. 520; 40 T.L.R. 853 . . . . . 186, 190, 218
City Equitable Fire Insurance Co., *Re* [1930] 2 Ch. 293; 143 L.T. 444; 99 L.J.Ch. 536 397
City Housing Trust, *Re* [1942] 1 All E.R. 369 315
City of Glasgow Bank in Liquidation (1879). *See* Buchan's Case.
City of Glasgow Life Assurance Co., *Re* [1916] 2 Ch. 557; 86 L.J.Ch. 86; 115 L.T. 519 370
City of London Insurance Co., *Re* [1932] 1 Ch. 226; (1925) 41 T.L.R. 521; 69 S.J. 591 . . . . . 192, 398
Civil, Naval and Military Outfitters, *Re* [1899] 1 Ch. 215; 68 L.J.Ch. 164; 80 L.T. 241; 47 W.R. 239; 15 T.L.R. 114; 6 Mans. 100 413
Civil Service Brewery Co., *Re* [1893] W.N. 5; 37 S.J. 194 435
Civil Service Co-operative Society *v.* Chapman [1914] W.N. 369; 30 T.L.R. 679 . 185
Clandown Colliery Co., *Re* [1915] 1 Ch. 369; 84 L.J.Ch. 420; 112 L.T. 1060; 59 S.J. 350 . . . . . 380, 381, 385
Claridge's Patent Asphalte Co., *Re* [1921] 1 Ch. 543; 90 L.J.Ch. 273; 125 L.T. 255; 37 T.L.R. 465 . . . . . 193, 195

Clark *v.* **Urquhart**, H.L.(N.Ir.); [1930] A.C. 28; 99 L.J.P.C. 1; 141 L.T. 641; [1930] N.Ir. 4 350
—— *v.* **Workman** [1920] 1 Ir.R. 107 172
Clarke *v.* **Hart** (1858) 6 H.L.C. (Clark) 633; 27 L.J.Ch. 615; 32 L.T.(o.s.) 380; 7 W.R.(H.L.) Dig. 4; 5 Jur.(N.S.) 447 130
—— *v.* **Imperial Gas Light and Coke Co.** (1832) 4 B. & Ad. 315; 1 Nev. & Man. 206; 2 L.J.K.B. 30 248
Clarkson *v.* **Davies** [1923] A.C. 100; 92 L.J.P.C. 27; 128 L.T. 452; [1923] B. & C.R. 42 177
Clayton Engineering and Electrical Construction Co., *Re*, **Boddington** *v.* **The Company** [1904] W.N. 28; 90 L.T. 283; 52 W.R.Dig. 22 320
Clayton, Peat *v.* *See* **Peat** *v.* **Clayton**.
Clayton's Case, Devaynes *v.* **Noble** (1816) 1 Mer. 572, 585; Tudor's L.C.Merc. (3rd ed.) 25 308
Cleadon Trust, *Re* [1939] Ch. 286; 108 L.J.Ch. 81; 55 T.L.R. 154; 160 L.T. 45 . 251
Cleary *v.* **Brazil Ry.** [1915] W.N. 178; 85 L.J.K.B. 32; 113 L.T. 96 . . 307, 316
Clemmons Aluminium, Ltd., *Re* (1924) 41 T.L.R. 138 401
Clews *v.* **Grindey**. *See* **Grindey**, *Re*.
Clinch *v.* **Financial Corporation** (1868) L.R. 5 Eq. 450; 4 Ch.App. 117; 38 L.J.Ch. 1; 19 L.T. 334; 17 W.R. 84 . . . . . 146, 155
Clinton's Claim, National Motor Mail-Coach Co., *Re* [1908] 2 Ch. 515; 77 L.J.Ch. 790; 99 L.T. 632 45
Clyne Tin Plate Co., *Re* (1882) 47 L.T. 439; 31 W.R.Dig. 40 310
Coal Consumers' Association, *Re* (1876) 4 Ch.D. 625; 46 L.J.Ch. 501; 35 L.T. 729; 25 W.R. 300 401
Coal Economising Gas Co., *Re*. *See* **Gover's Case**.
Coalport China Co., *Re* [1895] 2 Ch. 404; 64 L.J.Ch. 710; 73 L.T. 46; 44 W.R. 38; 12 R. 462; 2 Mans. 532 109
Coasters, Ltd., *Re* [1911] 1 Ch. 86; 80 L.J.Ch. 89; 103 L.T. 632; 18 Mans. 183 124, 189
Coates *v.* **L. & S.W. Ry., Waterhouse** *v.* **Same** (1879) 41 L.T. 553; 28 W.R.Dig. 86; 44 J.P. 154 124
Coats (J. & P.), Ltd. *v.* **Crossland** (1904) 20 T.L.R. 800 . . 190, 192, 223, 411
Cobb *v.* **Becke** (1845) 6 Q.B. 930; 14 L.J.Q.B. 108; 9 Jur. 439 181
Cohen *v.* **Mitchell** (1890) 25 Q.B.D. 262; 59 L.J.Q.B. 409; 63 L.T. 206; 38 W.R. 551; 7 Morr. 207; 6 T.L.R. 326 115
— *v.* **Popular Restaurants, Ltd.** [1917] 1 K.B. 480; 86 L.J.K.B. 617; 116 L.T. 477; 33 T.L.R. 107 425
Coleman *v.* **London County and Westminster Bank** [1916] 2 Ch. 353; 85 L.J.Ch. 652; 115 L.T. 152 110
Coliseum (The) (Barrow), Ltd., *Re* [1930] 2 Ch. 44; [1930] W.N. 101; 99 L.J.Ch. 423; 143 L.T. 423 167
Collaroy Company, Ltd. *v.* **Giffard** [1928] Ch. 144; 97 L.J.Ch. 69; 138 L.T. 321; [1927] B. & C.R. 217 67
Collen *v.* **Wright** (1857) 8 El. & Bl. 647; 27 L.J.Q.B. 215; 6 W.R. 123; 4 Jur. (N.S.) 357 . . . . . 173, 185
Collier (H.) & Sons, Ltd. [1933] 1 K.B. 488 [1932] W.N. 249; 148 L.T. 199; 49 T.L.R. 46 455
Collins *v.* **Associated Greyhound Racecourses** [1930] 1 Ch. 1; [1929] W.N. 161; 141 L.T. 529; 45 T.L.R. 519; 99 L.J.Ch. 52 348
—— *v.* **Sedgwick** [1917] 1 Ch. 179; 86 L.J.Ch. 156; 115 L.T. 763; 82 T.L.R. 554 208
Colman *v.* **Eastern Counties Ry.** (1846) 10 Beav. 1; 16 L.J.Ch. 73; 8 L.T. (o.s.) 530; 11 Jur. 74; 4 Ry.Cas. 513 . . . . . 4, 51
Colmer (James), Ltd., *Re* [1897] 1 Ch. 524; 66 L.J.Ch. 326; 76 L.T. 323; 45 W.R. 348 36
Colonial Bank *v.* **Whinney** (1886) 11 App.Cas. 426; (1885) 30 Ch.D. 261; 56 L.J.Ch. 43; 55 L.T. 362; 34 W.R. 705; 3 M.B.R. 207; 2 T.L.R. 747 . 12, 120
Colonial Gold Reef, Ltd. *v.* **Free State Rand, Ltd.** [1914] 1 Ch. 382; 83 L.J.Ch. 303; 110 L.T. 63; 30 T.L.R. 88; 58 S.J. 173; 21 Mans. 42 154
Colonial Mutual Life Assurance Society, *Re* (1882) 21 Ch.D. 837; 46 L.T. 282; 30 W.R. 458 370
Colonial Trusts Corporation, *Re*, **Bradshaw**, *Ex p.* (1879) 15 Ch.D. 465; 29 W.R.Dig. 40 . . . . . 279, 296, 299, 320
Columbian Fireproofing Co., *Re* [1910] 2 Ch. 120; 79 L.J.Ch. 583; 102 L.T. 835; 17 Mans. 237 297
Colville Estates, Ltd. *v.* **I.R.C.** [1930] 2 K.B. 393; 15 T.C. 485 455
Combined Weighing and Advertising Machine Co., *Re* (1889) 43 Ch.D. 99; 59 L.J.Ch. 26; 61 L.T. 582; 38 W.R. 67; 1 Meg. 398; 6 T.L.R. 7 380
Commercial Bank Corporation of India and the East, *Re*. *See* **Fernandes' Executors' Case**.
Commrs. of Inland Revenue *v.* **Blott**. *See* **Inland Revenue Commrs.** *v.* **Blott**.
—— *v.* **Sansom** [1921] 2 K.B. 492; 90 L.J.K.B. 627; 125 L.T. 37 454

Commrs. of Taxes *v.* Melbourne Trust, Ltd. [1914] A.C. 1001; 84 L.J.P.C. 21; 111 L.T. 1040; 30 T.L.R. 685 451
Compagnie (La) de Mayville *v.* Whitley [1896] 1 Ch. 788; 65 L.J.Ch. 729; 74 L.T. 441; 44 W.R. 568; 12 T.L.R. 268 179
Compagnie Générale de Bellegarde, *Re*. *See* Campbell's Case.
Companies Guardian Society, *Re*. *See* Wallscourt's (Lord) Case.
Concessions Acquisition Syndicate, *Re* [1898] W.N. 161; 68 L.J.Ch. 49; 79 L.T. 666; 47 W.R.Dig. 27; 5 Mans. 348 100
Condran, *Re*, Condran *v.* Stark [1917] 1 Ch. 639; 86 L.J.Ch. 464; 117 L.T. 270; 33 T.L.R. 307; 61 S.J. 445 . . . . . 206, 456
Connolly Bros., Ltd. (No. 2), *Re*, Wood *v.* Connolly Bros. [1912] 2 Ch. 25; 81 L.J.Ch. 517; 106 L.T. 738; 19 Mans. 259; 56 S.J. 360 . . . . 266, 298, 300
Consett Iron Co., *Re* [1901] 1 Ch. 236; 70 L.J.Ch. 198; 84 L.T. 258; 49 W.R.Dig. 28; 8 Mans. 429 61
Consolidated Diesel Engine Manufacturers, Ltd., *Re* [1915] 1 Ch. 192; 84 L.J.Ch. 325; 112 L.T. 585; 31 T.L.R. 91; 59 S.J. 234 391
Consolidated Gold Fields of South Africa *v.* Simmer and Jack East, Simmer and Jack East, Ltd., *Re* [1913] W.N. 41; 82 L.J.Ch. 214; 108 L.T. 488; 20 Mans. 142; 57 S.J. 358 284
Consolidated Nickel Mines, *Re* [1914] 1 Ch. 883; 83 L.J.Ch. 760; 111 L.T. 243; 30 T.L.R. 447; 58 S.J. 556 169
Consolidated South Rand Mines Deep, Ltd., *Re* [1909] 1 Ch. 491; 78 L.J.Ch. 326; 100 L.T. 319; 16 Mans. 81; on appeal [1909] W.N. 66 387
Consort Deep Level Gold Mines, *Re*, Stark, *ex p.* [1897] 1 Ch. 575; 66 L.J.Ch. 297; 76 L.T. 300; 45 W.R. 227; 13 T.L.R. 265 (C.A.) 106, 328
Constantinople and Alexandria Hotel Co., *Re*. *See* Ebbett's Case.
——, *Re*. *See* Redpath's Case.
Contal Radio, Ltd. [1932] 2 Ch. 66 . . . . . 420, 442
Contract Corporation, *Ex p.* (1867). *See* Barned's Banking Co., *Re*.
——, *Re*, Bowerbank and others, *ex p.* (1866) L.R. 2 Ch App. 95; 36 L.J.Ch. 69; 15 L.T. 201; 15 W.R. 49; 12 Jur.(N.S.) 931 393
Cook *v.* Decks (G. S.) [1916] 1 A.C. 554; 85 L.J.P.C. 161; 114 L.T. 636 . . 230
—— *v.* Fowler (1874) L.R. 7 H.L. 27; 43 L.J.Ch. 855; 22 W.R.Dig. 260 . . 276
Cooper, *Ex p.*, Zucco, *re* (1875) L.R. 10 Ch.App. 510; 44 L.J.Bk. 121; 33 L.T. 3; 23 W.R. 782 409
Cooper, *Re*. *See* Hall, *Ex p.*
Cooper *v.* Griffin [1892] 1 Q.B. 740; 61 L.J.Q.B. 563; 66 L.T. 660; 40 W.R. 420; 8 T.L.R. 404 114
—— *v.* National Provincial Insurance Corporation. *See* National Provincial Insurance Corporation, *Re*.
Coote *v.* Jecks (1872) L.R. 13 Eq. 597; 41 L.J.Ch. 599; 20 W.R.Ch.Dig. 16 . . 261
Copal Varnish Co., *Re* [1917] 2 Ch. 349; 87 L.J.Ch. 132; 117 L.T. 508 . 106, 109
Cope (Benjamin) & Sons, *Re*, Marshall *v.* Benjamin Cope & Sons [1914] 1 Ch. 800; 83 L.J.Ch. 699; 110 L.T. 905; 58 S.J. 432 . . . . . 279, 308
Copiapo Mining Co., *Re* [1899] W.N. 25; 6 Mans. 320 62
Cork and Youghal Ry., *Re* (1869) L.R. 4 Ch.App. 748; 39 L.J.Ch. 277; 21 L.T. 735; 18 W.R. 26 262
Cornbrook Brewery Co. *v.* Law Debenture Corporation [1904] 1 Ch. 103; 73 L.J. Ch. 121; 89 L.T. 680; 52 W.R. 242; 20 T.L.R. 140; 11 Mans. 60 . . 268
Cornell *v.* Hay (1873) L.R. 8 C.P. 328; 42 L.J.C.P. 136; 28 L.T. 475; 21 W.R. 580 351
Cornford *v.* Carlton Bank [1900] 1 Q.B. 22; 68 L.J.Q.B. 1020; 81 L.T. 415; 48 W.R.Dig. 108; 16 T.L.R. 12 56
Cornwall Great Consolidated Lead and Copper Mining Co. *v.* Bennett (1860) 5 Hurl. & Nor. 423; 29 L.J.Ex. 157; 8 W.R.(C.L.)Dig. 13; 6 Jur.(N.S.) 539 . 127
Corporate Equitable Property Society, *Re* [1940] Ch. 654; 56 T.L.R. 720; 109 L.J. Ch. 273; 163 L.T. 200 312
Cory's Case. *See* National Bank of Wales, *Re*.
——. *See* Premier Underwriting Association (No. 2), *Re*.
Costa Rica Ry. *v.* Forwood [1901] 1 Ch. 746; 70 L.J.Ch. 385; 84 L.T. 279; 49 W.R. 337; 17 T.L.R. 297; 8 Mans. 374 . . . . . 175, 176, 178
Costello's Case, Mexican and South American Co., *Re* (1860) 2 De G.F. & J. 302; 30 L.J.Ch. 113; 3 L.T. 421; 9 W.R. 6; 6 Jur.(N.S.) 1270 111
Cotman *v.* Brougham [1918] A.C. 514; 87 L.J.Ch. 379; 119 L.T. 162; 34 T.L.R. 410; 62 S.J. 534 (*and see sub nom.* Anglo-Cuban Oil, Bitumen and Asphalte Co., *Re*) 54, 55
Cotterell *v.* Stratton (1872) L.R. 8 Ch.App. 295; 42 L.J.Ch. 417; 28 L.T. 218; 21 W.R. 234 321
Cotton *v.* Imperial and Foreign Agency and Investment Corporation [1892] 3 Ch. 454; 61 L.J.Ch. 684; 67 L.T. 342; 41 W.R.Dig. 36; 8 T.L.R. 777. . 49
Coulson *v.* Austin Motor Co. (1927) 43 T.L.R. 493 66
County Hotel and Wine Co. *v.* L. & N.W.Ry. [1919] 2 K.B. 29; 88 L.J.K.B. 1027; 121 L.T. 30; 35 T.L.R. 305 51

County Life Assurance Co., *Re* (1870) L.R. 5 Ch.App. 288; 39 L.J.Ch. 471; 22 L.T. 537; 18 W.R. 390 . . . . . 33, 34, 248
County Marine Insurance Co., *Re*. *See* Rance's Case.
County of Gloucester Bank *v.* Rudry Merthyr Steam, etc., Colliery Co. [1895] 1 Ch. 629; 64 L.J.Ch. 451; 72 L.T. 375; 43 W.R. 486; 12 R. 188; 2 Mans. 223 32, 33, 179, 248, 249
County Palatine and Discount Co., *Re* (1873). *See* Teasdale's Case.
County Palatine Loan andDiscount Co., *Re* (1874). *See* Cartmell's Case.
Courtney, *Re*. *See* Pollard, *Ex p.*
Courtney's Case. *See* Bradford Tramway and Omnibus Co., *Re*.
Cousins *v.* International Brick Co. [1931] 2 Ch. 90; [1931] W.N. 30; 47 T.L.R. 217; 100 L.J.Ch. 404; 145 L.T. 471 154
Coveney *v.* Persse [1910] 1 Ir.R. 194 300
Coventry and Dixon's Case, Canadian Land Reclaiming and Colonising Co., *Re* (1880) 14 Ch.D. 660; 42 L.T. 559; 28 W.R. 775 . . . . . 173, 175
Coventry's Case, Britannia Fire Association, *Re* [1891] 1 Ch. 202; 60 L.J.Ch. 186; 64 L.T. 185; 39 W.R. 328; 7 T.L.R. 133 (C.A.) 83, 185
Cox Moore *v.* Peruvian Corporation [1908] 1 Ch. 604; 77 L.J.Ch. 387; 98 L.T. 611; 15 Mans. 191 309
Craig (J. M.) (Kilmarnock) & Co. *v.* Inland Revenue [1914] S.C. 338 (No. 43); 51 Sc.L.R. 321 452
Cranstown (Lord) *v.* Johnston (1796) 3 Ves. 170; on question of costs (1800) 5 Ves. 277 261
Craven-Ellis *v.* Canons, Ltd. [1936] 2 K.B. 403, [1936] W.N. 249; 155 L.T. 376; 52 T.L.R. 657; 105 L.J.K.B. 767 169
Crawley & Co., *Re* (1889) 42 Ch.D. 209, 231 108
Crawley's Case, Robinson's Case, Peruvian Rys., *Re* (1869) 4 Ch. App. 322; 20 L.T. 96; 17 W.R. 454 . . . . . 90, 92, 94, 344
Credit Assurance and Guarantee Corporation, *Re* [1902] 2 Ch. 601; 71 L.J.Ch. 775; 87 L.T. 216; 51 W.R. 20; 18 T.L.R. 787 (C.A.) 77
Crédit Foncier and Mobilier of England, *Ex p*. *See* Marseilles Extension Ry., *Re* (1871).
Crédit Général Liegeois' Claim. *See* British American Continental Bank, *Re*.
Creen *v.* Wright (1877) 2 C.P.D. 354, 46 L.J.C.P. 427, 36 L.T. 355; 25 W.R. 502 253
Crenver and Wheal Abraham United Mining Co., *Re*. *See* Wilson, *Ex p.*
Creyke's Case, Blakely Ordnance Co., *Re* (1869) L.R. 5 Ch.App. 63; 39 L.J.Ch. 124; 21 L.T. 572; 18 W.R. 103 192
Crichton's Oil Co., *Re* [1902] 2 Ch. 86; 71 L.J.Ch. 531; 86 L.T. 787; 18 T.L.R. 556; 9 Mans. 402 . . . . . 66, 394
Crickmer's Case, Caribbean Co., *Re* (1875) L.R. 10 Ch.App. 614; 46 L.J.Ch. 870; 24 W.R. 219 124
Crigglestone Coal Co., *Re* [1906] 2 Ch. 327; 75 L.J.Ch. 662; 95 L.T. 510; 22 T.L.R. 585; 13 Mans. 233 . . . . . 380, 385
Crompton & Co., *Re*, Player *v.* The Company [1914] 1 Ch. 954; 83 L.J.Ch. 666; 110 L.T. 759; 21 Mans. 200; 58 S.J. 433 . . . . . 284, 298
Crook *v.* Seaford (Corporation of) (1871) L.R. 6 Ch.App. 551; 25 L.T. 1; 19 W.R. 938 57
Croskey *v.* Bank of Wales (1863) 4 Giff. 314; 8 L.T. 301; 11 W.R.Ch.Dig. 45; 9 Jur. (N.S.) 595 126
Crouch *v.* The Crédit Foncier of England (1873) L.R. 8 Q.B. 374; 42 L.J.Q.B. 183; 29 L.T. 259; 21 W.R. 946 . . . . . 282, 289, 290, 292, 293, 295
Crown Bank, *Re* (1890) 44 Ch.D. 634; 59 L.J.Ch. 739; 62 L.T. 823; 38 W.R. 666 . 54
Crown Lease Proprietary Co., *Re* (1897) 14 T.L.R. 47 328
Crowther *v.* Thorley (1884) 50 L.T. 43; 32 W.R. 330; 48 J.P. 292 374
Crumlin Viaduct Works Co., *Re* (1879) 11 Ch.D. 755; 48 L.J.Ch. 537; 27 W.R. 722 303
Crystal Palace Co., *Re*, Fox *v.* The Company [1911] W.N. 104; 104 L.T. 898; 27 T.L.R. 413 313
Crystal Reef Gold Mining Co., *Re* [1892] 1 Ch. 408; 61 L.J.Ch. 208; 66 W.R. 111; 40 W.R. 235 382
Cuban Land and Development Co. (1911), Ltd., *Re* [1921] 2 Ch. 147; 90 L.J.Ch. 440; 125 L.T. 792; 65 S.J. 680 305
Cuff *v.* London and County Land and Building Co., Ltd. [1912] 1 Ch. 440; 81 L.J.Ch. 426; 106 L.T. 285; 19 Mans. 166; 28 T.L.R. 218 220
Cullen, *Ex p.*, Parrott, *re* [1891] 2 Q.B. 151; 60 L.J.Q.B. 567; 64 L.T. 801; 39 W.R. 543; 8 Morr. 185; 7 T.L.R. 564 154
Cullen *v.* Thomson's Trustees and Kerr (1862) 4 Macq. 424; 6 L.T. 870; 11 W.R. (H.L.) Dig. 7; 9 Jur.(N.S.) 85 185
Cullerne *v.* London and Suburban General Permanent Building Society (1890) 25 Q.B.D. 485; 59 L.J.Q.B. 525; 63 L.T. 511; 39 W.R. 88; 55 J.P. 148; 6 T.L.R. 449 . . . . . 191, 194, 411

Cully *v.* **Parsons** [1923] 2 Ch. 512; 93 L.J.Ch. 42; 130 L.T. 178; 67 S.J. 750 . 286
Cunard Steamship Co. *v.* Hopwood [1908] 2 Ch. 564; 77 L.J.Ch. 785; 99 L.T. 549; 24 T.L.R. 865 268
Cunliffe, Brooks & Co. *v.* Blackburn and District Benefit Building Society (1884) 9 App.Cas. 857; 54 L.J.Ch. 376; 52 L.T. 225; 33 W.R. 309 262
Cunningham (R. N.) & Co., *Re*, Simpson's Claim (1887) 36 Ch.D. 532; 57 L.J.Ch. 169; 58 L.T. 16 179
Curtis *v.* B.U.R.T. Co., Ltd. (1912) 28 T.L.R. 585 442
Customs and Excise Officers' Mutual Guarantee Fund, *Re*, Robson *v.* Att.-Gen. [1917] 2 Ch. 18; 86 L.J.Ch. 456; 117 L.T. 86; 33 T.L.R. 311 377
Cuthbert Copper & Sons, Ltd., *Re* [1937] Ch. 392; [1937] W.N. 148; 53 T.L.R. 548 378, 379
Cyclists' Touring Club *v.* Hopkinson [1910] 1 Ch. 179; 79 L.J.Ch. 82; 101 L.T. 848; 26 T.L.R. 117; 54 S.J. 134 . . . . . 50, 444
Cyclists' Touring Co., *Re* [1907] 1 Ch. 269; 76 L.J.Ch. 172; 96 L.T. 780; 23 T.L.R. 220; 14 Mans. 52 60

Dafen Tinplate Co. *v.* Llanelly Steel Co. (1907), Ltd. [1920] 2 Ch. 124; 89 L.J.Ch. 346; 123 L.T. 225; 36 T.L.R. 428; 64 S.J. 446 37
Daimler Co. *v.* Continental Tyre and Rubber Co. (Great Britain), Ltd. [1916] 2 A.C. 307; 85 L.J.K.B. 1333; 114 L.T. 1049; 32 T.L.R. 624; 22 Com.Cas. 32; 60 S.J. 602 231
Dairen Kisen Kabushiki Kaisha *v.* Shuangkee [1941] A.C. 373 449
Dale and Plant, *Re* (1889) 43 Ch.D. 255; 59 L.J.Ch. 180; 62 L.T. 215; 38 W.R. 409; 6 T.L.R. 123; 2 Meg. 25 166
Dale and Plant, Ltd., *Re* (1889) 61 L.T. 206; 1 Meg. 338; 5 T.L.R. 585 . . . 243
Dale's Case. *See* Salisbury-Jones and Dales Case.
Danby *v.* Coutts & Co. (1885) 29 Ch.D. 500; 54 L.J.Ch. 577; 52 L.T. 401; 33 W.R. 559; 1 T.L.R. 313 446
Daponte *v.* Schubert [1939] Ch. 958; 108 L.J.Ch. 423; 55 T.L.R. 940; 161 L.T. 268 115
Darter's Case. *See* Markham and Darter's Case.
Darwen and Pearce, *Re* [1927] 1 Ch. 176; 95 L.J.Ch. 487; 136 L.T. 124; 70 S.J. 965; [1926] B. & C.R. 65 133
Davey & Co. *v.* Williamson & Sons [1898] 2 Q.B. 194; 67 L.J.Q.B. 699; 78 L.T. 755; 46 W.R. 571 296
David Allister, Ltd., *Re* [1922] 2 Ch. 211; 91 L.J.Ch. 797; 127 L.T. 434; 38 T.L.R. 611; 66 S.J. 486 269
David and Adlard, *Re*, Whinney, *ex p.* [1914] 2 K.B. 694; 83 L.J.K.B. 1173; (*sub nom. Re* David and Johnson); 110 L.T. 942; 30 T.L.R. 366; 21 Mans. 148; 58 S.J. 340 410
Davies *v.* Gas Light and Coke Co. [1909] 1 Ch. 708; 78 L.J.Ch 445; 100 L.T. 553; 25 T.L.R. 428; 16 Mans. 147; 53 S.J. 399 103
Davies' Case. *See* Tees Bottle Co., *Re*.
Davis *v.* Bank of England (1824) 2 Bing. 393; 9 Moo. 747; 3 L.J.(o.s.)C.P. 4, 11 . 115
—— *v.* Martin. *See* Queensland Land and Coal Co., *Re*.
Davis & Collett, Ltd., *Re* [1935] Ch. 693; 153 L.T. 329; 104 L.J.Ch. 340 . . . 378
Davison *v.* Duncan (1857) 26 L.J.Q.B. 104; 7 E. & B. 229; 5 W.R. 253; 3 Jur. (N.S.) 613 155
—— *v.* King (1927) N.Ir. 1 206
Dawes' Case, China Steamship Co., *Re* (1868) L.R. 6 Eq. 232; 37 L.J.Ch. 901; 16 W.R. 995 . . . . . 95, 132
Dawkins *v.* Antrobus (1881) 17 Ch.D. 615; 44 L.T. 557; 29 W.R. 511 130
Dawson *v.* African Consolidated Land and Trading Co. [1898] 1 Ch. 6; 67 L.J.Ch. 47; 77 L.T. 392; 46 W.R. 132; 14 T.L.R. 30; 4 Mans. 372 (C.A.) . 171, 174
—— *v.* Isle [1906] 1 Ch. 633; 75 L.J.Ch. 338; 95 L.T. 385; 54 W.R. 452 . . . 267
Day, *Re*, Day, *ex p.* (1876) 1 Ch.D. 699; 45 L.J.Bk. 53; 33 L.T. 867; 24 W.R. 492 374
De Beers Consolidated Mines *v.* British South Africa Co. [1912] A.C. 52; 81 L.J. Ch. 137; 105 L.T. 683; 28 T.L.R. 114; 56 S.J. 134, 175 305
De Bouchout *v.* Goldsmid (1800) 5 Ves. 210 447
Debtor, A (No. 28 of 1917) [1917] 2 K.B. 808; 87 L.J.K.B. 783; 117 L.T. 574; 3 H.B.R. 285 172
De Clifford's (Lord) Estate, *Re*, De Clifford (Lord) *v.* Quilter [1900] 2 Ch. 707; 69 L.J.Ch. 828; 83 L.T. 160; 49 W.R.Dig. 181; 16 T.L.R. 547 193
Deeley *v.* Lloyds Bank, Ltd. [1912] A.C. 756; 81 L.J.Ch. 697; 107 L.T. 465; 29 T.L.R. 1 308
Deep Sea Fishery Co.'s Claim. *See* Fenwick, Stobart & Co., *Re*.
Defries (J.) & Sons, *Re*, Eicholz *v.* Defries (J.) & Sons, Ltd. [1909] 2 Ch. 423; 78 L.J.Ch. 720; 101 L.T. 486; 53 S.J. 697; 25 T.L.R. 752 . . . . 276, 284
De Jong (F.) & Co., *Re* [1946] Ch. 211; 174 L.T. 299; 62 T.L.R. 312; 115 L.J. Ch. 173 66

De la Rue (Thomas) & Co., Ltd. and Reduced, *Re* [1911] 2 Ch. 361; 81 L.J.Ch. 59; 105 L.T. 542; 55 S.J. 715; 19 Mans. 71 77
Delavenne *v.* Broadhurst [1930] W.N. 238 108
Demerara Rubber Co., *Re* [1913] 1 Ch. 331; 82 L.J.Ch. 220; 108 L.T. 318; 20 Mans. 148 436
Denham (Charles) & Co., *Re* (1883) 25 Ch.D. 752; 50 L.T. 523; 32 W.R. 487 . 190, 191
——, *Re* (1884) 53 L.J.Ch. 1113; 51 L.T. 570; 32 W.R. 920 186
De Pass's Case, Grisewood and Smith's Case, Mexican and South American Co., *Re* (1859) 4 De G. & J. 544; 28 L.J.Ch. 769; 7 W.R. 682; 5 Jur.(N.S.) 1191 108, 111
Derby Canal Co. *v.* Wilmot (1808) 9 East 360 249
Derham & Allen, Ltd., *Re* [1946] Ch. 31; 61 T.L.R. 536; 114 L.J.Ch. 321; 173 L.T. 281 52
Dermatine Co. *v.* Ashworth (1905) 21 T.L.R. 510 . . . . . 185, 238, 256
De Rosaz's Case, Charles Laffitte & Co., *Re* (1869) 21 L.T. 10; 17 W.R.Ch.Dig. 75, 76 89
Derry *v.* Peek (1889) 14 App.Cas. 337; 58 L.J.Ch. 864; 61 L.T. 265; 38 W.R. 33; 54 J.P. 148; 1 Meg. 292; 5 T.L.R. 625 . . . . 335, 348, 350
De Ruvigne's Case, British Provident Life and Guarantee Association, *Re* (1877) 5 Ch.D. 306; 46 L.J.Ch. 360; 36 L.T. 329; 25 W.R. 476 191
Descours, Parry & Co., *Re* [1909] W.N. 50 384
Destone Fabrics, Ltd., *Re* [1941] Ch. 319 297
Deuchar *v.* Gas Light and Coke Co. [1925] A.C. 691; 94 L.J.Ch. 382; 133 L.T. 565; 41 T.L.R. 563; 89 J.P. 177; 23 L.G.R. 525 . . . . . 51, 55
Development Co. of Central and West Africa, *Re* [1902] 1 Ch. 547; 71 L.J.Ch. 310; 86 L.T. 323; 50 W.R. 456; 18 T.L.R. 337; 9 Mans. 151 78
Deverges *v.* Sandeman, Clark & Co. [1902] 1 Ch. 579; 71 L.J.Ch. 328; 86 L.T. 269; 50 W.R. 404; 18 T.L.R. 375 125
De Waal *v.* Adler (1886) L.R. 12 App.Cas. 141; 56 L.J.P.C. 25; 35 W.R.Dig. 139; 3 T.L.R. 188 113
Dexine Patent Packing and Rubber Co., *Re* [1903] W.N. 82; 88 L.T. 791; 51 W.R.Dig. 31 74
Dey *v.* Pullinger Engineering Co. [1921] 1 K.B. 77; 89 L.J.K.B. 1229; 124 L.T. 534; 37 T.L.R. 10 . . . . . 33, 182, 257
—— *v.* Rubber and Mercantile Corporation, Ltd. [1923] 2 Ch. 528; 93 L.J.Ch. 27; 130 L.T. 93; 39 T.L.R. 615; 67 S.J. 768 310
Deyes *v.* Wood [1911] 1 K.B. 806; 80 L.J.K.B. 553; 104 L.T. 404; 18 Mans. 229 . 285
Diamond *v.* English Sewing Cotton Co., Ltd. and Reduced [1922] W.N. 237 . . 169
Diamond Fuel Co., *Re* (No. 1). *See* Metcalfe's Case.
——, *Re* (No. 2) (1879) 13 Ch.D. 400; 49 L.J.Ch. 301; 41 L.T. 573; 28 W.R. 309 382
Diamond Rock Boring Co., *Re*. *See* Shaw, *Ex p.*
Dibble *v.* Wilts and Somerset Farmers, Ltd. [1923] 1 Ch. 342; 92 L.J.Ch. 168; 128 L.T. 643; 39 T.L.R. 174; 67 S.J. 297 7
Dickinson *v.* Valpy (1829) 10 B. & C. 128; 5 Man. & Ry. 126, 8 L.J.(O.S.)K.B. 51 255
Dickson *v.* Halesowen Steel Co. [1928] W.N. 33 222
Direct Spanish Telegraph Co., *Re* (1886) 34 Ch.D. 307; 56 L.J.Ch. 353; 55 L.T. 804; 35 W.R. 209; 3 T.L.R. 240 77
Director of Public Prosecutions *v.* Kent & Sussex Contractors, Ltd. [1944] K.B. 146; 113 L.J.K.B. 88; 170 L.T. 41; 60 T.L.R. 175 41
Dixon *v.* Kennaway & Co. [1900] 1 Ch. 833; 69 L.J.Ch. 501; 82 L.T. 527; 48 W.R.Dig. 40; 7 Mans. 446; 16 T.L.R. 329 124
Dixon (C. W.), Ltd., *Re* [1947] Ch. 251; [1947] L.J.R. 783; 177 L.T. 127; [1947] 1 All E.R. 279; 63 T.L.R. 155 415
Dixon's Case. *See* Coventry and Dixon's Case.
Dobson's Case, Fearnside and Dean's Case, Leeds Banking Co., *Re* (1865) L.R. 1 Ch.App. 231; 35 L.J.Ch. 307; 13 L.T. 694; 14 W.R. 255; 12 Jur.(N.S.) 60 118
Doloswella Rubber and Tea Estates, Ltd. and Reduced, *Re* [1917] 1 Ch. 213; 86 L.J.Ch. 223; 115 L.T. 853 76
Doman's Case, European Assurance Society Arbitration Acts, *Re* (1876) 3 Ch.D. 21; 45 L.J.Ch. 801; 34 L.T. 929; 24 W.R.Dig. 121 . . . . . 31, 36
Dominion Cotton Mills Co. *v.* Amyot [1912] A.C. 546; 81 L.J.P.C. 283; 106 L.T. 934; 28 T.L.R. 467 230
Dominion of Canada Freehold Estate and Timber Co., *Re* (1886) 55 L.T. 347; 35 W.R.Dig. 41 440
Dominion of Canada General Trading and Investment Syndicate *v.* Brigstocke [1911] 2 K.B. 648; 80 L.J.K.B. 1344; 105 L.T. 894; 18 Mans. 369; 27 T.L.R. 508; 55 S.J. 633 . . . . . 331, 368
Dominion Tar Co. [1929] 2 Ch. 387; 98 L.J.Ch. 448; [1929] W.N. 189; 45 T.L.R. 601 66
Doré Gallery Co., *Re* [1891] W.N. 98; 35 S.J. 480 382
Dorman Long & Co., *Re* [1934] Ch. 635; 151 L.T. 347; 103 L.J.Ch. 316 . 439, 440

Doughty, *Re*, **Burridge** *v.* **Doughty** [1947] 1 Ch. 263; 176 L. T. 173; 63 T.L.R. 257; [1947] 1 All E.R. 207 207
Dover Coalfields Extension, Ltd., *Re* [1908] 1 Ch. 65; 77 L.J.Ch. 94; 98 L.T. 31; 24 T.L.R. 52; 15 Mans. 51 (C.A.) 166
Dovey *v.* **Cory** [1901] A.C. 477 (H.L.(E.)); 70 L.J.Ch. 753; 85 L.T. 257; 50 W.R. 65; 17 T.L.R. 732; 8 Mans. 346 . . . . 186, 188, 189, 203, 219
Downes *v.* **Ship (James) and S. L. Price** (1868) L.R. 3 H.L. 343; 37 L.J.Ch. 642; 19 L.T. 74; 17 W.R. 34 89
Dowson's Submission to Arbitration, *Re* [1889] W.N. 222 100
Driffield Gas Light Co., *Re* [1898] 1 Ch. 451; 67 L.J.Ch. 247; 78 L.T. 162; 46 W.R. 411; 14 T.L.R. 259; 5 Mans. 253 394
Drincqbier *v.* **Wood** [1899] 1 Ch. 393; 68 L.J.Ch. 181; 79 L.T. 548; 47 W.R. 252; 6 Mans. 76; 15 T.L.R. 18 349
Driver *v.* **Broad** [1893] 1 Q.B. 744; 63 L.J.Q.B. 12; 69 L.T. 169; 41 W.R. 483; 9 T.L.R. 440 304
Drown *v.* **British Gaumont Picture Corporation, Ltd.** [1937] Ch. 402; 106 L.J.Ch 241; 157 L.T. 543 202
Drummond, *Re*, **Ashworth** *v.* **Drummond** [1914] 2 Ch. 90; 83 L.J.Ch. 817; 111 L.T. 156; 30 T.L.R. 429 445
Dublin City Distillery, Ltd. *v.* **Doherty** [1914] A.C. 823; [1914] 1 Ir. R. 389; 83 L.J.P.C. 265; 111 L.T. 81; 58 S.J. 413 267
Du Boulay *v.* **Du Boulay** (1869) L.R. 2 P.C. 430, 441; 38 L.J.P.C. 35; 17 W.R. 594; 6 Moore P.C.(N.S.) 31 238
Duck *v.* **Tower Galvanising Co. Callund—claimant** [1901] 2 K.B. 314; 70 L.J. K.B. 625; 84 L.T. 847; 49 W.R. Dig. 25 . . . . . 33, 34, 296
Duckett *v.* **Gover** (1877) 6 Ch.D. 82; 46 L.J.Ch. 407; 25 W.R. 455 (*and see* same case on practice point, 25 W.R. 554) 228
Duder *v.* **Amsterdamsch Trustees Kantoor** [1902] 2 Ch. 132, 71 L.J.Ch. 618; 87 L.T. 22; 50 W.R. 551 261
Duff's Executors' Case, Cheshire Banking Co., *Re* (1886) 32 Ch.D. 301; 54 L.T. 558; 34 W.R.Dig. 33; 2 T.L.R. 440 118
Duffin *v.* **Mexican Gold and Silver Ore Reduction Co.** [1890] W.N 116 . . . 106
Dummelow, *Re*. *See* Ruffle, *Ex p.*
Duncan (W. W.) & Co., *Re* [1905] 1 Ch. 307; 74 L.J.Ch. 188; 92 L.T. 108; 53 W.R. 299; 12 Mans. 38 . . . . . 395, 404
Dunderland Iron Ore Co., *Re* [1909] 1 Ch. 446; 78 L.J.Ch. 237; 100 L.T. 244; 16 Mans. 67 . . . . . 311, 381
Dunlop *v.* **Higgins** (1848) 1 H.L.Cas. (Cl. & Fin.) 381; 12 Jur. 295 83
Dunlop Truffault Cycle and Tube Manufacturing Co., *Re*, **Shearman**, *ex p.* (1896) 66 L.J.Ch. 25; 75 L.T. 385; 45 W.R.Dig. 29 344
Dunstable Portland Cement Co., *Re* (1932) 48 T.L.R. 223 394
Dunster's Case, Glory Paper Mills Co., *Re* [1894] 3 Ch. 473; 63 L.J.Ch. 885; 71 L.T. 528; 43 W.R. 164; 10 T.L.R. 669; 1 Mans. 438; 7 R. 456 (C.A.) . . . 82
Dunston *v.* **Imperial Gas Light and Coke Co.** (1832) 3 B. & Ad. 125; 1 L.J.K.B. 49 166
Duranty's Case, Liverpool Borough Bank, *Re* (1858) 26 Beav. 268; 28 L.J.Ch. 37; 32 L.T.(O.S.) 114; 7 W.R. 70; 4 Jur.(N.S.) 1068 348
Dutton *v.* **Marsh** (1871) L.R. 6 Q.B. 361; 40 L.J.Q.B. 175; 24 L.T. 470; 19 W.R. 754 257
Dutton's Patent, *Re* [1923] W.N. 64; 67 S.J. 403; 40 R.P.C. 84 415

Eaglesfield *v.* **Londonderry (Marquis of)** (1877) 4 Ch.D. 702; (1878) 38 L.T. 303; 26 W.R. 540 345
Eales *v.* **Cumberland Blacklead Mine Co.** (1861) 6 H. & N. 481; 30 L.J.Ex. 141; 3 L.T. 861; 7 Jur.(N.S.) 169 170
Earle's Shipbuilding and Engineering Co., *Re*, **Barclay & Co.** *v.* **The Company** [1901] W.N. 78 400
East *v.* **Bennett Brothers** [1911] 1 Ch. 163; 80 L.J.Ch. 123; 103 L.T. 826; 27 T.L.R. 103; 18 Mans. 145; 55 S.J. 92 148
East Kent Shipping Co. (1868) 18 L.T. 748 430
East Kongsberg Co., *Re*. *See* Biggs' Case.
East Pant Du United Lead Mining Co. *v.* **Merryweather** (1864) 2 Hem. & Mil. 254; 13 W.R. 216; 10 Jur.(N.S.) 1231; 4 N.R. 541; 5 N.R. 166 150
Eastern Telegraph Co., Ltd. [1947] L.J.R. 1247; 177 L.T. 526; [1947] All E.R. 104 378
Easton *v.* **London Joint Stock Bank** (1886) 34 Ch.D. 95; 56 L.J.Ch. 569; 55 L.T. 678; 35 W.R. 220; 3 T.L.R. 68 114
Ebbett's Case, Constantinople and Alexandria Hotel Co., *Re* (1870) L.R. 5 Ch.App. 302; 39 L.J.Ch. 679; 22 L.T. 424; 18 W.R. 394 94
Ebbw Vale Steel, Iron and Coal Co., *Re* (1877) 4 Ch.D. 827; 46 L.J.Ch. 241; 36 L.T. 308; 25 W.R.Dig. 48 . . . . . 76, 203
Eberle's Hotels and Restaurant Co. *v.* **Jonas (E.) & Bros.** (1887) 18 Q.B.D. 459; 56 L.J.Q.B. 278; 35 W.R. 467 397

Eddystone Marine Insurance Co., *Re* (1893) 3 Ch. 9; 62 L.J.Ch. 742; 69 L.T. 363; 41 W.R. 642; 9 T.L.R. 501 . . . . . 52, 97
Edelstein *v.* Schuler & Co. [1902] 2 K.B. 144; 71 L.J.K.B. 572; 87 L.T. 204; 50 W.R. 493; 18 T.L.R. 597; 7 Com.Cas. 172 . . . . . 293, 294
Eden *v.* Ridsdale's Ry. Lamp and Lighting Co. (1889) 23 Q.B.D. 368; 58 L.J. Q.B. 579; 61 L.T. 444; 38 W.R. 55 177
Edgington *v.* Fitzmaurice (1885) 29 Ch.D. 459, 483; 55 L.J.Ch. 650; 53 L.T. 369; 33 W.R. 911; 50 J.P. 52; 1 T.L.R. 326 347
Edmonds *v.* Foster (1875) 45 L.J.M.C. 41; 33 L.T. 690; 24 W.R. 368 101
Edwards, *Re*, Newbery *v.* Edwards [1918] 1 Ch. 142; 87 L.J.Ch. 248; 118 L.T 17; 62 S.J. 191; 34 T.L.R. 135 205
Edwards *v.* Edwards (1876) 2 Ch.D. 291; 45 L.J.Ch. 391; 34 L.T. 472; 24 W.R. 713 315
—— *v.* Midland Ry. (1880) 6 Q.B.D. 287; 50 L.J.Q.B. 281; 43 L.T. 694; 29 W.R. 609; 45 J.P. 374 56
—— *v.* Ransomes & Rapier, Ltd. [1930] W.N. 180; 143 L.T. 594 281
—— *v.* Standard Rolling Stock Syndicate [1893] 1 Ch. 574; 62 L.J.Ch. 605; 68 L.T. 633; 41 W.R. 343; 3 R. 226 315
Egyptian Delta Land and Investment Co. *v.* Todd [1929] A.C. 1; 98 L.J.K.B. 1; 140 L.T. 50; 44 T.L.R. 747; 72 S.J. 545 451
Egyptian Salt and Soda Co. *v.* Port Said Salt Association, Ltd. [1931] A.C. at p. 677, 682; 100 L.J.P.C. 147; 145 L.T. 313 54
Ehrmann Bros., *Re*, Albert *v.* Ehrmann Bros., Ltd. [1906] 2 Ch. 697; 75 L.J.Ch. 817, 95 L.T. 664; 22 T.L.R. 734; 13 Mans. 368 (C.A.) 269
Eichbaum *v.* City of Chicago Grain Elevators, Ltd. [1891] 3 Ch. 459; 61 L.J. Ch. 28; 65 L.T. 704; 40 W.R. 153 75
Eicholz *v.* Defries & Sons. *See* Defries & Sons, *Re*.
Electric Telegraph Co. of Ireland, *Re*. *See* Bunn's Case.
Eley *v.* Positive Government Security Life Assurance Co. (1876) 1 Ex.Div. 88; 45 L.J.Exch. 451; 34 L.T. 190; 24 W.R. 338 . . . . 28, 30, 252
Elias *v.* Continental Oxygen Co., Continental Oxygen Co., *Re* [1897] 1 Ch. 511; 66 L.J.Ch. 273; 76 L.T. 229; 45 W.R 313, 13 T.L.R. 224 319
Elkington's Case, Richmond Hill Hotel Co., *Re* (1867) L.R. 2 Ch.App. 511; 36 L.J.Ch. 593; 16 L.T. 301; 15 W.R. 665 92
Elliott *v.* Bax-Ironside [1925] 2 K.B. 301; 94 L.J.K.B. 807; 133 L.T. 624; 41 T.L.R. 631 257
Ellis *v.* Glover and Hobson, Ltd. [1908] 1 K.B. 388 298
Elphinstone (Lord) *v.* Monkland Co. (1886) 11 App.Cas. 332 403
Elsner and McArthur's Case. *See* Common Petroleum Engine Co., *Re*.
Emma Silver Mining Co., *Re* (production of books) (1875) L.R. 10 Ch.App. 194; 44 L.J.Ch. 456; 31 L.T. 816; 23 W.R. 300 385
—— *v.* Grant (No. 1) (1879) 11 Ch.D. 918; 40 L.T. 804; 27 W.R.Dig. 44 . 323, 326
—— *v.* —— (No. 2) (1880) 17 Ch.D. 122; 50 L.J.Ch. 449; 29 W.R. 481 . . 326
Emmerson's Case (No. 1), London, Hamburg and Continental Exchange Bank, *Re* (1866) 35 Beav. 518; L.R. 2 Eq. 231; 35 L.J.Ch. 652; 14 W.R. 785; 12 Jur.(N.S.) 494 395
—— (No. 2), London, Hamburg and Continental Exchange Bank, *Re* (1866) L.R. 1 Ch.App. 433; 36 L.J.Ch. 177; 14 L.T. 746; 14 W.R. 905; 12 Jur.(N.S.) 592 116
Empire Guarantee, etc., Corporation, *Re* [1911] S.C. 1296 . . . . . 371, 372
Empire Mining Co., *Re* (1890) 44 Ch.D. 402; 59 L.J.Ch. 345; 62 L.T. 493; 38 W.R. 747; 2 Meg. 191 440
Empress Engineering Co., *Re* (1880) 16 Ch.D. 125; 43 L.T. 742; 29 W.R. 342 . 243, 311
Engel *v.* South Metropolitan Brewing and Bottling Co. [1892] 1 Ch. 442; 61 L.J. Ch. 369; 66 L.T. 155; 40 W.R. 282; 8 T.L.R. 267 310
Englefield Colliery Co., *Re* (1877-8) 8 Ch.D. 388; 38 L.T. 112; 26 W.R.Dig. 45 191, 197, 325
English and Colonial Produce Co., *Re* [1906] 2 Ch. 435; 75 L.J.Ch. 831; 95 L.T. 580; 22 T.L.R. 669; 13 Mans. 387 . . . . . 243, 326
English and Scottish Mercantile Investment Co. *v.* Brunton [1892] 2 Q.B. 700; 62 L.J.Q.B. 136; 67 L.T. 406; 41 W.R. 133; 8 T.L.R. 772 (C.A.) . 279, 300
English and Scottish Mercantile Investment Trust, *Re*. *See* Barnes (G.S.), *Ex p.*
English Electro-Metallurgical Co. *v.* Glasdir Copper Works. *See* Glasdir Copper Works, *Re*.
English, Scottish and Australian Chartered Bank, *Re* [1893] 3 Ch. 385; 62 L.J. Ch. 825; 69 L.T. 268; 42 W.R. 4; 2 R. 574; 9 T.L.R. 556, 581 154
English, etc., Rolling Stock Co., *Re*. *See* Lyon's Case.
Enraght's Case. *See* Dale's Case.
Erlanger *v.* New Sombrero Phosphate Co. (1878) 3 App.Cas. 1218 (H.L.(E.)); 48 L.J.Ch. 73; 39 L.T. 269; 27 W.R. 65 . . . . . 57, 322, 323, 324
Ernest *v.* Croysdill (1860) 2 De G.F. & J. 175; 29 L.J.Ch. 580; 2 L.T. 616; 8 W.R. 786; 6 Jur.(N.S.) 740 160

Ernest *v.* **Loma Gold Mines** [1897] 1 Ch. 1; 66 L.J.Ch. 17; 75 L.T. 317; 45 W.R. 86; 13 T.L.R. 31 . . . . . 152, 154, 226
—— *v.* **Nicholls** (1857) 6 H.L.Cas. 401 (Clark); 6 W.R. 24 . . . 32, 42, 48, 51, 438
Esberger & Son, Ltd. *v.* **Capital and Counties Bank** [1913] 2 Ch. 366; 82 L.J.Ch. 576; 109 L.T. 140 267
Esparto Trading Co., *Re* (1879) 12 Ch.D. 191; 48 L.J.Ch. 573; 28 W.R. 146 . 82, 130
Espuela Land and Cattle Co., *Re* [1900] W.N. 139; 48 W.R. 684 148
——, *Re* (No. 2) [1909] 2 Ch. 187; 78 L.J.Ch. 729; 101 L.T. 13; 16 Mans. 251 . 67
Estates Investment Co., *Re.* *See* Ashley's Case.
Etheridge *v.* **Central Uruguay Northern Extension Ry.** [1913] 1 Ch. 425; 82 L.J. Ch. 333; 108 L.T. 362; 29 T.L.R. 328; 20 Mans. 172; 57 S.J. 341 . . 438
Etic, Ltd., *Re* [1928] Ch. 861; 97 L.J.Ch. 460; 140 L.T. 219 412
Euphrates and Tigris Steam Navigation Co., *Re* [1904] 1 Ch. 360; 73 L.J.Ch. 175; 90 L.T. 56; 11 Mans. 93 62
European and American Finance Corpn., *Ex p.* *See* Strand Music Hall Co., *Re.*
European Assurance Society Arbitration Acts, *Re.* *See* Doman's Case.
European Assurance Society, *Re* (1875) 4 Ch.D. 33 276
European Banking Co., *Re*, **Bayliss,** *ex p.* (1866) L.R. 2 Eq. 521; 35 L.J.Ch. 690; 15 L.T. 310; 14 W.R.Ch.Dig. 62; 12 Jur.(N.S.) 615 386
European Central Ry., *Re*, **Oriental Financial Corpn.,** *ex p.* (1876) 4 Ch.D. 33; 46 L.J.Ch. 57; 35 L.T. 583; 25 W.R. 92 321
——, *Re.* *See* Sykes's Case.
European Society Arbitration Acts, *Re.* *See* British Nation Life Assurance Association (Liquidators of), *Ex p.*
Evans *v.* **Brunner, Mond & Co., Ltd.** [1921] 1 Ch. 359; 90 L.J.Ch. 294; 124 L.T. 469; 65 S.J. 134 . . . . . 50, 55
—— *v.* **Chapman** (1902) 86 L.T. 381; 50 W.R.Dig. 24; 18 T.L.R. 506 . . . 87
—— *v.* **Lloyds Furniture Palace, Ltd.** *See* Lloyds Furniture Palace, Ltd., *Re.*
—— *v.* **Rival Granite Quarries** [1910] 2 K.B. 979; 79 L.J.K.B. 970; 54 S.J. 580; 26 T.L.R. 509 . . . . . 297, 298, 316
——, *Ex p.* **Watkins,** *re* (1879) 11 Ch.D. 691; 48 L.J.Bk. 97; 40 L.T. 526; 27 W.R. 712; on appeal (1879) 13 Ch.D. 252; 49 L.J.Bk. 7; 41 L.T. 565; 28 W.R. 127 316
——, *Re.* *See* Jones *v.* Evans.
Evans' Case, London, Hamburgh and Continental Exchange Bank, *Re* (1867) L.R. 2 Ch.App. 427; 36 L.J.Ch. 501; 16 L.T. 252; 15 W.R. 543 . . . 81, 82
Evans (J.H.) & Co., *Re* [1892] W.N. 126 385
Evans (Joseph) & Co. *v.* **Heathcote** [1918] 1 K.B. 418; 87 L.J.K.B. 593; 118 L.T. 556; 34 T.L.R. 247 20
Everitt *v.* **Automatic Weighing Machine Co.** [1892] 3 Ch. 506; 62 L.J.Ch. 241; 67 L.T. 349; 41 W.R.Dig. 40; 3 R. 34 137
Evertite Locknuts, *Re* [1945] Ch. 220; 114 L.J.Ch. 193; 61 T.L.R. 274; 172 L.T. 378 443
Evling *v.* **Israel and Oppenheimer, Ltd.** [1918] 1 Ch. 101; 87 L.J.Ch. 341; 118 L.T. 99; 34 T.L.R. 109 . . . . . 201, 204, 218
Ewing *v.* **Buttercup Margarine Co.** [1917] 2 Ch. 1; 86 L.J.Ch. 441; 117 L.T. 67; 34 R.P.C. 232; 61 S.J. 443; 33 T.L.R. 321 19
Exchange Banking Co., *Re* (1882). *See* Flitcroft's Case.
Exchange Drapery Co., *Re* (1888) 38 Ch.D. 171; 57 L.J.Ch. 914; 58 L.T. 544; 36 W.R. 444; 4 T.L.R. 381 129
Exchange Trust, Ltd., *Re*, **Larkworthy's Case** [1903] 1 Ch. 711; 72 L.J.Ch. 387; 88 L.T. 56; 51 W.R.Dig. 32; 10 Mans. 191 131
Exeter and Crediton Ry. *v.* **Buller** (1847) 5 Ry. & Canal Cas. 211; 16 L.J.Ch. 449; 11 Jur. 527 229
Exploring Land and Minerals Co. *v.* **Kölckmann** (1905) 94 L.T. 234 . . 190, 192
Express Engineering Works, *Re* [1920] 1 Ch. 466; 89 L.J.Ch. 379; 122 L.T. 790; 36 T.L.R. 275 . . . . . 53, 142, 148
Eyre *v.* **Milton Proprietary** [1936] Ch. 244; [1936] W.N. 23; 154 L.T. 120; 52 T.L.R. 208; 105 L.J.Ch. 121 182

F. de Jong & Co., Ltd. [1946] Ch. 211 66
F. P. A. Finance Trust, Ltd. *v.* **I. R. C.** [1946] A.C. 38 455
Fairbairn Engineering Co., *Re*, **Ladd's Case** [1893] 3 Ch. 450; 68 L.J.Ch. 8; 69 L.T. 415; 42 W.R. 155; 8 R. 16 . . . . . 127, 131, 453
Famatina Development Corpn., *Re* [1914] 2 Ch. 271; 83 L.J.Ch. 712; 84 L.J.Ch. 48; 30 T.L.R. 696 196
—— *v.* **Bury** [1910] A.C. 439; 79 L.J.Ch. 597; 102 L.T. 866; 54 S.J. 616; 26 T.L.R. 540; 17 Mans. 242 305
Faris's Case. *See* British Sugar Refining Co., *Re.*
Farmer, Tebrau (Johore) Rubber Syndicate, Ltd. *v.* *See* **Tebrau (Johore) Rubber Syndicate** *v.* **Farmer.**

Farmer *v.* Goy & Co., Goy & Co., *Re* [1900] 2 Ch. 149; 69 L.J.Ch. 481; 83 L.T. 309; 48 W.R. 425; 16 T.L.R. 310 . . . . . 281, 283
Farrar *v.* Farrars, Ltd. (1888) 40 Ch.D. 395; 58 L.J.Ch. 185; 60 L.T. 121; 37 W.R. 196; 5 T.L.R. 164 43
Farrer, *Re* [1937] Ch. 352; 53 T.L.R. 581; 106 L.J.Ch. 305 254
Farrow's Bank, Ltd., *Re* [1921] 2 Ch. 164; 90 L.J.Ch. 465; 125 L.T. 699; 37 T.L.R. 847; 65 S.J. 679 . . . . . 389, 396
Fasey, *Re*, Trustees, *ex p.* [1923] 2 Ch. 1; 92 L.J.Ch. 400; 129 L.T. 132; [1923] B. & C.R. 8 410
Faure Electric Accumulator Co., *Re* (1888) 40 Ch.D. 141; 58 L.J.Ch. 48; 59 L.T. 918; 37 W.R. 116; 1 Meg. 99; 5 T.L.R. 63 . . . . . 159, 189, 329
— *v.* Phillipart (1888) 58 L.T. 525; 36 W.R.Dig. 30; 4 T.L.R. 365 . 127, 128, 130, 132, 174, 180
Fearnside and Dean's Case, Leeds Banking Co., *Re* (1865) L.R. 1 Ch.App. 231; 35 L.J.Ch. 307; 13 L.T. 694; 14 W.R. 255; 12 Jur.(N.S.) 60 118
Feist *v.* Société Intercommunale Belge [1934] A.C. 161; [1934] W.N. 4; 103 L.J.Ch. 41; 150 L.T. 41; 39 Com Cas. 145; 50 T.L.R. 143 287
Feldman and Partridge *v.* Belvedere Fish Guano Co. *See* Rainham Chemical Works, Ltd., *Re*.
Fell *v.* Derby Leather Co. [1931] 2 Ch. 252; [1931] W.N. 131; 47 T.L.R. 595; 100 L.J.Ch. 397; 145 L.T. 672 25
Fendock Investment Trust Co. *v.* I.R.C. [1945] W.N. 118 455
Fenton, *Re*, [1931] 1 Ch. 85; 99 L.J.Ch. 358; 143 L.T. 273; [1929–30] B. & C.R. 189; 46 T.L.R. 478 397
Fenwick, Stobart & Co., *Re*, Deep Sea Fishery Co.'s Claim [1902] 1 Ch. 507; 71 L.J.Ch. 321; 86 L.T. 193; 50 W.R.Dig. 30; 9 Mans. 205 . . . . 223, 250
Ferguson *v.* Wilson (1866) L.R. 2 Ch.App. 77; 36 L.J.Ch. 67; 15 L.T. 290; 15 W.R. 27; 12 Jur.(N.S.) 912 . . . . . 95, 157, 158, 184, 185
Fernandes' Executors' Case, Commercial Bank Corporation of India and the East, *Re*, (1870) L.R. 5 Ch.App. 314; 39 L.J.Ch. 497; 22 L.T. 219; 18 W.R. 411 . 119
Fewings, *Ex p.*, Sneyd, *re* (1883) 25 Ch.D. 338; 53 L.J.Ch. 545; 50 L.T. 109; 32 W.R. 352 276
Finance and Issue, Ltd. *v.* Canadian Produce Corporation [1905] 1 Ch. 37; 73 L.J.Ch. 751; 91 L.T. 685; 53 W.R. 170; 20 T.L.R. 807; 11 Mans. 412 . 87
Financial Corporation's Claim. *See* Natal Investment Co., *Re*.
Findlay (Liquidators of Scottish Workmen's Assurance Co.) *v.* Waddell, 1910 S.C. 670 (Ct. of Sess.) (No. 97) 219
Firbank's Executors *v.* Humphreys (1886) 18 Q.B.D. 54; 56 L.J.Q.B. 57; 56 L.T. 36; 35 W.R. 92; 3 T.L.R. 49 . . . . . 124, 178, 263
Fireproof Doors, Ltd., Umney *v.* The Company [1916] 2 Ch. 142; 85 L.J.Ch. 444; 114 L.T. 994; 60 S.J. 513 . . . . . 84, 180, 268, 277, 307
First Garden City *v.* Bonham-Carter [1928] Ch. 53; 97 L.J.Ch. 52; 138 L.T. 222 . 206
First National Re-insurance Co. *v.* Greenfield [1921] 2 K.B. 260; 90 L.J.K.B. 617; 125 L.T. 171; 37 T.L.R. 235 129
Firth & Sons *v.* Commrs. Inland Revenue [1904] 2 K.B. 205; 73 L.J.K.B. 632; 91 L.T. 138; 52 W.R. 622; 20 T.L.R. 447 305
Fisher *v.* Black and White Publishing Co. [1901] 1 Ch. 174; 70 L.J.Ch. 175; 84 L.T. 305; 49 W.R. 310; 8 Mans. 184; 17 T.L.R. 146 (C.A.) 200
Fisher's Case, Sherrington's Case, Southport and West Lancs. Banking Co., *Re* (1885) 31 Ch.D. 120; 55 L.J.Ch. 497; 53 L.T. 832; 34 W.R. 49. 335; 2 T.L.R. 49 92
Fisher's Case. *See* Tom Tit Cycle Co., *Re*.
Fitzgerald *v.* Persse [1908] 1 Ir.R. 279 308
Fleetwood and District Electric Light and Power Syndicate, *Re* [1915] 1 Ch. 486; 84 L.J.Ch. 374; 112 L.T. 1127; 59 S.J. 383; 31 T.L.R. 221; [1915] 1 H.B.R. 70 389
Fleetwood Estate Co., *Re* [1897] W.N. 20 60
Fletcher's Case. *See* Smedley and Fletcher, *Ex p.*
Flitcroft's Case, Exchange Banking Co., *Re* (1882) 21 Ch.D. 519; 52 L.J.Ch. 217; 48 L.T. 86; 31 W.R. 174 . . . 41, 42, 159, 191, 192, 200, 204, 208, 411
Floating Dock Co. of St. Thomas, Ltd., *Re* [1895] 1 Ch. 691; 64 L.J.Ch. 361; 43 W.R. 344; 13 R. 491 77
Florence Land and Public Works Co., *Re*, Moor, *ex p.* (1878) 10 Ch.D. 530; 48 L.J. Ch. 137; 39 L.T. 589; 27 W.R. 236; 29 Ch.D. 421 . . . 279, 296, 298, 299
——, *Re* (1885). *See* Nicol's Case.
Follit *v.* Eddystone Granite Quarries Co. [1892] 3 Ch. 75; 61 L.J.Ch. 567; 40 W.R. 667; 8 T.L.R. 535 309
Food Controller *v.* Cork [1923] A.C. 647; 92 L.J.Ch. 587; 130 L. T. 1; 39 T.L.R. 698; 67 S.J. 788 396
Foorde, *Ex p.* *See* Delta Syndicate, *Re*.
Forbes' Case, Dent's Case; Anglo-Moravian-Hungarian Junction Ry., *Re* (1873) L.R. 8 Ch.App. 768; 42 L.J.Ch. 857; 28 L.T. 888 171

Forde, *Ex p.* *See* **Delta Syndicate, *Re.***
Fore Street Warehouse Co., *Re* [1888] W.N. 155; 59 L.T. 214; 37 W.R.Dig. 34; 1 Meg. 67 76
Forest of Dean Coal Mining Co., *Re* (1878) 10 Ch.D. 450; 40 L.T. 287; 27 W.R. 594 . . . . . 159, 187, 189, 190
Forget *v.* Cement Products Co. of Canada [1916] W.N. 259 89
Forrest *v.* Manchester, Sheffield and Lincolnshire Ry. (1861) 4 De G.F. & J. 126; 4 L.T. 666; 9 W.R. 818; 7 Jur.(N.S.) 887 50
Foss *v.* Harbottle (1843) 2 Hare 461 . . . . . 29, 156, 173
Foster *v.* Borax Co., Borax Co., *Re* [1901] 1 Ch. 326; 70 L.J.Ch. 162; 83 L.T. 638; 49 W.R. 212; 17 T.L.R. 159 . . . . . 49, 296, 298, 315
—— *v.* Coles (1906) 22 T.L.R. 555 65
—— *v.* Foster [1916] 1 Ch. 532; 85 L.J.Ch. 305; 114 L.T. 405 . . . . 161, 230
—— *v.* New Trinidad Lake Asphalt Co. [1901] 1 Ch. 208; 70 L.J.Ch. 123; 49 W.R. 119; 8 Mans. 47; 17 T.L.R. 89 . . . . . 200, 201
Foster (W.) & Sons, Ltd., *Re* [1942] 1 All E.R. 314 66
Fowler *v.* Commercial Timber Co. [1930] 2 K.B. 1; 99 L.J.K.B. 529, 143 L.T. 391 253
—— *v.* Midland Electric Corporation for Power Distribution [1917] 1 Ch. 656; 86 L.J.Ch. 472; 117 L.T. 97; 61 S.J. 459; 32 T.L.R. 322 287
Fowler (B. P.), Ltd., *Re* [1938] Ch. 113; 107 L.J.Ch. 97; 158 L.T. 369 409
Fox, *Ex p.*, Irrigation Co. of France, *re* (1871) L.R. 6 Ch.App. 176; 40 L.J.Ch 433; 24 L.T. 336; 19 W.R.Ch.Dig. 54, 58; affirming (1870) 18 W.R. 1083 . 437
Fox *v.* Crystal Palace Co. *See* Crystal Palace Co., *Re.*
Frames *v.* Bulfontein Mining Co. [1891] 1 Ch. 140; 60 L.J.Ch. 99; 64 L.T. 12; 39 W.R. 134; 7 T.L.R. 129; 2 Meg. 374 208
France *v.* Clark (1884) 26 Ch.D. 257; 53 L.J.Ch. 585; 50 L.T. 1, 32 W.R. 466 114
Francke, *Re*, Drake *v.* Francke (1888) 57 L.J.Ch. 437 318
Fraser and Chalmers, Ltd., *Re* [1919] 2 Ch. 114 88 L.J.Ch. 343; [1918-19] B. & C.R. 186; 121 L.T. 232; 35 T.L.R. 484; 63 S.J. 590 67
Freeman *v.* Cooke (1848) 2 Ex. Reps. 654; 6 Dow & Low 187; 18 L.J.Ex. 114; 12 Jur. 777 123
Friary, Holroyd and Healy's Breweries, The Company *v.* Seckham [1922] W.N. 293; 67 S.J. 97 50
Fruit and Vegetable Growers' Association *v.* Kekewich [1912] 2 Ch. 52; 81 L.J.Ch. 499; 106 L.T. 1007; 56 S.J. 502; 19 Mans. 206; 28 T.L.R. 411 . . . 143
Fry *v.* Salisbury House Estate Co. [1930] A.C. 432 452
—— *v.* Smellie [1912] 3 K.B. 282; 81 L.J.K.B. 1009; 106 L.T. 404 . . . 114
Fuller *v.* Glyn, Mills, Currie & Co. [1914] 2 K.B. 168; 83 L.J.K.B. 764; 110 L.T. 318; 30 T.L.R. 162; 58 S.J. 235; 19 Com.Cas. 186 125
—— *v.* McMahon. *See* McMahon, *Re.*
Fulton & Co., *Re* [1932] N. Ir. 35 211

Gadd *v.* Houghton (1876) 1 Ex.Div. 357; 46 L.J.Ex. 71; 35 L.T. 222; 24 W.R. 975 . . . . . 185, 245
Galbraith *v.* Merito Shipping Co. 1947 S. C. 446 378
Gallard, *Re*, Gallard, *ex p.* [1896] 1 Q.B. 68; 65 L.J.Q.B. 199; 73 L.T. 457; 44 W.R. 121; 2 Mans. 515 392
Galloway *v.* Hallé Concerts Society [1915] 2 Ch. 233; 84 L.J.Ch. 723; 113 L.T. 811; 59 S.J. 613; 31 T.L.R. 469 . . . . . 127, 129
—— *v.* Schill, Seebohm & Co. [1912] 2 K.B. 354; 81 L.J.K.B. 752; 106 L.T. 875; 76 J.P. 298; 28 T.L.R. 400; 19 Mans. 199 101
Gallsworthy *v.* Selby Dam Drainage Commrs. [1892] 1 Q.B. 348; 61 L.J.Q.B. 372; 66 L.T. 17; 40 W.R.Dig. 81 57
Galway and Salthill Tramways Co., *Re* [1918] 1 Ir. R. 62 379
Gandy *v.* Gandy (1885) 30 Ch.D. 57; 54 L.J.Ch. 1154; 53 L.T. 306; 33 W.R. 803; 1 T.L.R. 520 311
Garden Gully United Quartz Mining Co. *v.* McLister (1875) L.R. 1 App.Cas. 39; 33 L.T. 408; 24 W.R. 744 . . . . . 127, 130, 131
Gardner *v.* Iredale [1912] 1 Ch. 700; 81 L.J.Ch. 531; 106 L.T. 860; 19 Mans. 245 96, 140
—— *v.* London, Chatham and Dover Ry. (1866-7) L.R. 2 Ch.App. 201; 36 L.J.Ch. 323; 15 L.T. 494, 552; 15 W.R. 325 272
Garrard *v.* James [1925] Ch. 616; 94 L.J.Ch. 234; 133 L.T. 261; 69 S.J. 622 . 263
Gartside *v.* Silkstone and Dodworth Coal and Iron Co. (1882) 21 Ch.D. 762; 51 L.J.Ch. 828; 47 L.T. 76; 31 W.R. 36 308
Gaumont British Picture Corporation, *Re* [1940] Ch. 506; 56 T.L.R. 610; 109 L.J.Ch. 263; 163 L.T. 75 214
Gee *v.* Bell (1887) 35 Ch.D. 160; 56 L.J.Ch. 718; 56 L.T. 305; 35 W.R. 805 . . 318
Geipel *v.* Peach [1917] 2 Ch. 108; 86 L.J.Ch. 745; 117 L.T. 84; 61 S.J. 460 . . 349
Geisse *v.* Taylor and Hartland [1905] 2 K.B. 658; 74 L.J.K.B. 912; 93 L.T. 534; 54 W.R. 215; 12 Mans. 400 308

General Accident Assurance Corpn., *Re* [1904] 1 Ch. 147; 73 L.J.Ch. 84; 89 L.T. 699; 52 W.R. 332 415
General Auction Estate and Monetary Co. *v.* Smith [1891] 3 Ch. 432; 60 L.J.Ch. 723; 65 L.T. 188; 40 W.R. 106; 7 T.L.R. 636 . . . . . 51, 258
General Estates Co., *Re*. *See* City Bank, *Ex p.*
General Exchange Bank, *Re*, Lewis, *ex p.* (1871) L.R. 6 Ch.App. 818; and under London, Hamburg and Continental Exchange Bank, 40 L.J.Ch. 429; 24 L.T. 787; 19 W.R. 791 . . . . . 134, 138
General Horticultural Co., *Re*, Whitehouse, *ex p.* (1886) 32 Ch.D. 512; 55 L.J.Ch. 608; 54 L.T. 898; 34 W.R. 681 115
General Mortgage Society (Great Britain), Ltd., *Re* [1942] 1 All E.R. 414 . . 440
General Motor Cab Co., Ltd., *Re* (1912) 56 S.J. 573 284
——, *Re* [1913] 1 Ch. 377; 81 L.J.Ch. 505; 106 L.T. 709; 28 T.L.R. 352; 19 Mans. 272 441
General Provident Insurance Co., *Re*. *See* Bridger's Case.
General Rolling Stock Co., *Re*, Joint Stock Discount Co.'s Claim (1872) L.R. 7 Ch.App. 646; 41 L.J.Ch. 732; 27 L.T. 88, 20 W.R. 762 . . . . 395, 396
General Rolling Stock Co., *Re* (1866). *See* Chapman's Case.
General Service Co-operative Stores, *Re* [1891] 1 Ch. 496; 60 L.J.Ch. 586; 64 L.T. 272; 39 W.R.Dig. 55; 7 T.L.R. 231 405
General Share and Trust Co. *v.* Wetley Brick and Pottery Co. (1882) 20 Ch.D. 260; 30 W.R. 445 . . . . . 298, 412
General South American Co., *Re* (1876) 2 Ch.D. 337; 34 L.T. 706; 24 W.R. 891 263, 297
General Works Co., *Re*. *See* Gill's Case.
George Ingleheld, Ltd., *Re* [1933] Ch. 1 267
George Whitechurch *v.* Cavanagh. *See* Whitechurch (George), Ltd. *v.* Cavanagh.
Gerard *v.* Worth of Paris, Ltd. (1936) 80 S.J. 633 391
German Date Coffee Co., *Re* (1882) 20 Ch.D. 169; 51 L.J.Ch. 564; 46 L.T. 327; 30 W.R. 717 . . . . . 54, 378, 381
German Mining Co., *Re*, Chippendale, *ex p.* (1853) 4 De G.M. & G. 19; 22 L.J.Ch. 926; 17 Jur. 745 . . . . . 196, 262
Gerson *v.* Simpson [1903] 2 K.B. 197, 72 L.J.K.B. 603; 89 L.T. 117; 51 W.R. 610; 19 T.L.R. 541 197
Gibson *v.* Barton (1875) L.R. 10 Q.B. Cas. 329; 44 L.J.M.C. 81; 32 L.T. 396; 23 W.R. 858 101
—— *v.* Holland (1865) 1 Har. & Ruth. 1; L.R. 1 C.P. 1; 35 L.J.C.P. 5; 13 L.T. 293, 14 W.R. 86; 11 Jur.(N.S.) 1022 246
Gilbert's Case, National Provincial Marine Insurance Co., *Re* (1870) L.R. 5 Ch.App. 559, 39 L.J.Ch. 837; 23 L.T. 341; 18 W.R. 938 . . 108, 126, 127, 170, 172
Gill *v.* Continental Union Gas Co. (1872) L.R. 7 Ex.Cas. 332; 41 L.J.Ex. 176; 27 L.T. 424; 21 W.R. 111 115
Gill's Case, General Works Co., *Re* (1879) 12 Ch.D. 755; 48 L.J.Ch. 774; 41 L.T. 21; 27 W.R. 934 397
Gilt Edge Safety Glass, Ltd., *Re* [1940] 1 Ch. 495; 56 T.L.R. 478; 162 L.T. 293; 109 L.J.Ch. 239 193
Glasdir Copper Works, *Re*, English Electro-Metallurgical Co., Ltd. *v.* Glasdir Copper Works [1904] 1 Ch. 819; 73 L.J.Ch. 461; 90 L.T. 412; 52 W.R.Dig. 58 . . . . . 317, 319
——, *Re*, —— *v.* —— [1906] 1 Ch. 365; 75 L.J.Ch. 109; 94 L.T. 8; 54 W.R.Dig. 23; 22 T.L.R. 100; 13 Mans. 41 318
Glasier *v.* Rolls (1889) 42 Ch.D. 436; 58 L.J.Ch. 820; 62 L.T. 133; 38 W.R. 118; 1 Meg. 196, 418; 5 T.L.R. 691 328
Glory Paper Mills, *Re*, Dunster's Case [1894] 3 Ch. 473; 63 L.J.Ch. 885; 71 L.T. 528; 43 W.R. 164; 10 T.L.R. 669; 1 Mans. 438; 7 R. 456 (C. A.) . . . 165
Glossop *v.* Glossop [1907] 2 Ch. 370; 76 L.J.Ch. 610; 97 L.T. 372 170
Gluckstein *v.* Barnes [1900] A.C. 240; 69 L.J.Ch. 385; 82 L.T. 393; 48 W.R.Dig. 34; 7 Mans. 321; 16 T.L.R. 321 (H.L.(E.)) 323, 324
Glyn *v.* Baker (1811) 13 East 509 295
Glyncorrwg Colliery Co., *Re*, Railway Debenture and General Trust Co. *v.* The Co. [1926] Ch. 951; 96 L.J.Ch. 43; 136 L.T. 159; 70 S.J. 857 . . . 318
Gold Co., *Re* (1879) 11 Ch.D. 701; 48 L.J.Ch. 281; 40 L.T. 5; 27 W.R. 341 . . 226
Gold Hill Mines, *Re* (1883) 23 Ch.D. 210; 49 L.T. 66; 31 W.R. 853 . . . 378, 385
Goldburg, *Re*, Silverstone, *ex p.* [1912] 1 K.B. 384; 81 L.J.K.B. 382; 105 L.T. 959; 19 Mans. 44 410
Goldzieher and Penso's Claim. *See* British-American Continental Bank, *Re*.
Gonville's Trustee (a bankrupt) *v.* Patent Caramel Co. [1912] 1 K.B. 599; 81 L.J.K.B. 291; 105 L.T. 831; 19 Mans. 37 410
Gooch *v.* London Banking Association (1885) 32 Ch.D. 41 408
Goodchap *v.* Roberts, Roberts, *Re* (1880) 14 Ch.D. 49; 42 L.T. 666; 28 W.R. 870 . 277
Goodfellow *v.* Nelson Line (Liverpool), Ltd. [1912] 2 Ch. 324; 81 L.J.Ch. 564; 107 L.T. 344; 28 T.L.R. 461; 19 Mans. 265 310

Goodwin, *Ex p.* *See* Klein, *Re.*
Goodwin *v.* Robarts (1876) 1 App.Cas. 476; 45 L.J.Ex. 748; 35 L.T. 179; 24 W.R. 987 . . . . . 292, 293, 294
Gordillo *v.* Weguelin (1877) 5 Ch.D. 287; 46 L.J.Ch. 691; 36 L.T. 206; 25 W.R. 620 276
Gorringe *v.* Irwell India Rubber and Gutta Percha Works (1886) 34 Ch.D. 128; 56 L.J.Ch. 85; 55 L.T. 572; 35 W.R. 86 . . . . . 303, 386
Gorrissen's Case, Monarch Insurance Co., *Re* (1878) L.R. 8 Ch.App. 507; 42 L.J.Ch. 864; 28 L.T. 611; 21 W.R. 536 329
Gosling *v.* Gaskell [1897] A.C. 575; 66 L.J.Q.B. 848; 77 L.T. 314; 46 W.R. 208; 13 T.L.R. 544 . . . . . 286, 317
Gough's Garages *v.* Pugsley [1930] 1 K.B. 615; [1930] W.N. 87; 99 L.J.K.B. 225; 46 T.L.R. 283; 28 L.G.R. 239; 143 L.T. 38 317
Gould *v.* Curtis (Surveyor of Taxes) [1913] 3 K.B. 84; 82 L.J.K.B. 802; 108 L.T. 779; 6 Tax Cas. 293; 57 S.J. 461; 29 T.L.R. 469 369
Gover's Case, Coal Economising Gas Co., *Re* (1875) 1 Ch.D. 182; 45 L.J.Ch. 83; 33 L.T. 619; 24 W.R. 125 350
Government Security Fire Insurance Co., *Re*. *See* White's Case.
Governments Stock and other Securities Investment Co. *v.* Manila Ry. [1897] A.C. 81; 66 L.J.Ch. 102; 75 L.T. 553; 45 W.R. 353; 13 T.L.R. 109 (H. L. (E.)) 296, 298
Governments Stock Investment Co. (No. 2), *Re* [1892] 1 Ch. 597; 61 L.J.Ch. 381; 66 L.T. 608; 40 W.R. 387; 8 T.L.R. 356 60
Gowers *v.* Walker [1930] 1 Ch. 262; [1930] W.N. 5; 46 T.L.R. 150 400
Goy & Co., *Re*. *See* Farmer *v.* Goy & Co.
Graham *v.* Van Diemen's Land Co (1856) 1 H. & N. 541; 26 L.J.Ex. 73; 28 L.T.(o.s.) 219; 5 W.R. 149; 2 Jur.(N.S.) 1191 . . . . . 130, 145
Grainger & Son *v.* Gough (Surveyor of Taxes) [1896] A.C. 325; 65 L.J.Q.B. 410; 74 L.T. 435; 44 W.R. 561; 12 T.L.R. 364 451
Gramophone and Typewriter, Ltd. *v.* Stanley (Surveyor of Taxes) [1908] 2 K.B. 89; 77 L.J.K.B. 834; 99 L.T. 39; 24 T.L.R. 480 (C.A.) 173
Gramophone Records, *Re* [1930] W.N. 42 254
Grant *v.* Gold Exploration and Development Syndicate [1900] 1 Q.B. 233; 69 L.J.Q.B. 150; 82 L.T. 5; 48 W.R. 280; 16 T.L.R. 86 (C.A.) 177
—— *v.* United Kingdom Switchback Railways Co. (1888) 40 Ch.D. 135; 58 L.J.Ch. 211; 60 L.T. 525; 37 W.R. 312; 5 T.L.R. 92; 1 Meg. 117 . 49, 57, 146, 147, 158, 176, 229, 243
Gray *v.* Lewis (1873) L.R. 8 Ch.App. 1035, 1049; 43 L.J.Ch. 281; 29 L.T. 12; 21 W.R. 923 37
—— *v.* Stone and Funnell [1893] W.N. 133; 69 L.T. 282; 3 R. 692; 9 T.L.R. 583 138
Grayson Rollo and Clover Docks, Ltd., *Re* [1930] W.N. 27 227
Great Britain Mutual Life Assurance Society, *Re* (1880) 16 Ch.D. 246; 51 L.J.Ch. 10; 43 L.T. 684; 29 W.R. 202 377
Great Britain Mutual Marine Insurance Association, *Ex p.* *See* Premier Underwriting Association (No. 1), *Re*.
Great Cobar, Ltd., *Re*, Beeson *v.* The Company [1915] 1 Ch. 682; 84 L.J.Ch. 468; 113 L.T. 226; (1915) 1 H.B.R. 79 316
Great Eastern Electric Co., Ltd., *Re* [1941] 1 Ch. 241; 57 T.L.R. 373 . . . 422
Great Eastern Ry. *v.* Turner (1872) L.R. 8 Ch.App. 149; 42 L.J.Ch. 83; 27 L.T. 697; 21 W.R. 163 . . . . . 41, 159, 160
Great Northern Salt and Chemical Works Co., *Re*, Kennedy, *ex p.* (1890) 44 Ch.D. 472; 59 L.J.Ch. 288; 62 L.T. 231; 38 W.R.Dig. 33; 2 Meg. 46 . . 160, 284
Great Orme Tramways, *Re* (1934) 50 T.L.R. 450 396
Great Western (Forest of Dean) Coal Consumers' Co., *Re* (1882) 21 Ch.D. 769; 51 L.J.Ch. 743; 46 L.T. 875; 30 W.R. 885 407
——, *Re*, Carter's Case (1886) 31 Ch.D. 496; 55 L.J.Ch. 494; 54 L.T. 531; 34 W.R. 516; 2 T.L.R. 293 411
Greenberg *v.* Cooperstein [1926] Ch. 657; 95 L.J.Ch. 466; 135 L.T. 663 . . 373
Greenhalgh *v.* Arderne Cinemas, Ltd. [1945] 2 All E.R. 719 72
Greenwell *v.* Porter [1902] 1 Ch. 530; 71 L.J.Ch. 243; 86 L.T. 220; 50 W.R.Dig. 33 150
Greenwood, *Ex p.* *See* Liverpool Civil Service Association, *Re*.
Greenwood, *Re* [1900] 2 Q.B. 306; 69 L.J.Q.B. 751; 82 L.T. 843; 48 W.R. 607; 7 Mans. 456 381
Greenwood *v.* Algeciras (Gibraltar) Ry. [1894] 2 Ch. 205; 63 L.J.Ch. 670; 71 L.T. 133; 1 Mans. 455; 7 R. 620 (C.A.) 318
—— *v.* Humber & Co. (Portugal), Ltd. [1898] W.N. 162; 6 Mans. 42 . . . 350
—— *v.* Leather Shod Wheel Co. [1900] 1 Ch. 421; 69 L.J.Ch. 131; 81 L.T. 595; 48 W.R.Dig. 35; 7 Mans. 210; 16 T.L.R. 117 (C.A.) . . . 336, 343, 346
Greenwood's Case, Sea, Fire and Life Assurance Co., *Re* (1854) 23 L.J.Ch. 966; 3 De G.M. & G. 459; 2 W.R. 322; 18 Jur. 387 6
Gregory, Love & Co., *Re*, Francis *v.* **The Company** [1916] 1 Ch. 203; 85 L.J.Ch. 281; 114 L.T. 395; (1916) 2 H.B.R. 42; 60 S.J. 221; 32 T.L.R. 210 . 298, 307

Gresham Life Assurance Society, *Re*, Penney, *ex p.* (1872) L.R. 8 Ch.App. 446; 42 L.J.Ch. 183; 28 L.T. 150; 21 W.R. 186 . . . . . 109, 172, 183
Grey *v.* Pearson (1857) 6 H.L.Cas.(Clark) 61; 26 L.J.Ch. 473; 29 L.T.(o.s.) 67; 5 W.R. 454; 3 Jur.(N.S.) 823 53
Greycaine, Ltd., *Re* [1946] Ch. 269; 115 L.J.Ch. 263; 175 L.T. 33 314
Greymouth Point Elizabeth Rail. and Coal Co., *Re*, Yuill *v.* Same [1904] 1 Ch. 32; 73 L.J.Ch. 92; 52 W.R.Dig. 22 180
Griffin Hotel Co., Ltd., *Re* [1941] 1 Ch. 129; 110 L.J.Ch. 51; 165 L.T. 57 . 298, 318
Griffith *v.* Paget (No. 1) (1877) 5 Ch.D. 894; 46 L.J.Ch. 493; 25 W.R. 523 . . 437
—— *v.* —— (No. 2) (1877) 6 Ch.D. 511; 37 L.T. 141; 25 W.R. 821 32
Grill *v.* General Iron Screw Collier Co. (1868) L.R. 3 C.P. 476; 37 L.J.Q.B. 205; 18 L.T. 485; 16 W.R. 796 . . . . . 186, 188
Grimson *v.* I. R. C. [1930] 2 K.B. 246 453
Grimwade *v.* Mutual Society (1885) 52 L.T. 409; 33 W.R.Dig. 44 189
Grindey, *Re*, Clews *v.* Grindey [1898] 2 Ch. 593; 67 L.J.Ch. 624; 79 L.T. 105; 47 W.R. 53; 14 T.L.R. 555 193
Grissell, *Ex p. See* Regents Canal Ironworks Co., *Re*.
Grissell's Case, Overend, Gurney & Co., *Re* (1866) L.R. 1 Ch.App. 528; 35 L.J.Ch. 752; 14 L.T. 843; 14 W.R. 1015; 12 Jur.(N.S.) 718; 10 S.J. 983, 1005 . . 397
Grundt *v.* Great Boulder Proprietary Gold Mines [1948] 1 Ch. 145; [1947] 2 All E.R. 439 183
Grundy *v.* Briggs [1910] 1 Ch. 444; 79 L.J.Ch. 244; 101 L.T. 901 . . 110, 119, 165
Guardian Assurance Co., *Re* [1917] 1 Ch. 431; 86 L.J.Ch. 214; 116 L.T. 193; 33 T.L.R. 169; 61 S.J. 232; (1917) 3 H.B.R. 113 440
Guillemin, *Ex p. See* Oriental Bank Corporation, *Re*.
Guinness *v.* Land Corporation of Ireland (1882) 22 Ch.D. 349; 52 L.J.Ch. 177; 47 L.T. 517; 31 W.R. 341 . . . . . 26, 27
Gunn's Case, Universal Banking Corpn., *Re* (1867) L.R. 3 Ch.App. 40; 37 L.J.Ch. 40; 17 L.T. 365; 16 W.R. 97 89
Gutta Percha Corporation, *Re* [1900] 2 Ch. 665; 69 L.J.Ch. 769; 83 L.T. 401; 49 W.R.Dig. 36 381
Guy *v.* Waterlow Bros. and Layton (1909) 25 T.L.R. 515 . . . . . 110, 125

Hackney Pavilion, *Re* [1924] 1 Ch. 276; 93 L.J.Ch. 193; 130 L.T. 658 . . 109, 119
Haddock's Case. *See* London and Northern Bank, *Re*.
Hadleigh Castle Gold Mines, *Re* [1900] 2 Ch. 419; 69 L.J.Ch. 631; 83 L.T. 400; 49 W.R.Dig. 28; 16 T.L.R. 468 . . . . . 45, 149, 226
Hadley, Norris and Jacob's Case. *See* London and Provincial Consolidated Coal Co., *Re*.
Hafna Mining and Smelting Co., *Re* (1888) 84 L.T.(o.s.) 403 432
Hague *v.* Dandeson (1848) 2 Ex.Reps. 741; 17 L.J.Ex. 269 138
Halifax Joint Stock Banking Co. *v.* British Power Traction and Lighting Co. *See* British Power Traction and Lighting Co., *Re*.
Halifax Sugar Refining Co. *v.* Francklyn (1890) 59 L.J.Ch. 591; 62 L.T. 563; 38 W.R.Dig. 37, 38; 2 Meg. 129 179
Hall, *Ex p.*, Cooper, *re* (1882) 19 Ch.D. 580; 51 L.J.Ch. 556; 46 L.T. 549; 30 W.R.Dig. 15 413
(A. W.) & Co., *Re* (1887) 37 Ch.D. 712; 57 L.J.Ch. 288; 58 L.T. 156; 36 W.R.Dig. 33; 4 T.L.R. 227 . . . . . 124, 223
(W. J.) & Co., *Re* [1909] 1 Ch. 521; 78 L.J.Ch. 382; 100 L.T. 692; 16 Mans. 152 66
Hallett, *Re*, National Insurance Co., *ex p.* [1894] W.N. 156; 71 L.T. 408; 42 W.R. 651; 1 Mans. 380; 10 R. 441 119
Hallett's Estate, *Re* (1878) 13 Ch.D. 696 410
Hallmark's Case. *See* Wincham Shipbuilding, Boiler and Salt Co., *Re*.
Hallows *v.* Fernie (1868) L.R. 3 Ch.App. 467; 18 L.T. 340; 16 W.R. 873 . . 347
Hambro *v.* Burnand [1904] 2 K.B. 10; 73 L.J.K.B. 669; 90 L.T. 803; 52 W.R. 588; 20 T.L.R. 398; 9 Com.Cas. 251 . . . . . 446, 447
Hamer *v.* London City and Midland Bank (1918) 87 L.J.K.B. 973; 118 L.T. 571 . 296, 298
Hamilton *v.* Blackpool Motor Car Co. *See* Blackpool Motor Car Co., *Re*.
—— *v.* Vaughan-Sherrin Electrical Engineering Co. [1894] 3 Ch. 589; 63 L.J.Ch. 795; 71 L.T. 325; 43 W.R. 126; 10 T.L.R. 642; 8 R. 750 95
Hamilton's Windsor Ironworks, *Re*, Pitman and Edwards, *ex p.* (1879) 12 Ch.D. 707; 39 L.T. 658; 27 W.R. 445 296
Hamlyn & Co. *v.* Wood & Co. [1891] 2 Q.B. 488; 60 L.J.Q.B. 734; 65 L.T. 286; 40 W.R. 24; 7 T.L.R. 731 254
Hammond *v.* Prentice Bros. [1920] 1 Ch. 201; 89 L.J.Ch. 91; 122 L.T. 307; 36 T.L.R. 98; 64 S.J. 131 39
Hampshire Land Co., *Re* [1896] 2 Ch. 743; 65 L.J.Ch. 860; 75 L.T. 181; 45 W.R. 136; 3 Mans. 269; 12 T.L.R. 517 . . . . . 145, 223, 306

Hampson *v.* **Price's Patent Candle Co.** (1876) 45 L.J.Ch. 437; 34 L.T. 711; 24 W.R. 754 . . . . . 50, 172, 228, 444
Hand *v.* **Blow** [1901] 2 Ch. 721; 70 L.J.Ch. 687; 85 L.T. 156; 50 W.R. 5; 17 T.L.R. 635 317
Hannan's Empress Gold Mining and Development Co., *Re*, **Carmichael's Case** [1896] 2 Ch. 643; 65 L.J.Ch. 902; 75 L.T. 45; 45 W.R.Dig. 29 . . . 83, 328
Hanson *v.* **Newman** [1934] 1 Ch. 298; 103 L.J.Ch. 124; 50 T.L.R. 191; 150 L.T. 345 402
Harben *v.* **Phillips** (1883) 23 Ch.D. 14; 48 L.T. 334 and 741; 31 W.R. 173 . 28, 142, 144, 154, 179, 183, 229
Hardoon *v.* **Belilios** [1901] A.C. 118; 70 L.J.P.C. 9; 83 L.T. 573; 49 W.R. 209; 17 T.L.R. 126 . . . . . 116, 243
Hardwick, *Re*. *See* Hubbard, *Ex p.*
Hardy *v.* **Fothergill** (1888) L.R. 13 App.Cas. 351; 58 L.J.Q.B. 44; 59 L.T. 273; 37 W.R. 177; 53 J.P. 36; 4 T.L.R. 603 (H.L.(E.)) 395
— — *v.* **Metropolitan Land and Finance Co.** (1872) L.R. 7 Ch.App. 427; 41 L.J.Ch. 257; 26 L.T. 407; 20 W.R. 425 411
Hargreaves (Joseph), Ltd., *Re* [1900] 1 Ch. 347; 69 L.J.Ch. 183; 82 L.T. 132, 48 W.R. 241; 7 Mans. 354; 16 T.L.R. 155 412
Hargrove, *Ex p.*, **Arthur Average Association for British, Foreign and Colonial Ships,** *re* (1875) L.R. 10 Ch.App. 542; 44 L.J.Ch. 569; 32 L.T. 525; 23 W.R. 939 373
Harmer *v.* **Cornelius** (1858) 5 C.B. (N.S.) 236; 28 L.J.C.P. 85; 6 W.R. 749; 4 Jur. (N.S.) 1110 253
Harmony and Montague Tin, etc., Co., *Re*. *See* Spargo's Case.
Harper's Ticket Issuing and Recording Machine, Ltd., *Re*, **Hamlin** *v.* **The Company** [1912] W.N. 263, 29 T.L.R. 63; 57 S.J. 78 . . . . . 12[illegible]
Harrington *v.* **Victoria Graving Dock Co.** (1878) 3 Q.B.D. 549; 47 L.J.Q.B. 594; 39 L.T. 120; 26 W.R. 740 177
Harrington Motor Co., *Re* [1928] Ch. 105; [1927] W.N. 296; 97 L.J.Ch. 55; 138 L.T. 185; 44 T.L.R. 58; [1928] W.C. & Ins.Rep. 107; [1927] B. & C.R. 198; 43 T.L.R. 684; 71 S.J. 652 406
Harris Calculating Machine Co., *Re*, **Sumner** *v.* **The Company** [1914] 1 Ch. 920; 83 L.J.Ch. 545; 110 L.T. 997; 58 S.J. 455 262
Harris' Case, Imperial Land Co. of Marseilles, *Re* (1872) L.R. 7 Ch.App. 587; 41 L.J.Ch. 621; 26 L.T. 781; 20 W.R. 690 89
Harrison, *Ex p.*, **Bentley (Henry) & Co.,** *re* (1893) 69 L.T. 204 . . . . . 328, 329
— —, *Ex p.*, **Cannock and Rugeley Colliery Co.,** *re* (1884) 26 Ch.D. 522; 53 L.J.Ch. 1152; 51 L.T. 324; 32 W.R. 1011 120
Harrison's Case. *See* Roger's Case.
Harrogate Estates, Ltd., *Re* [1903] 1 Ch. 498; 72 L.J.Ch. 313; 88 L.T. 82; 51 W.R. 334; 19 T.L.R. 246 . . . . . 267, 268
Harrold *v.* **Plenty** [1901] 2 Ch. 314; 70 L.J.Ch. 562; 85 L.T. 45; 49 W.R. 646; 17 T.L.R. 545; 8 Mans. 304 114
Harvey Lewis's Case (1872) 26 L.T. 673 166
Harvey's Oyster Co., *Re*. *See* Ormerod's Case.
Hastings and Folkestone Glassworks, Ltd. *v.* **Kalson** [1948] 1 All E.R. 711 . . 171
Hastings Bros. *v.* **Stenotyper, Ltd.** *See* Stenotyper, Ltd., *Re*.
Hastings Corporation *v.* **Letton** [1908] 1 K.B. 378; 77 L.J.K.B. 149; 97 L.T. 584; 23 T.L.R. 456 415
Hatton, *Re*, **Hockin** *v.* **Hatton** [1917] 1 Ch. 357; 86 L.J.Ch. 375; 116 L.T. 281; 61 S.J. 253 206
Hauxwell, *Ex p.*, **Hemingway,** *re* (1883) 23 Ch.D. 626; 52 L.J.Ch. 737; 48 L.T. 742; 31 W.R. 711 307
Haven Gold Mining Co., *Re* (1882) 20 Ch.D. 151; 51 L.J.Ch. 242; 46 L.T. 322; 30 W.R. 389 . . . . . 54, 373, 381, 385
Hawkes, *Re*, **Ackerman** *v.* **Lockhart** [1898] 2 Ch. 1; 67 L.J.Ch. 284; 78 L.T. 336; 46 W.R. 445 (C.A.) 212
Hawkes *v.* **Eastern Counties Ry.** (1855) 5 H.L.Cas. 331; 24 L.J.Ch. 601; 3 W.R. 609 4
Hay's Case, Canadian Oilworks Corpn., *Re* (1875) L.R. 10 Ch.App. 593; 44 L.J.Ch. 721; 33 L.T. 466; 24 W.R. 191 . . . . . 166, 411
Hay *v.* **Swedish and Norwegian Ry.** (1892) 8 T.L.R. 775 317
Haycraft Gold Reduction and Mining Co., *Re* [1900] 2 Ch. 230; 69 L.J.Ch. 497; 83 L.T. 166; 7 Mans. 243; 16 T.L.R. 350 . . . . . 142, 179, 382, 416
Hayman, Christy and Lilly, Ltd., *Re*, **Christy** *v.* **The Company** [1917] 1 Ch. 283; 86 L.J.Ch. 255; 116 L.T. 283; 33 T.L.R. 167 297
——, *Re*, —— *v.* —— (No. 2) [1917] 1 Ch. 545; 86 L.J.Ch. 389; 116 L.T. 467 . 317
Haytor Granite Co., *Re* (1865) 1 Ch.App. 77 403
Hearts of Oak Ass. Co. *v.* **Flower & Sons** [1936] Ch. 76; 105 L.J.Ch. 25; [1935] W.N. 164; 52 T.L.R. 5; 154 L.T. 156 233
Hearts of Oak Life and General Assurance Co., Ltd., and Reduced, *Re*, [1920] 1 Ch. 544; 89 L.J.Ch. 241; 123 L.T. 46; 64 S.J. 324 60

Heaton and Dugard, Ltd. v. Cutting Bros., Ltd. [1925] 1 K.B. 655; 94 L.J.K.B. 673; 133 L.T. 41; 41 T.L.R. 286 297
Hebb's Case, National Savings Bank Association, *Re* (1867) L.R. 4 Eq. 9; 36 L.J. Ch. 748; 16 L.T. 308; 15 W.R. 754 . . . . . 83, 94
Hector Whaling, Ltd., *Re* [1936] Ch. 208; 105 L.J.Ch. 117; [1935] W. N. 223; 52 T.L.R. 142; 154 L.T. 342 225
Helbert v. Banner, Barned's Bank, *Re* (1871) L.R. 5 H.L. 28; 40 L.J.Ch. 410; 20 W.R. 63 393
Hemans v. Hotchkiss Ordnance Co. [1899] 1 Ch. 115; 68 L.J.Ch. 99; 79 L.T. 681; 47 W.R. 276; 6 Mans. 52 149
Hemingway, *Re*. *See* Hauxwell, *Ex p.*
Hemp, Yarn and Cordage Co., *Re*, Hindley's Case [1896] 2 Ch. 121; 65 L.J.Ch. 591, 74 L.T. 627; 44 W.R. 630; 12 T.L.R. 366; 3 Mans. 187 (C.A.) . . . 328
Henderson v. Bank of Australasia (1888) 40 Ch.D. 170; 58 L.J.Ch. 197, 59 L.T. 856; 37 W.R. 332; 4 T.L.R. 734 . . . . . 50, 444
—— v. —— (1890) 45 Ch.D. 330; 59 L.J.Ch. 794; 63 L.T. 597; 39 W.R.Dig. 41; 6 T.L.R. 424; 2 Meg. 301 . . . . . 146, 155, 156
—— v. Lacon (1867) L.R. 5 Eq. 249; 17 L.T. 527; 16 W.R. 328 . . 334, 335, 346
Henderson's Nigel, Ltd., *Re* [1911] W.N. 159; 105 L.T. 370 415
Henry v. Great Northern Ry. (1857) 1 De G. & J. 606; 27 L.J.Ch. 1; 30 L.T.(o.s.) 141; 6 W.R. 87; 3 Jur.(N.S.) 1133 65
Henry Pound, Son and Hutchins, *Re* [1899] 42 Ch. 402; 58 L.J.Ch. 792; 62 L.T. 137; 38 W.R. 18; 1 Meg. 363; 5 T.L.R. 720 286
Henthorn v. Fraser [1892] 2 Ch. 27; 61 L.J.Ch. 373; 66 L.T. 439; 40 W.R. 433; 8 T.L.R. 459 . . . . . 83, 89
Herbert Gold Co. v. Haycraft, *Times*, 28 March, 1901, p. 14, col. 3 111
Hercules Insurance Co., *Re*, Pugh and Sharman's Case (1872) L.R. 13 Eq. 566; 41 L.J.Ch. 580; 26 L.T. 274; 20 W.R.Ch.Dig. 45, 50 418
Heritage's Case, Merchants' Co., *Re* (1869) L.R. 9 Eq. 5; 39 L.J.Ch. 238; 21 L.T. 479; 18 W.R 270 94
Herts and Essex Waterworks Co., *Re* [1909] W.N. 48 270
Hertslet's Case. *See* Sly, Spink & Co., *Re*.
Hesketh's Case. *See* Sale Hotel and Botanical Gardens Co., *Re*.
Heslop v. Paraguay Central Ry. [1910] 54 S.J. 234 276
Hester & Co., *Re* (1875) 44 L.J.Ch 757; 24 W.R.Dig. 50 436
Heward v. Wheatley (1853) 22 L.J.Ch. 435; 3 De G.M. & G. 628; 21 L.T.(o.s.) 121; 1 W.R. 216; 17 Jur. 403 95
Heyford Co., *Re*. *See* Pell's Case.
Heymann v. European Central Ry. (1868) L.R. 7 Eq. 154; 17 W.R.Ch.Dig. 85 . 335
Hibblewhite v. McMorine (1840) 9 L.J.Exch. 217; 6 M. & W. 200; 2 Ry. & Can.Cas. 51 . . . . . 114, 304
Hickman v. Kent or Romney Marsh Sheep-breeders' Association [1915] 1 Ch. 881; 84 L.J.Ch. 688; 113 L.T. 159; 59 S.J. 478 30
Hicks v. May, Metcalfe, *Re* (1879) 13 Ch.D. 236; 49 L.J.Ch. 192, 41 L.T. 572; 42 L.T. 383; 28 W.R. 499 396
—— v. Powell (1869) L.R. 4 Ch.App. 741; 17 W.R. 449 261
Higg's Case, Bank of Hindustan, China and Japan, *Re* (1865) 2 H. & M. 657 (34 L.J.Ch. note on p. 615); 12 L.T. 669; 13 W.R. 937 437
Higginshaw Mills & Spinning Co., *Re* [1896] 2 Ch. 544 408
Higginson v. German Athenæum (1916) 32 T.L.R. 277 315
Higginson and Dean, *Re*, Att.-Gen., *ex p.* [1899] 1 Q.B. 325; 68 L.J.Q.B. 198; 79 L.T. 673; 47 W.R. 285; 5 Mans. 289; 15 T.L.R. 135 415
Higgs v. Northern Assam Tea Co. (1869) L.R. 4 Ex.Cases 387; 38 L.J.Ex. 233; 21 L.T. 336; 17 W.R. 1125 282
Hilckes, *Re*, Muhesa Rubber Plantations, Ltd., *ex p.* [1917] 1 K.B. 48; 86 L.J. K.B. 204; 115 L.T. 490; 33 T.L.R. 28; 61 S.J. 39 231
Hilder v. Dexter [1902] A.C. 474; 71 L.J.Ch. 781; 87 L.T. 311; 51 W.R. 225; 7 Com.Cas. 258; 18 T.L.R. 800; 9 Mans. 378 (H.L.(E.)) . . 84, 325, 331
Hilder v. Wilcox. *See* Wilcox & Co., *Re*.
Hill v. Manchester and Salford Water Works Co. (1833) 3 L.J.K.B. 19; 5 B. & Ad. 866; 2 Nev. & Man. 573 248
—— v. Permanent Trustee Corporation [1930] A.C. 720; 99 L.J.P.C. 191; 144 L.T. 65 . . . . . 206, 207, 453
Hills Waterfall, etc., Co. [1896] 1 Ch. 946 431
Hilo Manufacturing Co., Ltd. v. Williamson (1911) 28 T.L.R. 164 (C.A.) . . 344
Himley Estates, Ltd. [1933] 1 K.B. 472; 102 L.J.K.B. 383; 148 L.T. 319; 17 Tax Cas. 367 455
Hindley's Case, Hemp, Yarn and Cordage Co., *Re* [1896] 2 Ch. 121; 65 L.J.Ch. 591; 74 L.T. 627; 44 W.R. 630; 12 T.L.R. 366; 3 Mans. 187 83
Hippisley's Case. *See* Campbell's Case.
Hiram Maxim Lamp Co., *Re* [1903] 1 Ch. 70; 72 L.J.Ch. 18; 87 L.T. 729; 51 W.R. 74; 10 Mans. 329; 19 T.L.R. 26 . . . . . 128, 397

Hitchens, Malam *v.* *See* **Malam**, *Re*.
Hoare, *Re*. *See* **Nelson**, *Ex p*.
—— *v.* British Columbia Development Association [1912] W.N. 285; 107 L.T. 602 268
—— *v.* Tasker (W.) & Sons. *See* **Tasker (W.) & Sons**, *Re*.
Hoare, etc., *Re* (1934) 150 L.T. 374 443
Hoare & Co., Ltd., and Reduced, *Re* [1904] 2 Ch. 208; 73 L.J.Ch. 601; 91 L.T. 115; 53 W.R. 51; 20 T.L.R. 581; 11 Mans. 307 (C.A.) 202
——, *Re* [1910] W.N. 87 . . . . . 76, 78
Hobson *v.* Gorringe [1897] 1 Ch. 182 298
Hobson, Houghton & Co., *Re* [1929] 1 Ch. 300 119
Hockin *v.* Hatton. *See* **Hatton**, *Re*.
Hodges Distillery Co., *Re*. *See* **Maude**, *Ex p*.
Hodgson *v.* Accles, Accles, *Re* [1902] W.N. 164; 51 W.R. 57; 18 T.L.R. 786 . . 303
Hodson, *Ex p*. *See* **Bell**, *Re*.
Hodson *v.* Tea Co. (1880) 14 Ch.D. 859; 49 L.J.Ch. 234; 28 W.R. 458 . . 284, 315
Hole *v.* Garnsey [1930] A.C. 472; 99 L.J.Ch. 243; [1930] W.N. 91; 46 T.L.R. 312; 143 L.T. 153 62
Holland *v.* Dickson (1888) 37 Ch.D. 669; 57 L.J.Ch. 502; 58 L.T. 845; 36 W.R. 320; 4 T.L.R. 285 212
Holroyd *v.* Marshall (1861) 10 H.L.C. (Clark) 191; 33 L.J.Ch. 193; 7 L.T. 172; 11 W.R. 171; 9 Jur.(N.S.) 213 296
Holt *v.* Catterall (1931) 47 T.L.R. 332 183
—— *v.* Speir. *See* **Speir**, *Re*.
Holthausen, *Ex p*., Schiebler, *re* (1874) L.R. 9 Ch.App. 722; 44 L.J.Bk. 26; 31 L.T. 13 231
Homan, *Ex p*., Broadbent, *re* (1871) L.R. 12 Eq. 598; 19 W.R. 1078 307
Home and Colonial Insurance Co. [1930] 1 Ch. 102; [1929] W.N. 223; 45 T.L.R. 658; 142 L.T. 207 424
Home and Foreign Investment and Agency Co., *Re* [1912] 1 Ch. 72; 81 L.J.Ch. 364; 106 L.T. 259; 19 Mans. 188 71
Home Grown Sugar, *Re* [1938] Ch. 219; 107 L.J.Ch. 145; 158 L.T. 170 . . . 454
Home Remedies, *Re* [1943] Ch. 1; 112 L.J.Ch. 36; 167 L.T. 362; 59 T.L.R. 31 . 407
Home Secretary *v.* O'Brien. *See* **R.** *v.* **Secretary of State for Home Affairs, O'Brien**, *Ex p*.
Homer District Consolidated Gold Mines, *Re*, Smith, *ex p*. (1888) 39 Ch.D. 546; 58 L.J.Ch. 134; 60 L.T. 97; 37 W.R.Dig. 36 . . . . . 84, 106
Hong Kong and China Gas Co. *v.* Glen [1914] 1 Ch. 527; 83 L.J.Ch. 561; 110 L.T. 859; 30 T.L.R. 339; 58 S.J. 380 97
Hoole *v.* Great Western Ry. (1867) L.R. 3 Ch.App. 262; 17 L.T. 453; 16 W.R. 260 207
—— *v.* Speak [1904] 2 Ch. 732; 73 L.J.Ch. 719; 91 L.T. 183; 20 T.L.R. 649; 11 Mans. 421 351
Hooley, *Re*, United Ordnance and Engineering Co., *ex p*. [1899] 2 Q.B. 579; 68 L.J.Q.B. 993; 48 W.R.Dig. 18; 6 Mans. 404 119
Hooper *v.* Herts [1906] 1 Ch. 549; 75 L.J.Ch. 253; 94 L.T. 324; 54 W.R. 350; 13 Mans. 85 (C.A.) 114
—— *v.* Kerr, Stuart & Co. (1900) 83 L.T. 729; 49 W.R.Dig. 27; 17 T.L.R. 162; 45 S.J. 139 . . . . . 142, 180
Hop and Malt Exchange and Warehouse Co., *Re*, Briggs, *ex p*. (1866) 35 L.J.Ch. 320; 35 Beav. 273; L.R. 1 Eq. 483; 14 L.T. 39; 14 W.R.Ch.Dig. 57; 12 Jur. (N.S.) 322 344
Hope *v.* International Financial Society (1876) 4 Ch.D. 327; 46 L.J.Ch. 200; 35 L.T. 924; 25 W.R. 203 182
Hopkins, *Re*. *See* **Williams** *v.* **Hopkins**.
Hopkins' Trusts, *Re* (1874), L.R. 18 Eq. 696; 43 L.J.Ch. 722; 30 L.T. 627; 22 W.R. 687 206
Hopkinson *v.* Mortimer, Harley & Co. [1917] 1 Ch. 646; 86 L.J.Ch. 467; 116 L.T. 676; 61 S.J. 384 138
Hopkinson *v.* Newspaper Proprietary Syndicate. *See* **Newspaper Proprietary Syndicate**, *Re*.
—— *v.* Rolt (1861) 9 H.L.C. (Clark) 514; 34 L.J.Ch. 468; 5 L.T. 90; 9 W.R. 900; 7 Jur.(N.S.) 1209 137
Horbury Bridge Coal, Iron and Wagon Co., *Re* (1879) 11 Ch.D. 109; 48 L.J.Ch. 341; 40 L.T. 353; 27 W.R. 433 . . . . . 151, 156, 226
Horne (W. C.) & Sons, Ltd., *Re*, Horne *v.* Horne (W. C.) & Sons, Ltd. [1906] 1 Ch. 271; 75 L.J.Ch. 206; 54 W.R. 278; 13 Mans. 165 320
Horner & Co., *Re* [1898] W.N. 159; 5 Mans. 355 434
Hort's Case. *See* **Grain's Case**.
Hosack *v.* Robins (No. 2) [1918] 2 Ch. 339; 87 L.J.Ch. 545; 119 L.T. 522; 62 S.J. 681 115
Houghton & Co. *v.* Nothard, Lowe & Wills, Ltd. [1928] A.C. 1; 97 L.J.K.B. 76; 138 L.T. 210; 44 T.L.R. 76 . . . . . 33, 223

Houldsworth *v.* City of Glasgow Bank and Liquidators (1880) 5 App.Cas. 317; 42 L.T. 194; 28 W.R. 677 . . . . . 56, 57, 396
—— *v.* Yorkshire Woolcombers' Association, Yorkshire Woolcombers' Association, *Re*, *sub nom.* Illingworth *v.* Houldsworth [1904] A.C. 355; 73 L.J.Ch. 739; 91 L.T. 602; 53 W.R. 113; 12 Mans. 141; 20 T.L.R. 633 296
Household Fire and Carriage Accident Insurance Co. *v.* Grant (1879) 4 Ex.D. 216; 48 L.J.Ex. 577; 41 L.T. 298; 27 W.R. 858 89
Howard *v.* Patent Ivory Manufacturing Co. (1888) 38 Ch.D. 156; 57 L.J.Ch. 878; 58 L.T. 395; 36 W.R. 801 . . . . . 34, 248, 246, 260
— *v.* Sadler [1893] 1 Q.B. 1 114
Howbeach Coal Co. *v.* Teague (1860) 29 L.J.Ex. 137; 5 H. & N. 151; 2 L.T. 187; 8 W.R. 264; 6 Jur.(N.S.) 275 . . . . . 127, 174
Howell *v.* British Consolidated Oil Corpn. *See* British Consolidated Oil Corpn., *Re*.
Hoylake Rail. Co., *Re*, Littledale, *ex p.* (1874) L.R. 9 Ch.App. 257; 43 L.J.Ch. 529; 30 L.T. 213; 22 W.R. 443 110
Hoyle, *Re*, Hoyle *v.* Hoyle [1893] 1 Ch. 84; 62 L.J.Ch. 182; 67 L.T. 674; 41 W.R. 81; 2 R. 145 246
Hoyle's Case. *See* London and Northern Bank, *Re*.
Hubbard, *Ex p.*, Hardwock, *re* (1886) 17 Q.B.D. 690; 55 L.J.Q.B. 490; 59 L.T. 172, n.; 35 W.R. 2; 3 Morr. 246; 2 T.L.R. 904 269
Hubbard *v.* Hubbard [1898] 68 L.J.Ch. 54; 79 L.T. 665; 5 Mans. 360 308
Hubbuck *v.* Helms (1887) 56 L.J.Ch. 536; 56 L.T. 232; 35 W.R. 574; 3 T.L.R. 381 296, 315
Huddersfield Banking Co., *Ex p.* *See* Lister (Henry) & Co., *Re*.
Hughes, *Ex p.* *See* Agriculturist Cattle Insurance Co., *Re* (1872).
Hughes' Claim, International Contract Co., *Re* (1872) L.R. 13 Eq. 628; 41 L.J.Ch. 373; 26 L.T. 500; 20 W.R. 522 404
Hull and County Bank, *Re*. *See* Burgess' Case.
Humber Ironworks and Shipbuilding Co., *Re*, Warrant Finance Co.'s Case (1869) L.R. 4 Ch.App. 643; 38 L.J.Ch. 712; 20 L.T. 859; 17 W.R. 780 . . 386, 404
Hume *v.* Record Reign Jubilee Syndicate (1899) 80 L.T. 404; 47 W.R.Dig. 92 . 374
Hummell *v.* Routledge. *See* Routledge (George) & Sons, *Re*.
Humphrey and Denham *v.* Kavanagh (1925) 41 T.L.R. 378 91
Hunter *v.* Hunter [1936] A.C. 222; 105 L.J.Ch. 97; [1936] W.N. 44; 154 L.T. 513 110
Hutchinson (W. H.) & Sons, Ltd., *Re*, Thornton *v.* The Company (1915) 31 T.L.R. 324 310
Huth *v.* Clarke (1890) 25 Q.B.D. 391; 59 L.J.M.C. 120; 63 L.T. 348; 38 W.R. 655; 55 J.P. 86; 6 T.L.R. 373 182
Hutton *v.* Scarborough Cliff Hotel Co. (A) (1865) 4 De G.J. & S. 672; 34 L.J.Ch. 643, 12 L.T. 289; 13 W.R. 631; 11 Jur.(N.S.) 551 35
—— *v.* —— (B) (1865) 2 Dr. & Sm. 521; 13 L.T. 57; 13 W.R. 1059; 11 Jur.(N.S.) 849 35
—— *v.* West Cork Ry. (1883) 23 Ch.D. 654; 52 L.J.Ch. 689; 49 L.T. 420; 31 W.R. 827 . . . . . 50, 166, 167, 444, 445
Hyam's Case, Mexican and S. American Co., *Re* (1859) 1 De G.F. & J. 75; 29 L.J.Ch. 243; 1 L.T. 115; 8 W.R. 52; 6 Jur.(N.S.) 181 111
Hyde *v.* New Asbestos Co. (1891) 8 T.L.R. 121 346

Iso Investment Co., *Re* [1903] 2 Ch. 373; 72 L.J.Ch. 661, 88 L.T. 752; 51 W.R. 593; 10 Mans. 309 387
I. C. R. Haulage, Ltd. *v.* R., *Re* [1944] K.B. 551; 113 L.J.K.B. 492; 171 L.T. 180; 108 J.P. 181; 60 T.L.R. 335 41
Ideal Films, Ltd. *v.* Richards [1927] 1 K.B. 374; 96 L.J.K.B. 161; 136 L.T. 295; 43 T.L.R. 7; 70 S.J. 1138 374
Ilfracombe Permanent Mutual Benefit Building Society, *Re* [1901] 1 Ch. 102; 70 L.J.Ch. 66; 84 L.T. 146; 49 W.R.Dig. 18; 17 T.L.R. 44 . . . 373, 377
Illingworth *v.* Houldsworth [1904] A.C. 355 296
Imperial Bank of China, India and Japan, *Re* (1866) L.R. 1 Ch.App. 339; 35 L.J. Ch. 445; 14 L.T. 211; 14 W.R. 594; 12 Jur.(N.S.) 422 382
Imperial Hydropathic Hotel Co., Blackpool *v.* Hampson (1882) 23 Ch.D. 1; 49 L.T. 150; 31 W.R. 330 28
Imperial Land Co. of Marseilles, *Re* (1872). *See* Harris' Case.
——, *Re*, National Bank, *Re* (1870) L.R. 10 Eq. 298; 39 L.J.Ch. 331; 22 L.T. 598; 18 W.R. 661 411
Imperial Mercantile Credit Association *v.* Coleman (1873) L.R. 6 H.L. 189; 42 L.J.Ch. 644; 29 L.T. 1; 21 W.R. 606 . . . . . 175, 176, 178
Imperial Mercantile Credit Association, *Re* (1867). *See* Chapman and Barker's Case.
——, *Re* (1867). *See* Marino's Case.
——, *Re* (1875). *See* Richardson's Case.
Inchiquin (Lord), *Ex p.*, Portuguese Consolidated Copper Mines, *re* [1891] 3 Ch. 28; 60 L.J.Ch. 556; 64 L.T. 841; 39 W.R. 610; 7 T.L.R. 591 164

Incorporated Glasgow Dental Hospital *v.* **The Lord Advocate (1927) 400 S. C. (No. 48)** 61
Ind, Coope & Co., *Re*, **Fisher** *v.* **The Company [1911] 2 Ch. 223; 80 L.J.Ch. 661; 105 L.T. 356; 55 S.J. 600** 299
Inderwick *v.* **Snell (1850) 2 M. & G. 216; 2 H. & Tw. 412; 19 L.J.Ch 542; 14 Jur. 727** 183
Indian Zoedone Co., *Re* **(1884) 26 Ch.D. 70; 53 L.J.Ch. 468; 50 L.T. 547; 32 W.R. 481** 149, 283
Indo-China Steam Navigation Co., *Re* **[1917] 2 Ch. 100; 86 L.J.Ch. 723; 117 L.T. 212** 106
Inglefield (George), Ltd. [1933] Ch. 1 267
Inland Revenue Commissioners *v.* **Blott [1921] 2 A.C. 171; 90 L.J.K.B. 1028; 125 L.T. 497; 37 T.L.R. 762; 65 S.J. 642** 452
—— *v.* **J. Bibby & Sons, Ltd. [1945] W.N. 117** 456
—— *v.* **Burrell [1924] 2 K.B. 52; 93 L.J.K.B. 709; 131 L.T. 727; 40 T.L.R. 562 68 S.J. 594** 453
—— *v.* **Crossman [1937] A.C. 26; 105 L.J.K.B. 450; 154 L.T. 570; 52 T.L.R. 415** 456
—— *v.* **Fisher's Executors [1926] A.C. 395; 95 L.J.K.B. 487; 134 L.T 681; 42 T.L.R. 340** 453
—— *v.* **Sansom [1921] 2 K.B. 492; 90 L.J.K.B. 627; 125 L.T. 37** 454
—— *v.* **Wright [1927] 1 K.B. 333, 95 L.J.K.B. 982; 135 L.T. 718; 11 Tax Cas. 181** 206, 207
Inman *v.* **Acroyd and Best, Ltd. [1901] 1 K.B. 613; 70 L.J.K.B. 450; 84 L.T. 344 49 W.R. 369; 8 Mans. 291; 17 T.L.R. 293 (C.A.)** 168, 169
Innes & Co., *Re* **[1903] 2 Ch. 254; 72 L.J.Ch. 613; 89 L.T. 142; 51 W.R. 514; 19 T.L.R. 477; 10 Mans. 402 (C.A.)** 96, 393
International Cable Co., *Re*, **Official Liquidator,** *ex p.* **[1892] W.N 34; 66 L.T. 253; 40 W.R.Dig. 36; 8 T.L.R. 316** 31, 169
International Contract Co., *Re*. *See* Hughes' Claim.
——, *Re* (1867). *See* Levita's Case.
——, *Re* (1870). *See* Levita's (G. H.) Case.
International Life Assurance Society, *Re* **(1871) L.R. 10 Eq. 312** 194
International Pulp and Paper Co., *Re* **(1876) 3 Ch.D. 594; 45 L.J.Ch. 446; 35 L.T. 229; 24 W.R. 535** 405
International Society of Auctioneers and Valuers, *Re*, **Baillie's Case [1898] 1 Ch. 110; 67 L.J.Ch. 81; 77 L.T. 523; 46 W.R. 187; 4 Mans. 393** 92
Investment Trust Corpn., Ltd *v.* **Singapore Traction Co., Ltd. [1935] Ch. 615; [1935] W.N. 92; 153 L.T. 83; 51 T.L.R. 476** 52, 306
Ireland *v.* **Hart [1902] 1 Ch. 522; 71 L.J.Ch. 276; 86 L.T. 385; 50 W.R. 315; 18 T.L.R. 253; 9 Mans. 209** 110, 113
Irish Club Co., *Re* **[1906] W.N. 127** 260
Iron Ship Coating Co. *v.* **Blunt (1868) L.R. 3 C.P. 484; 37 L.J.C.P. 273; 16 W.R. 868** 127, 170
Irrigation Co. of France, *Re*. *See* Fox, *Ex p.*
Irvine *v.* **Union Bank of Australia (1877) 2 App.Cas. 366; 46 L.J.P.C. 87; 37 L.T. 176; 25 W.R. 682** 34, 260, 262
Isaacs *v.* **Chapman [1916] W.N. 28; 32 T.L.R. 237** 154, 161
Isaacs' Case, Anglo-Austrian Printing and Publishing Union, *Re* **[1892] 2 Ch. 158; 61 L.J.Ch. 481; 66 L.T. 593; 40 W.R. 518; 8 T.L.R. 315 and 501; 36 S.J. 427** 31, 165
Isle of Wight Ry. *v.* **Tahourdin (1883) 25 Ch.D. 320; 53 L.J.Ch. 353; 50 L.T. 132; 32 W.R. 297** 143, 144

Jackson and Bassford, Ltd., *Re* **[1906] 2 Ch. 467; 75 L.J.Ch. 697; 95 L.T. 292; 22 T.L.R. 708; 13 Mans. 306** 408
Jackson & Co., *Re* **[1899] 1 Ch. 348; 68 L.J.Ch. 190; 79 L.T. 662; 47 W.R.Dig. 27; 6 Mans. 125** 99, 100, 269
Jackson, *Re*. *See* Union Bank of Manchester, *Ex p.*
Jackson *v.* **Rainford Coal Co. [1896] 2 Ch. 340; 65 L.J.Ch. 757; 44 W.R. 554** . . . 260
—— *v.* **Turquand (1869) L.R. 4 H.L. (E. & Ir.App.) 305; 39 L.J.Ch. 11; 18 W.R. (H.L. & P.C.) Dig. 8** 83
Jacobs *v.* **Batavia and General Plantations Trust, Ltd. [1924] 2 Ch. 329; 93 L.J.Ch. at p. 528; 131 L.T. 617; 40 T.L.R. 616; 68 S.J. 630** 336
—— *v.* **Morris [1902] 1 Ch. 816; 71 L.J.Ch. 363; 86 L.T. 275; 50 W.R. 371; 18 T.L.R. 384** 446
Jacobus Marler Estates *v.* **Marler (April, 1913) (1916) 85 L.J.P.C. 167, n.; 114 L.T. 640, n.** 159
Jaeger's (Dr.) Sanitary Woollen System Co. *v.* **Walker & Sons (1897) 77 L.T. 180** . 223
Jamal (A. K. A. S.) *v.* **Moolla, Dawood, Sons & Co. [1916] 1 A.C. 175; 85 L.J.P.C. 28; 114 L.T. 1; 32 T.L.R. 79; 60 S.J. 139; L.R. 43 Ind.App. 6** 116
James *v.* **Boythorpe Colliery Co., Boythorpe Colliery Co.,** *Re* **[1890] W.N. 28; 2 Meg. 55** 308

James v. Buena Ventura Nitrate Grounds Syndicate, Ltd. [1896] 1 Ch. 456; 65 L.J.Ch. 284; 74 L.T. 1; 44 W.R. 372; 12 T.L.R. 176 131
—— v. Rockwood Colliery Co. (1912) 106 L.T. 128; 28 T.L.R. 215 171
—— (Liquidator of International Contract Co.) v. May and the West London, etc., Wharves Co. (Liquidators of) (1873) L.R. 6 H.L. (E. & Ir.App.) 328; 42 L.J.Ch. 802 196
James Millward & Co., Ltd. *See* Millward, James, & Co.
James Smith & Sons (Norwood), Ltd. v. Goodman [1936] Ch. 216; 105 L.J.Ch. 70; 154 L.T. 113; [1934–5] B. & C.R. 283 424
Jeavons, *Re*. *See* Mackay, *Ex p.*
Jegon, *Ex p.*, South Llanharran Colliery Co, *re* (1879) 12 Ch.D. 503; 41 L.T. 567; 28 W.R. 194 204
Jenkin's Claim. *See* 'Otto' Electrical Manufacturing Co. (1905), Ltd.
Jenner's Case, Perry and Kelly Nickel, Cobalt and Chrome Iron Mining Co., *Re* (1877) 7 Ch.D. 132; 47 L.J.Ch. 201; 37 L.T. 807; 26 W.R. 291 . . 165, 173
Jennings v. Broughton (1854) 23 L.J.Ch. 999; 5 De G.M. & G. 126; 3 W.R.Ch.Dig. 45 336
— v. Hammond (1882) 9 Q.B.D. 225; 51 L.J.Q.B. 493; 31 W.R. 40 . . . 374
Jewish Colonial Trust (Jeudische (1) Colonialbank), Ltd., *Re* [1908] 2 Ch. 287; 77 L.J.Ch. 629; 99 L.T. 243; 24 T.L.R. 595; 15 Mans. 279 60
Johannesburg Hotel Co., *Re*, Zoutpansberg Prospecting Co., *ex p.* [1891] 1 Ch. 119; 60 L.J.Ch. 391; 64 L.T. 61; 39 W.R. 260; 2 Meg. 409; 7 T.L.R. 166 . . 100
John Blackwood, Ltd., Loch v. *See* Loch v. John Blackwood, Ltd.
John Brown, Ltd., *Re* [1914] W.N. 434; 84 L.J.Ch. 245; 112 L.T. 232; 59 S.J. 146 61
John Dry Steam Tugs, *Re* [1932] 1 Ch. 594; [1932] W.N. 52 67
John Morley Building Co. v. Barras [1891] 2 Ch. 386; 60 L.J.Ch. 496; 64 L.T. 856; 39 W.R. 619 . . . . . 145, 160
John Moore (Sir) Gold Mining Co. (1879) 12 Ch.D. 325 429
John Shaw & Son (Salford), Ltd v. Shaw [1935] 2 K.B. 113 230
Johns v. Balfour (1889) 5 T.L.R. 389; 1 Meg. 191 50
Johnson (I. C.) & Co., *Re* [1902] 2 Ch. 101; 71 L.J.Ch. 576; 86 L.T. 791; 50 W.R. 482; 9 Mans. 307 270
Johnson v. Lattle's Iron Agency (1877) 5 Ch.D. 687; 46 L.J.Ch. 786; 36 L.T. 528; 25 W.R. 548 . . . . . 29, 127, 130, 131, 234
— v. Russian Spratts Patent, Ltd., Russian Spratts Patent, Ltd., *Re* [1898] 2 Ch. 149; 67 L.J.Ch. 381; 78 L.T. 480; 46 W.R. 514 . . . . . 126, 260
Johnston v. Chestergate Hat Manufacturing Co. [1915] 2 Ch. 338; 84 L.J.Ch. 914; 113 L.T. 1148 208
Johnston's Claim. *See* United Service Co., *Re*.
Johnston Foreign Patents Co., *Re* [1904] 2 Ch. 234; 73 L.J.Ch. 617; 91 L.T. 124; 53 W.R. 189; 11 Mans. 378 263
Joint Stock Discount Co. v. Brown (1866) L.R. 3 Eq. 139, 15 L.T. 174; 15 W.R. Ch.Dig. 65; 12 Jur.(N.S.) 899 55
— v. —— (1869) L.R. 8 Eq. 381; 20 L.T. 844; 17 W.R. 1037 . 48, 51, 55, 159, 190, 192, 195, 252, 411
Joint Stock Discount Co.'s Claim. *See* General Rolling Stock Co., *Re*.
Joint Stock Trust and Finance Corpn., Ltd., *Re* (1912) 56 S.J. 272 . . . 192
Jones, *Ex p.* *See* London and Northern Bank, *Re*.
Jones v. Commissioners of Inland Revenue [1920] 1 K.B. 711; 89 L.J.K.B. 129; 121 L.T. 611 456
— v. Evans, Evans, *Re* [1913] 1 Ch. 23; 82 L.J.Ch. 12; 107 L.T. 604; 19 Mans. 397; 57 S.J. 60 206
—— v. North Vancouver Land and Improvement Co. [1910] A.C. 317; 79 L.J. P.C. 89; 102 L.T. 377 132
—— v. Pacaya Rubber and Produce Co. [1911] 1 K.B. 455; 80 L.J.K.B. 155; 104 L.T. 446; 18 Mans. 139 . . . . . 129, 130, 132
—— v. Smith (1841) 11 L.J.Ch. 83; 1 Ha. 43; 6 Jur. 8; on appeal (1843) 12 L.J. Ch. 381; 1 Ph. 244, 247; 7 Jur. 431 223
—— v. Victoria Graving Dock (1877) 2 Q.B.D. at p. 325; 36 L.T. at p. 347 . 234, 246
Jones' Case. *See* Letheby and Christopher, Ltd., *Re*.
Jommenjoy Coondoo v. Watson (1884) 9 App.Cas. 561; 53 L.J.P.C. 80; 50 L.T. 411; 32 W.R.Dig. 149 446
Joplin Brewery Co., *Re* [1902] 1 Ch. 79; 71 L.J.Ch. 21; 85 L.T. 411; 50 W.R. 75 269
Joseph Evans & Co. v. Heathcote [1918] 1 K.B. 418; 87 L.J.K.B. 593; 118 L.T. 556; 34 T.L.R. 247 20
Joseph Hargreaves, Ltd., *Re* [1900] 1 Ch. 347; 69 L.J.Ch. 183; 82 L.T. 132; 48 W.R. 241; 7 Mans. 354 412
Joseph v. Law Integrity Insurance Co. [1912] 2 Ch. 581; 82 L.J.Ch. 187; 107 L.T. 538; 20 Mans. 85; [1913] W.C. & Ins.R. 337 369
—— v. Sonora (Mexico) Land and Timber Co. (1918) 34 T.L.R. 220 . . . 167
Jowitt, *Re*, Jowitt v. Keeling [1922] 2 Ch. 442; 91 L.J.Ch. 449; 127 L.T. 466; 38 T.L.R. 688; 66 S.J. 577 206

Jubilee Cotton Mills, Ltd. *v.* Lewis [1924] A.C. 958; 93 L.J.Ch. 414; 131 L.T. 579; 40 T.L.R. 621; 68 S.J. 663 . . . . . 39, 178, 324, 354
Jubilee Sites (1897) Syndicate, *Re* [1899] 2 Ch. 204; 68 L.J.Ch. 427; 80 L.T. 869; 47 W.R. 606; 6 Mans. 331 . . . . . 382, 426
Justice *v.* James (1899) 15 T.L.R. 181 317

Kanssen *v.* Rialto (West End), Ltd. [1944] Ch. 346; 113 L.J.Ch. 264; 171 L.T. 3; 60 T.L.R. 471 174
Karamelli and Barnett, Ltd., *Re* [1917] 1 Ch. 203; 86 L.J.Ch. 207; 115 L.T. 753; (1917) 3 H.B.R. 102 . . . . . 315, 418, 429
Karberg's Case, Metropolitan Coal Consumers' Association, *Re* [1892] 3 Ch. 1; 61 L.J.Ch. 741; 66 L.T. 184, 700; 40 W.R.Dig. 41; 8 T.L.R. 637 . 332, 336, 347
Kaslo-Slocan Mining and Financial Corpn., *Re* [1910] W.N. 13 382
Katherine et Cie, *Re* [1932] 1 Ch. 70; 146 L.T. 226 390
Kaye *v.* Croydon Tramways Co. [1898] 1 Ch. 358; 67 L.J.Ch. 222; 78 L.T. 237; 46 W.R. 405; 14 T.L.R. 244 . . . . . 145, 147, 176, 437
Keatinge *v.* Paringa Consolidated Mines, Ltd. [1902] W.N. 15; 18 T.L.R. 266 . 97
Keeling, Jowitt *v.* *See* Jowitt, *Re*.
Keith Prowse & Co., *Re* [1918] 1 Ch. 487; 87 L.J.Ch. 290; 118 L.T. 591; 34 T.L.R. 283 106
Kelantan Coco Nut Estates, Ltd. and Reduced, *Re* [1920] W.N. 274; 64 S.J. 700 149
Kellock's Case, Barned's Banking Co., *Re* (1868) L.R. 3 Ch.App. 769; 16 W.R. 919 320
Kellock *v.* Enthoven (1874) L.R. 9 Q.B. 241; 43 L.J.Q.B. 90; 30 L.T. 68; 22 W.R. 322 116
Kelner *v.* Baxter (1866) L.R. 2 C.P. 174; 36 L.J.C.P. 94; 15 L.T. 213; 15 W.R. 278; 12 Jur.(N.S.) 1016 243
Kemp, *Ex p.* *See* Peruvian Guano Co., *Re*.
Kent and Sussex Sawmills, *Re* [1947] Ch. 177; 62 T.L.R. 747; [1947] L.J.R. 534; 176 L.T. 167 267
Kent Coalfields Syndicate, *Re* [1898] 1 Q.B. 754; 67 L.J.Q.B. 500; 78 L.T. 443; 46 W.R. 453; 14 T.L.R. 305; 5 Mans. 88 . . . . . 103, 212
Kent County Gas Light and Coke Co., *Re*, Brown, *ex p.* (1906) 95 L.T. 756 . . 346
—— *Re* [1913] 1 Ch. 92; 82 L.J.Ch. 28; 107 L.T. 641; 57 S.J. 112; 19 Mans. 358 326
Kent Outcrop Coal Co., *Re* [1912] W.N. 26 140
Kent *v.* Freehold Land and Brickmaking Co. (1868) L.R. 3 Ch.App. 493; 37 L.J. Ch. 653; 16 W.R. 990 346
Kepitigalla Rubber Estates *v.* National Bank of India [1909] 2 K.B. 1010; 78 L.J. K.B. 964; 100 L.T. 516; 14 Com.Cas. 116; 16 Mans. 234; 25 T.L.R. 402; 53 S.J. 335, 377 251
Kerr *v.* Marine Products, Ltd. (1928) 44 T.L.R. 292 167
—— *v.* Mottram [1940] Ch. 657; 56 T.L.R. 711; 109 L.J.Ch. 243; 163 L.T. 222 . 233
Kershaw, *Re*, Whittaker *v.* Kershaw (1890) 45 Ch.D. 320; 60 L.J.Ch. 9; 63 L.T. 203; 39 W.R. 22 126
Kershaw, Leese & Co. *v.* Stockport Overseers [1923] 2 K.B. 129; 92 L.J.K.B. 784; 129 L.T. 563; 21 L.G.R. 452 400
Key (W.) & Son, Ltd., *Re* [1902] 1 Ch. 467; 71 L.J.Ch. 254; 86 L.T. 374; 50 W.R. 234; 18 T.L.R. 263; 9 Mans. 181 119
Kidner's Agreement, Kidner *v.* Kidner [1929] 2 Ch. 121; 98 L.J.Ch. 247; [1929] W.N. 69; 141 L.T. 195 205
Kinatan (Borneo) Rubber, Ltd., *Re* [1923] 1 Ch. 124; 92 L.J. 613; 128 L.T. 216; 39 T.L.R. 58; 67 S.J. 113 395
King *v.* Chick. *See* Talbott, *Re*.
—— (J. J.) & Son's Case. *See* Law Car and General Insurance Corporation, *Re*.
Kingsbury Collieries, Ltd., and Moore's Contract, *Re* [1907] 2 Ch. 259; 76 L.J.Ch. 469; 96 L.T. 829; 23 T.L.R. 497; 14 Mans. 212 . . . . . 49, 50
Kingston Cotton Mill Co. (No. 2), *Re* [1896] 2 Ch. 279; 65 L.J.Ch. 673; 74 L.T. 568; 3 Mans. 171; 12 T.L.R. 430 . . . . . 217, 218, 411
Kirby *v.* Wilkins [1929] 2 Ch. 444; 98 L.J.Ch. 453 51
Kitson & Co., Ltd., *Re* [1947] 1 All E.R. 435; 175 L.T. 25 54
Klein, *Re*, Goodwin, *ex p.* [1906] W.N. 148; 22 T.L.R. 664 400
Kleinwort, Sons & Co. *v.* Associated Automatic Corporation [1934] W.N. 65; 50 T.L.R. 244; 39 Com.Cas. 189; 151 L.T. 1 . . . . . 118, 281
Knight *v.* Bulkeley (1858) 27 L.J.Ch. 592; 33 L.T.(o.s.) 7; 6 W.R. 610; 4 Jur. (N.S.) 527; further hearing on motion (1859) 5 Jur.(N.S.) 817 154
Knight's Case, North Hallenbeagle Mining Co., *Re* (1867) L.R. 2 Ch.App. 321; 36 L.J.Ch. 317; 15 L.T. 546; 15 W.R. 294 234
Knightsbridge Estates Trust, Ltd. *v.* Byrne [1940] A.C. 613 . . . . . 273, 301
Knowles *v.* Scott [1891] 1 Ch. 717; 60 L.J.Ch. 284; 64 L.T. 135; 39 W.R. 523; 7 T.L.R. 306 . . . . . 390, 424, 431
Krasnapolsky Restaurant and Winter Garden Co., *Re* [1892] 3 Ch. 174; 61 L.J.Ch. 553; 67 L.T. 51; 40 W.R. 639 385

Kreditbank Cassel (G.m.b.H.) *v.* Schenkers, Ltd. [1927] 1 K.B. 826; 96 L.J.K.B. 501; 136 L.T. 716; 43 T.L.R. 237; 32 Com.Cas. 197; 71 S.J. 141 . . . 33
Kreglinger (G. & C.) *v.* New Patagonia Meat and Cold Storage Co. [1914] A.C. 25; 83 L.J.Ch. 79; 109 L.T. 802; 30 T.L.R. 114; 58 S.J. 97 305
Kuala Pahi Rubber Estate *v.* Mowbray [1914] W.N. 321; 111 L.T. 1072 . . 310
Kushler (M.), Ltd., *Re* [1943] Ch. 248; 112 L.J.Ch. 194; 169 L.T. 17; 59 T.L.R. 328 408

Ladd's Case. *See* Fairbairn Engineering Co., *Re* 421, 425
Ladenburg & Co. *v.* Goodwin, Ferreira & Co. (In Liquidation) and Garnett [1912] 3 K.B. 275; 81 L.J.K.B. 1174; 107 L.T. 587; 28 T.L.R. 541; 56 S.J. 722 . 267
Ladies' Dress Association *v.* Pulbrook [1900] 2 Q.B. 376; 69 L.J.Q.B. 705; 49 W.R. 6; 7 Mans. 465 (C.A.) 79, 132, 393
Laffitte (Charles) & Co., *Re*. *See* De Rosaz's Case.
Lagunas Nitrate Co. *v.* Lagunas Nitrate Syndicate [1899] 2 Ch. 392; 68 L.J.Ch. 699; 81 L.T. 334; 48 W.R. 74; 15 T.L.R. 436; 7 Mans. 165 . 187, 188, 323, 324, 346
Lake George Mines, Ltd., *Re* [1904] 1 Ch. 803; 73 L.J.Ch. 333; 52 W.R.Dig. 30; 11 Mans. 214 388
La Mancha Irrigation Co., *Re*. *See* Hamilton's Case.
Lamb *v.* Sambas Rubber and Gutta Percha Co. [1908] 1 Ch. 845; 77 L.J.Ch. 386; 98 L.T. 633; 15 Mans. 189 . . . . . 129, 130, 132, 345
Lamplugh Iron Ore Co., *Re* [1927] 1 Ch. 308; 96 L.J.Ch. 177; 136 L.T. 501; [1927] B. & C.R. 61 400
Lancashire Cotton Co., *Re* (1887) 35 Ch.D. 656 403
Lancaster Motor Co (London), Ltd. *v.* Bremith, Ltd. [1941] 1 K.B. 675 . . 390
Land and Sea Telegraph Construction Co., *Re*. *See* Thames Plate Glass Co. *v.* Land and Sea, etc. Co.
Land Credit Co. of Ireland, *Re*, Overend, Gurney & Co., *ex p.* (1869) L.R. 4 Ch. App. 460; 39 L.J.Ch. 27; 20 L.T. 641; 17 W.R. 689 . . . . . 33, 180
——, *Re*. *See* Weikersheim's Case.
Land Credit Co. of Ireland *v.* Fermoy (Lord) (1870) L.R. 5 Ch.App. 763; 23 L.T. 439; 18 W.R. 1089 . . . . . 186, 244
Land Development Association, *Re*. *See* Kent's Case.
Land Loan Mortgage, etc., Trust Co. of South Africa, *Re*. *See* Boyle's Case.
Land Mortgage Bank of Florida, *Re* [1898] 1 Ch. 444; 67 L.J.Ch. 183; 78 L.T. 156; 46 W.R. 333; 5 Mans. 178; 14 T.L.R. 208 414
Landowners West of England and South Wales Land Drainage and Inclosure Co. *v.* Ashford (1880) 16 Ch.D. 411; 50 L.J.Ch. 276; 44 L.T. 20; 29 W.R.Dig. 141 307
Lands Allotment Co., *Re* [1894] 1 Ch. 616; 63 L.J.Ch. 291; 70 L.T. 286; 42 W.R. 404; 10 T.L.R. 234; 1 Mans. 107; 7 R. 115 . . . . . 48, 159, 234
Lane's Case, British Provident Life and Fire Assurance Society, *Re* (1863) 1 De G.J. & S. 504; 33 L.J.Ch. 84; 12 W.R. 60; 10 Jur.(N.S.) 25 234
Lang Propeller, Ltd., *Re* [1927] 1 Ch. 120; 95 L.J.Ch. 516; 136 L.T. 48; 42 T.L.R. 702; [1926] B. & C.R. 127; 70 S.J. 836; 11 Tax Cas. 46; [1926] Ch. 595 . . . . . 400, 410
Langham Hotel Co. (1869) 17 W.R. 463; 20 L.T. 163 . . . . . 430, 441
Langham Skating Rink Co., *Re* (1877) 5 Ch.D. 669; 46 L.J.Ch. 345; 36 L.T. 605; 25 W.R.Dig. 65 . . . . . 381, 407
Langlaagte Proprietary Co., *Re* (1912) 28 T.L.R. 529 40
Larkworthy's Case. *See* Exchange Trust, Ltd., *Re*.
Larocque *v.* Beauchemin [1897] A.C. 358; 66 L.J.P.C. 59; 76 L.T. 473; 45 W.R. 639; 13 T.L.R. 336; 4 Mans. 263 100
Last *v.* Buller & Co. (1919) 36 T.L.R. 35 73
Latchford Premier Cinema *v.* Ermion [1931] 2 Ch. 409; [1931] W.N. 204; 47 T.L.R. 595; 100 L.J.Ch. 397; 145 L.T. 672 170
Lathom *v.* Greenwich Ferry Co. [1895] W.N. 77; 72 L.T. 790; 43 W.R.Dig. 35; 2 Mans. 408; 13 R. 503 318
Laughton *v.* Bishop of Sodor and Man (1872) L.R. 4 P.C. 495; 42 L.J.P.C. 11; 28 L.T. 377; 21 W.R. 204; 9 Moo. P.C.(N.S.) 318 155
Law Car and General Insurance Corpn., *Re* [1911] W.N. 91, 101; 55 S.J. 407 . . 267
——, *Re* [1912] 1 Ch. 405; 81 L.J.Ch. 218; 106 L.T. 180 397
——, *Re*, King (J.J.) & Son's Case, Old Silkstone Collieries, Ltd.'s Case [1913] 2 Ch. 103; 82 L.J.Ch. 467; 108 L.T. 862; 29 T.L.R. 532; 20 Mans. 227; 57 S.J. 556 371
Law Guarantee Trust and Accident Society, *Re* (1910) 26 T.L.R. 565 . . . 393
——, *Re* (1913) 108 L.T. 880; 57 S.J. 628 396
——, *Re*, Godson's Claim [1915] 1 Ch. 340; 84 L.J.Ch. 510; 112 L.T. 537; [1915] 1 H.B.R. 103; 59 S.J. 234 321
Lawe's Case, Vale of Neath and South Wales Brewery Joint Stock Co., *Re* (1852) 1 De G.M. & G. 421; 21 L.J.Ch. 688; 16 Jur. 343 145
Lawrence *v.* West Somerset Mineral Ry. [1918] 2 Ch. 250; 87 L.J.Ch. 513; 119 L.T. 509; 62 S.J. 652 . . . . . 200, 315

Lawrence *v.* **Wynn (1839) 5 M. & W. 355; 8 L.J.Ex. 237** 127
Lawrence's Case, Cachar Co., *Re* (1867) L.R. 2 Ch.App. 412; 36 L.J.Ch. 490; 16 L.T. 222; 15 W.R. 571 . . . . . 89, 104
Laxon & Co., *Re* (No. 2) [1892] 3 Ch. 555; 61 L.J.Ch. 667; 67 L.T. 85; 40 W.R. 621; 8 T.L.R. 666 39
Lazarus *v.* **Cairn Line of Steamships, Ltd. (1912) 106 L.T. 378; 28 T.L.R. 244; 17 Com.Cas. 107; 56 S.J. 345** 254
Lee *v.* **Haley (1869) L.R. 5 Ch.App. 155; 39 L.J.Ch. 284; 22 L.T. 251; 18 W.R. 242** 238
—— *v.* **Neuchatel Asphalte Co. (1889) 41 Ch.D. 1; 58 L.J.Ch. 408; 61 L.T. 11; 37 W.R. 321; 1 Meg. 140; 5 T.L.R. 260** 200, 201, 202, 203, 204
—— *v.* **Roundwood Colliery Co., Roundwood Colliery Co., *Re* [1897] 1 Ch. 373; 66 L.J.Ch. 186; 75 L.T. 641; 45 W.R. 324; 13 T.L.R. 175** 316
—— *v.* **Wilson.** *See* **Tillott, *Re*.**
Lee Behrens & Co., *Re* [1932] 2 Ch. 46; 48 T.L.R. 248; [1932] W.N. 56 . . . 445
Leeds and Hanley Theatres of Varieties, *Re* (No. 1) [1902] 2 Ch. 809; 72 L.J.Ch. 1; 87 L.T. 488; 51 W.R. 5 (C.A.) 176, 323, 324
——, *Re* **(No. 2) [1904] 2 Ch. 45; 73 L.J.Ch. 553; 52 W.R. 506** 397
Leeds Banking Co., *Re* (1865). *See* **Addinell's Case.**
——, *Re*, **Barrett, *ex p.* (1865) 3 De G.J. & S. 30; 34 L.J.Ch. 558; 12 L.T. 514; 13 W.R. 826** 84
——, *Re*, **Fearnside and Dean's Case, Dobson's Case (1865) L.R. 1 Ch.App. 231; 35 L.J.Ch. 307; 13 L.T. 694; 14 W.R. 255; 12 Jur.(N.S.) 60** 118
Leeds Estate, Building and Investment Co. *v.* **Shepherd (1887) 36 Ch.D. 787; 57 L.J.Ch. 46; 57 L.T. 684; 36 W.R. 322; 3 T.L.R. 841** . . . 159, 167, 181, 190, 217, 218
Lees Brook Spinning Co., *Re* [1906] 2 Ch. 394; 75 L.J.Ch. 565; 95 L.T. 54; 54 W.R. 563; 22 T.L.R. 629; 13 Mans. 262 76
Leicester *v.* **Yolland, Husson and Birkett.** *See* **Yolland, Husson and Birkett, *Re*.**
Leicester Club and County Racecourse Co., *Re*, Cannon, *ex p.* (1885) 30 Ch.D. 629; 55 L.J.Ch. 206; 53 L.T. 340; 34 W.R. 14; 1 T.L.R. 658 166
Leifchild's Case, British and Foreign Cork Co., *Re* (1865) L.R. 1 Eq. 231; 13 L.T. 267; 14 W.R. 22; 11 Jur.(N.S.) 941 50
Leinster Contract Corporation, *Re* [1903] 1 Ir.R. 517 398
Leitch Bros. (Wm. C.) [1932] 2 Ch. 71 409
Leitner Electrical Co., *Re* (1916) 32 T.L.R. 474 413
Lemon *v.* **Austin Friars Investment Trust, Ltd. [1926] Ch. 1; 95 L.J.Ch. 97; 133 L.T. 790; 41 T.L.R. 629** 272
Leroux *v.* **Brown (1852) 22 L.J.C.P. 1; 12 C.B. 801; 1 W.R. 22; 16 Jur. 1021** . 246
Letheby and Christopher, Ltd., Jones's Case [1904] 1 Ch. 815; 73 L.J.Ch. 509; 90 L.T. 774; 52 W.R. 460; 11 Mans. 209 112
Lever Bros., Ltd. *v.* **Inland Revenue Commissioners [1937] W.N. 381** . . . 439
Levi *v.* **Ayers (1878) 3 App.Cas. 842; 47 L.J.P.C. 83; 38 L.T. 725; W.R. 79** 116, 119
Levi & Co., *Re* [1919] 1 Ch. 416; 88 L.J.Ch. 233; 120 L.T. 531; 35 T.L.R. 334 . 403
Levita's Case, International Contract Co., *Re* (1867) L.R. 3 Ch.App. 36; 17 L.T. 337; 16 W.R. 95 88
Levita's (G. H.) Case, International Contract Co., *Re* (1870) L.R. 5 Ch.App. 489; 39 L.J.Ch. 673; 22 L.T. 395; 18 W.R. 476 . . . . . 88, 89
Levy *v.* **Abercorris Slate and Slab Co. (1887) 37 Ch.D. 260; 57 L.J.Ch. 202; 58 L.T. 218; 36 W.R. 411; 4 T.L.R. 34** 272, 306
—— *v.* **Walker (1878) 10 Ch.D. 436** 238
Lewis, *Ex p.* General Exchange Bank, *re* (1871) L.R. 6 Ch.App. 818; 40 L.J.Ch. 429; 24 L.T. 787; 19 W.R. 791 138
Lewis Merthyr Consolidated Collieries, *Re*, Lloyds Bank *v.* **The Company [1929] 1 Ch. 498; 140 L.T. 321** 317
Lewis's (Harvey) Case, Lundy Granite Co., *Re* (1872) 26 L.T. 673; 20 W.R. 519 402, 403
Liberator Permanent Benefit Building Society, *Re* (1894) 71 L.T. 406; 43 W.R.Dig. 43; 15 R. 149; 2 Mans. 100 411
Liberian Government Concessions and Exploration Co., *Re* (1892) 9 T.L.R. 136 . 346
Lichtenstein (Hermann) & Co., *Re* (1903) 23 T.L.R. 424 381
Life and Health Assurance Association, *Re* [1910] 1 Ch. 458; 79 L.J.Ch. 262; 102 L.T. 160; 26 T.L.R. 277; 54 S.J. 290; 17 Mans. 75 370
Life Association of England, *Re*. *See* **Thomson's Case.**
Lindlar's Case, Discoverers Finance Corporation, *Re* [1910] 1 Ch. 312; 79 L.J.Ch. 193; 102 L.T. 150; 26 T.L.R. 291; 54 S.J. 287; 17 Mans. 46 111
Lindus *v.* **Melrose (1858) 3 H. & N. 177; 27 L.J.Ex. 326; 6 W.R. 441; 4 Jur.(N.S.) 488** 158
Linz *v.* **Electric Wire Co. of Palestine, Ltd. [1948] A.C. 371; [1947] 1 All E.R. 604** 105
Lisser and Rosenkranz's Claim. *See* **British American Continental Bank, *Re*.**
Lister *p.* **Henry Lister & Son (1893) 62 L.J.Ch. 568; 68 L.T. 826; 41 W.R. 330; 9 T.L.R. 296** 308

Littledale, *Ex p.* *See* Hoylake Ry., *Re.*
Liverpool and London Guarantee and Accident Insurance Co., *Re.* *See* Mason, etc., Case.
Liverpool Borough Bank, *Re.* *See* Duranty's Case.
Liverpool Household Stores Association, *Re* (1890) 59 L.J.Ch. 616; 62 L.T. 873; 38 W.R.Dig. 35; 2 Meg. 217 . . . . . 181, 189, 284, 411
Llanharry Hæmatite Iron Co., *Re.* *See* Tothill's Case.
Llewellyn *v.* Kasintoe Rubber Estates, Ltd. [1914] 2 Ch. 670; 84 L.J.Ch. 70; 112 L.T. 676; 30 T.L.R. 683; 58 S.J. 808 436
Lloyd *v.* David Lloyd & Co., David Lloyd & Co., *Re* (1877) 6 Ch.D. 339; 37 L.T. 83; 25 W.R. 872 . . . . . 320, 406
Lloyd *v.* Grace, Smith & Co. [1912] A.C. 716; 81 L.J.K.B. 1140; 107 L.T. 531; 28 T.L.R. 547; 56 S.J. 723 251
Lloyd Generale Italiano, *Re* (1885) 29 Ch.D. 219 450
Lloyds Bank *v.* Lewis Merthyr Consolidated Collieries, Ltd. *See* Lewis Merthyr Consolidated Collieries, *Re.*
Lloyds Furniture Palace, Ltd., *Re*, Evans *v.* The Company [1925] Ch. 853; 95 L.J.Ch. 140; 134 L.T. 241; [1926] B. & C.R. 29 410
Llynvi Coal Co. (1878) L.R. 7 Ch.App. 28 404
Llynvi Tondù and Ogmore Coal and Iron Co., *Re* (1877) 37 L.T. 373; 26 W.R. 55 76
Loch *v.* John Blackwood, Ltd. [1924] A.C. 783; 93 L.J.P.C. 257; 131 L.T. 719; 40 T.L.R. 792; [1924] B. & C.R. 209; 68 S.J. 735 378
Lock *v.* Queensland Investment and Land Mortgage Co. [1896] A.C. 461; 65 L.J.Ch. 798; 75 L.T. 3; 45 W.R. 65; 12 T.L.R. 478 . . . . . 47, 129
Locke and Smith, Ltd., *Re*, Wigan *v.* The Company [1914] 1 Ch. 687; 83 L.J.Ch. 650; 110 L.T. 683; 58 S.J. 379 303
Lodwick *v.* Perth (Earl of) (1884) 1 T.L.R. 76 346
London and Colonial Co., *Re*, Horsey's Claim (1868) 5 Eq. 561 413
London and Colonial Finance Corporation, *Re* (1897) 77 L.T. 146; 13 T.L.R. 576 (C.A.) 84, 175
London and Counties Assets Co. *v.* Brighton Grand Concert Hall and Picture Palace, Ltd. [1915] 2 K.B. 493; 84 L.J.K.B. 991; 112 L.T. 380; (1915) 1 H.B.R. 83 171
London and County Coal Coal, *Re* (1866) L.R. 3 Eq. 355; 15 W.R. 151 . . . 378
London and General Bank, *Re* (No. 1) [1895] 2 Ch. 166; 72 L.T. 611; 43 W.R. 481; 12 R. 263; 2 Mans. 282; 11 T.L.R. 374 411
— (No. 2), *Re*, Theobald, *ex p.* [1895] 2 Ch. 673; 64 L.J.Ch. 866; 73 L.T. 304; 44 W.R. 80; 2 Mans. 555; 12 R. 520; 11 T.L.R. 573 . 191, 217, 218, 219, 411
London and Globe Finance Co., *Re* (1902) 50 W.R. 253 414
London and Globe Finance Corporation, *Re* [1903] 1 Ch. 728; 72 L.J.Ch. 368; 88 L.T. 194; 51 W.R. 651; 19 T.L.R. 314; 10 Mans. 198 196
London and Mediterranean Bank, *Re.* *See* Bolognesi's Case.
— —, *Re.* *See* Wright's Case.
London and Mercantile Discount Co., *Re* (1865) L.R. 1 Eq. 277; 35 L.J.Ch. 229; 13 L.T. 665; 14 W.R. 219 382
London and New York Investment Corporation, *Re* [1895] 2 Ch. 860; 64 L.J.Ch. 729; 73 L.T. 280; 44 W.R. 137; 2 Mans. 541; 13 R. 749 77
London and Northern Bank, *Re*, Archer's Case [1901] W.N. 247; 85 L.T. 698; 50 W.R. 262; 18 T.L.R. 206 (C.A.) 412
— —, *Re*, Haddock's Case, Hoyle's Case [1902] 2 Ch. 73; 71 L.J.Ch. 511; 86 L.T. 430; 50 W.R. 536; 18 T.L.R. 536; 9 Mans. 325 . . . . . 351, 413
— —, *Re*, Jones, *ex p.* (1900) 1 Ch. 220; 69 L.J.Ch. 24; 81 L.T. 512; 48 W.R.Dig. 50; 7 Mans. 60 89
— —, *Re.* *See* McConnell's Claim.
London and Northern Steamship Co. *v.* Farmer [1914] W.N. 200; 111 L.T. 204; 58 S.J. 594 129
London and Provincial Consolidated Coal Co., *Re*, Hadley, Norris and Jacob's Case (1877) 5 Ch.D. 525; 46 L.J.Ch. 42; 36 L.T. 545; 25 W.R.Dig. 48 . 82
London and Provincial Law Assurance Society *v.* London and Provincial Joint Stock Life Assurance Co. (1847) 17 L.J.Ch. 37; 11 Jur. 938 288
London and Provincial Pure Ice Manufacturing Co., *Re* [1904] W.N. 136 . . 384
London and South Western Canal Co., *Re* [1911] 1 Ch. 346; 80 L.J.Ch. 234; 104 L.T. 95; 18 Mans. 171 . . . . . 166, 191
London and Southern Counties Freehold Land Co., *Re* (1885) 31 Ch.D. 223; 55 L.J.Ch. 224; 54 L.T. 44; 34 W.R. 163; 2 T.L.R. 148 160
London and Staffordshire Fire Insurance Co., *Re*, Wallace's Case (1883) 24 Ch.D. 149; 53 L.J.Ch. 78; 48 L.T. 955; 31 W.R. 781 . . . . . 344, 346
London Celluloid Co., *Re*, Bayley and Hanbury, *ex p.* (1888) 39 Ch.D. 190; 57 L.J.Ch. 843; 59 L.T. 109; 36 W.R. 673; 1 Meg. 45 99
London County Council *v.* Att.-Gen. [1902] A.C. 165; 71 L.J.Ch. 268; 86 L.T. 161; 50 W.R. 497; 66 J.P. 340; 18 T.L.R. 298 . . . . . 47, 51
London Financial Association *v.* Kelk (1884) 26 Ch.D. 107; 53 L.J.Ch. 1025; 50 L.T. 492; 32 W.R.Dig. 41 . . . . . 189, 194

London Fish Market and National Fishing Co., *Re* (1883) 27 S.J. 600 . . . 385
London Founders' Association and Palmer *v.* Clarke (1888) 20 Q.B.D. 576; 57 L.J. Q.B. 291; 59 L.T. 93; 36 W.R. 489; 4 T.L.R. 377 113
London Freehold and Leasehold Property Co. *v.* Suffield (Lord) [1897] 2 Ch. 608; 66 L.J.Ch. 790; 77 L.T. 445; 46 W.R. 102; 14 T.L.R. 8 . . . 248, 249
London, Hamburg and Continental Exchange Bank, *Re* (1866). *See* Emmerson's Case.
——, *Re* (1867). *See* Evans' Case.
London India Rubber Co., *Re* (1866) 14 W.R. 594 384
——, *Re* (1867–8) L.R. 5 Eq. 519; 37 L.J.Ch. 235; 17 L.T. 530; 16 W.R. 334 . 66, 394
London Investment Trust *v.* Russian Petroleum and Liquid Fuel Co. See Russian Petroleum, etc., Co., *Re*.
London Joint City and Midland Bank *v.* Herbert Dickinson, Ltd. [1922] W.N. 13 407, 442
London Joint Stock Bank *v.* Simmons [1892] A.C. 201; 61 L.J.Ch. 723; 66 L.T. 625; 41 W.R. 108; 56 J.P. 644; 8 T.L.R. 478 . . . . . 125, 294
London Marine Insurance Association, *Re*, Andrews and Alexander's Case, *etc.* (1869) L.R. 8 Eq. 176; 20 L.T. 943; 17 W.R. 784 374
London Pressed Hinge Co., *Re*, Campbell *v.* The Company [1905] 1 Ch. 576; 74 L.J.Ch. 321; 92 L.T. 409; 53 W.R. 407; 21 T.L.R. 322; 12 Mans. 219 . . 296
London Steam-Boat Co., *Re* [1883] W.N. 123; 31 W.R. 781 79
London United Breweries, Smith *v.* London United Breweries [1907] 2 Ch. 511; 76 L.J.Ch. 612; 97 L.T. 541; 14 Mans. 250 319
London, Windsor and Greenwich Hotels Co., *Re*. *See* Quartermaine's Case.
Long Acre Press, Ltd. *v.* Odhams Press [1930] 2 Ch. 196; 99 L.J.Ch. 479; [1930] W.N. 147; 143 L.T. 562 208
Longman *v.* Bath Electric Tramways [1905] 1 Ch. 646; 74 L.J.Ch. 424; 92 L.T. 743; 53 W.R. 480; 21 T.L.R. 373; 12 Mans. 147 118
Lonsdale Vale Ironstone Co., *Re* (1868) 16 W.R. 601 434
Loring *v.* Davis (1886) 32 Ch. D. 625; 55 L.J.Ch. 725; 54 L.T. 899; 34 W.R. 701; 2 T.L.R. 645 . . . . . 113, 116
Louisiana and Southern States Real Estate and Mortgage Co. [1909] 2 Ch. 552; 79 L.J.Ch. 17; 101 L.T. 495; 16 Mans. 350 . . . . . 76, 77
Lovelace (Earl of) *v.* Anson. *See* Anson's Settlement, *Re*.
Lovell and Christmas, Ltd. *v.* Commrs. of Taxes [1908] A.C. 46; 77 L.J.P.C. 31; 97 L.T. 651; 24 T.L.R. 32 451
Lowe and others, *Ex p.* *See* Standard Manufacturing Co., *Re*.
Lowndes *v.* Stamford (Earl of) (1852) 18 Q.B.Reps.(Ad. & El.) 425; 21 L.J.Q.B. 371; 16 Jur. 903 169
Lubbock *v.* British Bank of South Africa [1892] 2 Ch. 198; 61 L.J.Ch. 498; 67 L.T. 74; 41 W.R. 103; 8 T.L.R. 472 . . . . . 201, 203
Lumley *v.* Wagner (1852) 1 De G.M. & G. 604; 21 L.J.Ch. 898; 16 Jur. 871 . . 252
Lumsden's Case, Blakely Ordnance Co., *Re* (1868) L.R. 4 Ch.App. 31; 19 L.T. 437; 17 W.R. 65 94
Lundy Granite Co., *Re*. *See* Lewis' (Harvey) Case.
Lurgan's (Lord) Case, Metal Constituents Co., *Re* [1902] 1 Ch. 707; 71 L.J.Ch. 328; 86 L.T. 291; 50 W.R. 492; 9 Mans. 196 24
Lush & Co., *Re* [1913] W.N. 39; 108 L.T. 450; 57 S.J. 341 270
Lydney and Wigpool Iron Ore Co. *v.* Bird (1886) 33 Ch.D. 85; 55 L.J.Ch. 875; 55 L.T. 558; 34 W.R. 749; 2 T.L.R. 722 . . . . . 50, 322, 323
Lynde *v.* Anglo-Italian Hemp Spinning Co. [1896] 1 Ch. 178; 65 L.J.Ch. 96; 73 L.T. 502; 44 W.R. 359; 12 T.L.R. 61 336
—— *v.* Nash [1928] 2 K.B. 93; 97 L.J.K.B. 331; 138 L.T. 633; 44 T.L.R. 357 (C.A.); reversed on appeal, *see* Nash *v.* Lynde 343
Lyons *v.* Tramways Syndicate. *See* Perth Electric Tramways, *Re*.
Lyster's Case, Tavistock Ironworks, *Re* (1867) L.R. 4 Eq. 233; 36 L.J.Ch. 616; 16 L.T. 824, 15 W.R. 1007 . . . . . 180, 182

MacArthur's Case. *See* Common Petroleum Engine Co., *Re*.
McCollin *v.* Gilpin (1881) 6 Q.B.D. 516; 44 L.T. 914; 29 W.R. 408; 45 J.P. 828 158, 185
MacConnell *v.* E. Prill & Co. [1916] 2 Ch. 57; 85 L.J.Ch. 674; 115 L.T. 71; 32 T.L.R. 509; 60 S.J. 556 . . . . . 70, 146, 148, 223
McConnell *v.* Wright [1903] 1 Ch. 546; 72 L.J.Ch. 347; 88 L.T. 431; 51 W.R. 661; 10 Mans. 160 (C.A.) 350
McConnell's Claim, London and Northern Bank, *Re* [1901] 1 Ch. 728; 70 L.J.Ch. 251; 84 L.T. 557; 17 T.L.R. 188; 9 Mans. 91 . . . . . 167, 168, 171
Macdonald's Case. *See* Sly, Spink & Co., *Re*.
MacDougall *v.* Gardiner (No. 1) (1875) L.R. 10 Ch. App. 606; 23 W.R. 846 . 142, 143
—— *v.* —— (No. 2) (1875) 1 Ch.D. 13; 45 L.J.Ch. 27; 33 L.T. 521; 24 W.R. 118 28, 29, 37, 156, 229

McEllistrim *v.* Ballymacelligott Co-operative Agricultural and Dairy Society [1919] A.C. 548; 88 L.J.P.C. 59; 120 L.T. 613; 35 T.L.R. 354 20
McEwen *v.* London, Bombay and Mediterranean Bank (1867) 15 L.T. 495; 15 W.R. 245 407
Macfarlane's Claim, Northern Counties of England Fire Insurance Co., *Re* (1880) 17 Ch.D. 337; 50 L.J.Ch. 273; 44 L.T. 299; 29 W.R.Dig. 47 396
Mack's Claim, London and Northern Bank, *Re* [1900] W.N. 114 171
Mackay, *Ex p.*, Jeavons, *Re* (1873) L.R. 8 Ch.App. 643; 42 L.J.Bk. 68; 28 L.T. 828; 21 W.R. 664 307
McKay's Case, Morvah Consols Tin Mining Co., *Re* (1875) 2 Ch.D. 1; 45 L.J. Ch. 148; 33 L.T. 517; 24 W.R. 49 259
McKay's Case. *See* Concessions Trust, *Re* (1896).
Mackenzie, *Ex p.* *See* China Steamship Co., *Re*.
Mackenzie & Co., *Re* [1916] 2 Ch. 450; 85 L.J.Ch. 804; 115 L.T. 440; 61 S.J. 29 77, 78
McKeown *v.* Boudard Peveril Gear Co. (1896) 65 L.J.Ch. 735; 74 L.T. 712; 45 W.R. 152 335
Mackereth *v.* Wigan Coal and Iron Co. [1916] 2 Ch. 293; 85 L.J.Ch. 601; 115 L.T. 107; 32 T.L.R. 521 . . . . . 136, 137, 280
McKewan's Case, Maria Anna and Steinbank Coal & Coke Co., *Re* (1877) 6 Ch.D. 447; 46 L.J.Ch. 819; 37 L.T. 201; 25 W.R. 857 69
Mackley's Case, Tal-y-Drws Slate Co., *Re* (1875) 1 Ch.D. 247; 45 L.J.Ch. 158; 33 L.T. 460; 24 W.R. 92 82
McLaren *v.* Thomson [1917] 2 Ch. 261; 86 L.J.Ch. 713; 177 L.T. 417; 33 T.L.R. 463; 61 S.J. 576 (C.A.) 154
Macleay *v.* Tait [1906] A.C. 24; 75 L.J.Ch. 90; 94 L.T. 68; 54 W.R. 365; 22 T.L.R. 149; 13 Mans. 24 . . . . . 343, 351
McMahon, *Re*, Fuller *v.* McMahon [1900] 1 Ch. 173; 69 L.J.Ch. 142; 81 L.T. 715; 48 W.R.Dig. 18; 7 Mans. 38; 16 T.L.R. 73 128
McMahon *v.* North Kent Iron Works Co. [1891] 2 Ch. 148; 60 L.J.Ch. 372; 64 L.T. 317; 39 W.R. 349; 7 T.L.R. 303 315
McMillan *v.* Le Roi Mining Co. [1906] 1 Ch. 331; 75 L.J.Ch. 174; 94 L.T. 160; 54 W.R. 281; 22 T.L.R. 186; 13 Mans. 65 153
McMullen *v.* 'Sir Alfred Hickman' Steamship Co., Ltd. (1902) 71 L.J.Ch. 766; 18 T.L.R. 650 154
Madame Tussaud & Sons, Ltd., *Re* [1927] 1 Ch. 657; 96 L.J.Ch. 328; 137 L.T. 516; 43 T.L.R. 289; [1927] B. & C.R. 112 . . . . . 66, 394
Maddison *v.* Alderson. *See* Alderson *v.* Maddison.
Magneta Time Co., *Re*, Molden *v.* The Company [1915] W.N. 318; 84 L.J.Ch. 814; 113 L.T. 986 137
Mahony *v.* East Holyford Mining Co. (Liquidator of) (1875) L.R. 7 H.L. 869; Ir.R. 9 C.L. 306; 33 L.T. 383; 24 W.R.Dig. 10 32, 33, 34, 123, 174, 182, 248
Main Colliery Co., Powell *v.* *See* Powell *v.* Main Colliery Co.
Mair *v.* Himalaya Tea Co. (1865) L.R. 1 Eq. 411; 13 L.T. 586; 14 W.R. 165; 11 Jur.(N.S.) 1013 252
—— *v.* Rio Grande Rubber Estates [1913] A.C. 853; 109 L.T. 610; 29 T.L.R. 692; 57 S.J. 728 346
Malam, *Re*, Malam *v.* Hitchens [1894] 3 Ch. 578; 63 L.J.Ch. 797; 71 L.T. 655; 43 W.R.Dig. 201; 13 R. 38 206
Malleson *v.* National Insurance and Guarantee Corporation [1894] 1 Ch. 200; 63 L.J.Ch. 286; 70 L.T. 157; 42 W.R. 249; 1 Mans. 249; 8 R. 91; 10 T.L.R. 101 35
Mancha (La) Irrigation and Land Co., *Re*. *See* Hamilton's (Lord Claude) Case.
Manchester and Milford Ry., *Re*, Cambrian Ry., *ex p.* (1880) 14 Ch.D. 645; 49 L.J.Ch. 365; 42 L.T. 714; 28 W.R.Dig. 190 316
Manchester, Sheffield and Lincolnshire Ry. *v.* North Central Wagon Co. (1888) 13 App.Cas. 554; 58 L.J.Ch. 219; 59 L.T. 730; 37 W.R. 305; 4 T.L.R. 728 269
Mangles *v.* Dixon (1852) 3 H.L.Cas.(Clark) 702; 19 L.T.(o.s.) 260 282
Manihot Rubber Plantations, Ltd., *Re* (1919) 63 S.J. 827 107
Mann *v.* Edinburgh Northern Trams Co. [1893] A.C. 69; 62 L.J.P.C. 74; 68 L.T. 96; 41 W.R.Dig. 35; 57 J.P. 245; 1 R. 86; 9 T.L.R. 102 323
Maria Anna and Steinbank Coal and Coke Co., *Re*. *See* McKewan's Case.
Marine Investment Co., *Re* (1868) 17 L.T. 535; 16 W.R.Ch.Dig. 45 407
Marine Mansions Co., *Re* (1867) L.R. 4 Eq. 601; 37 L.J.Ch. 113; 17 L.T. 50; 16 W.R.Ch.Dig. 68 303
Marino's Case, Imperial Mercantile Credit Association, *Re* (1867) L.R. 2 Ch.App. 596; 36 L.J.Ch. 468; 16 L.T. 368; 15 W.R. 683 111
Marjoribanks, *Re*, Marjoribanks *v.* Dansey [1923] 2 Ch. 307; 92 L.J.Ch. 609; 129 L.T. 669; 67 S.J. 659 205
Markham and Darter's Case, African Gold Concessions and Development Co., *Re* [1899] 2 Ch. 480; 68 L.J.Ch. 724; 81 L.T. 145; 48 W.R. Dig. 88; 15 T.L.R. 491 124

Marks *v.* **Financial News** [1919] W.N. 237; 35 T.L.R. 681; 64 S.J. 69 . . . **119**
Marmor, Ltd. *v.* **Alexander, 1908 S.C. 78 (Ct. of Sess.) (No. 19)** **197**
Marrs *v.* **Thompson (1902) 86 L.T. 759; 50 W.R.Dig. 29; 18 T.L.R. 565** . . . **373**
Marseilles Extension Ry., *Re*, Crédit Foncier and Mobilier of England, *ex p.* (1871) L.R. 7 Ch.App. 161; 41 L.J.Ch. 345; 25 L.T. 858; 20 W.R. 254 . . . **223**
Marshall *v.* **Glamorgan Iron and Coal Co. (1868) L.R. 7 Eq. 129; 38 L.J.Ch. 69; 19 L.T. 632; 17 W.R. 435** **32**
Marshall's Valve Gear Co. *v.* **Manning, Wardle & Co.** [1909] 1 Ch. 267; 78 L.J. Ch. 46; 100 L.T. 65; 25 T.L.R. 69; 15 Mans. 379 . . . . . **173, 230**
Marzetti's Case, Railway and General Light Improvement Co., *Re* [1880] W.N. 50; 42 L.T. 206; 28 W.R. 541 . . . . . **189, 191, 325**
Maskelyne British Typewriter Co., *Re*, Stuart *v.* **The Company** [1898] 1 Ch. 133; 67 L.J.Ch. 125; 77 L.T. 579; 46 W.R. 294; 14 T.L.R. 108 . . . . . **285**
Mason *v.* **Harris (1879) 11 Ch.D. 97; 48 L.J.Ch. 589; 40 L.T. 644; 27 W.R. 699** . **87**
Mason, Gallagher and Slater's Case, Liverpool and London Guarantee and Accident Insurance Co., *Re* [1882] W.N. 18; 46 L.T. 54; 30 W.R. 378 . . . . **129**
Masonic and General Life Assurance Co., *Re* (1885) 32 Ch.D. 373; 55 L.J.Ch. 666, 34 W.R. 739 . . . . . **377, 380**
Masonic and General Life Assurance Co. *v.* **Sharpe, Sharpe, *Re*** [1892] 1 Ch. 154; 61 L.J.Ch. 193; 65 L.T. 806; 40 W.R. 241 . . . . . **159**
Massey, *Re* (1870) L.R. 9 Eq. 367 . . . . . **423**
Matlock Old Bath Hydropathic Co., *Re*. *See* Wheatcroft's Case.
Matthew Ellis, Ltd., *Re* [1933] 1 Ch. 458; [1933] W.N. 27; 102 L.J.Ch. 65; 148 L.T. 434; [1933] B. & C.R. 17 . . . . . **297**
Matthewman's (Mrs.) Case. *See* Leeds Banking Co., *Re*.
Maude, *Ex p.*, Hodge's Distillery Co., *re* (1870) L.R. 6 Ch.App. 51; 40 L.J.Ch 21; 23 L.T. 749; 19 W.R. 113 . . . . . **129, 394**
Maudslay *v.* **Maudslay, Sons and Field** [1900] 1 Ch. 602; 69 L.J.Ch. 347; 82 L.T. 378; 48 W.R. 568; 16 T.L.R. 228 . . . . . **261**
Maund *v.* **Monmouthshire Canal Co. (1842) 11 L.J.C.P. 317; 4 Man. & Gr. 452; 3 Ry. & Canal Cas. 159; Car. & M. 606, 609; 2 Dow.(N.S.) 113; 5 Scott N.R. 457; 6 Jur. 932** **56**
Maville Hose, *Re* [1939] Ch. 32; 54 T.L.R. 1056; 159 L.T. 410; 108 L.J.Ch. 78 **412**
Maxwell *v.* **Mitchell (1921, M. No. 2633)** **143**
Mayfair Property Co., *Re*. *See* Bartlett *v.* Mayfair Property Co.
Maynard *v.* **Consolidated Kent Collieries Corporation, Ltd.** [1903] 2 K.B. 121; 72 L.J.K.B. 681; 88 L.T. 676; 52 W.R. 117; 19 T.L.R. 448; 10 Mans. 386 **113**
Mayor, etc., of Company of Merchants of the Staple of England *v.* **Bank of England (1887) 21 Q.B.D. 160; 57 L.J.Q.B. 418; 36 W.R. 880; 52 J.P. 580; 4 T.L.R. 46** **248**
Mears *v.* **Western Canada Pulp and Paper Co.** [1905] 2 Ch. 353; 74 L.J.Ch. 581; 93 L.T. 150; 54 W.R. 176; 21 T.L.R. 661 (C.A.) **86**
Measures Brothers, Ltd. *v.* **Measures** [1910] 2 Ch. 248; 79 L.J.Ch. 707; 102 L.T. 794; 26 T.L.R. 488; 54 S.J. 521 . . . . . **254**
Medical Battery Co., *Re* [1894] 1 Ch. 444; 63 L.J.Ch. 189, 69 L.T. 799; 42 W.R. 191; 1 Mans. 104; 8 R. 46 . . . . . **385, 434**
Medical Invalid and General Life Assurance Society (1871) *Re*. *See* Spencer's Case.
Melbourne Brewery and Distillery, *Re* [1901] 1 Ch. 453; 70 L.J.Ch. 198; 84 L.T. 228; 49 W.R. 250; 17 T.L.R. 173; 8 Mans. 403 . . . . . **319, 380**
Melhado *v.* **Porto Alegre, New Hamburgh, etc., Ry. (1874) L.R. 9 C.P. 503; 43 L.J.C.P. 253; 31 L.T. 57; 23 W.R. 57** **29**
Menell et Cie, *Re*, Regent Street Fur Co. *v.* **Diamant** [1915] 1 Ch. 759; 84 L.J.Ch. 598; 113 L.T. 77; 31 T.L.R. 270; (1915) 1 H.B.R. 141 . . . . . **204**
Menier *v.* **Hooper's Telegraph Works (1874) L.R. 9 Ch.App. 350; 43 L.J.Ch. 330; 30 L.T. 209; 22 W.R. 396** **37, 72, 150, 230**
Menzies, *Ex p.* *See* New Eberhardt Co., *Re*.
Mercantile Bank of Australia, *Re* [1892] 2 Ch. 204; 61 L.J.Ch. 417; 67 L.T. 159; 40 W.R. 440 . . . . . **377, 449**
Mercantile Investment and General Trust Co. *v.* **International Co. of Mexico** [1893] 1 Ch. 484 n.; 68 L.T. 603 n. **309**
—— *v.* **River Plate Trust, Loan and Agency Co.** [1892] 2 Ch. 303; 61 L.J.Ch. 473; 66 L.T. 711; 40 W.R.Dig. 105 . . . . . **261**
—— *v.* —— [1894] 1 Ch. 578; 63 L.J.Ch. 366; 70 L.T. 131; 42 W.R. 365; 10 T.L.R. 184; 8 R. 791 . . . . . **309**
Mercantile Trading Co., *Re*. *See* Stringer's Case.
Merchant Navy Supply Association, *Re* [1947] W.N. 154; [1947] 1 All E.R. 894; 177 L.T. 386 . . . . . **378, 394**
Merchants' Co., *Re*. *See* Heritage's Case.
Merchants' Fire Office, *Re* [1899] 1 Ch. 432; 68 L.J.Ch. 211; 80 L.T. 285; 47 W.R. 480; 15 T.L.R. 160; 6 Mans. 93 . . . . . **413**
Merryweather *v.* **Moore** [1892] 2 Ch. 518; 61 L.J.Ch. 505; 66 L.T. 719; 40 W.R. 540; 8 T.L.R. 539 . . . . . **254**

Mersey Docks and Harbour Board Trustees *v.* **Cameron (1864–5)** 35 L.J.M.C. 1; 11 H.L.Cas.(Clark) 443; 20 C.B.(N.S.) 56; 13 W.R. 1069; 11 Jur.(N.S.) 746 11
—— *v.* Gibbs (1866) L.R. 1 H.L. 93; 35 L.J.Ex. 225; 11 H.L.Cas. 686; 14 L.T. 677; 14 W.R. 872; 12 Jur.(N.S.) 571 56
Mersey Steel and Iron Co. *v.* Naylor, Benzon & Co. (1884) L.R. 9 App.Cas. 434; 53 L.J.Q.B. 497; 51 L.T. 637; 32 W.R. 969 (H.L.(E.)) 397
Metal Constituents Co., *Re*, Lurgan's (Lord) Case [1902] 1 Ch. 707; 71 L.J.Ch. 323; 86 L.T. 291; 50 W.R. 492; 9 Mans. 196 82
Metcalfe, *Re*. *See* Hicks *v.* May.
Metcalfe (William), Ltd. [1933] 1 Ch. 142 67
Meter Cabs, Ltd., *Re* [1911] 2 Ch. 557 423
Metropolitan Amalgamated Estates, Ltd., *Re*, Fairweather *v.* Metropolitan, etc., Estates, Ltd. [1912] 2 Ch. 497; 81 L.J.Ch. 745 (*sub nom.* Yorkshire Insurance Co. *v.* Metropolitan Amalgamated Estates, Ltd.); 107 L.T. 545 . . 316
Metropolitan Bank *v.* Vivian. *See* Vivian (H. H.) & Co., *Re*.
Metropolitan Coal Consumers' Association, *Re* (1892). *See* Karberg's Case.
——, *Re*. *See* Wainwright's Case.
Metropolitan Coal Consumers' Association *v.* Scrimgeour [1895] 2 Q.B. 604; 65 L.J.Q.B. 22; 73 L.T. 137; 44 W.R. 35; 11 T.L.R. 526; 2 Mans. 579; 14 R. 729 . . . . . 50, 329, 331
Metropolitan Fire Insurance Co., *Re*. *See* Wallace's Case.
Metropolitan Public Carriage and Repository Co., *Re*. *See* Brown's Case.
Meux Brewery Co., Ltd., *Re* [1919] 1 Ch. 28; 88 L.J.Ch. 14; 119 L.T. 759; 35 T.L.R. 13; 63 S.J. 40 79
Mexican and South American Co. (1859). *See* Hyam's Case.
—— (1860). *See* Costello's Case.
—— (1859). *See* De Pass's Case.
Mexican Santa Barbara Mining Co., *Ex p.* *See* Perkins, *Re*.
Mid-Kent Fruit Factory, *Re* [1896] 1 Ch. 567; 65 L.J.Ch. 250; 74 L.T. 22; 44 W.R. 284; 3 Mans. 59 397
Midland Counties District Bank *v.* Attwood [1905] 1 Ch. 357; 74 L.J.Ch. 286; 92 L.T. 360; 21 T.L.R. 175; 12 Mans. 20 253
Midland Express, Ltd., *Re*, Pearson *v.* The Company [1914] 1 Ch. 41; 83 L.J.Ch. 153; 109 L.T. 697; 21 Mans. 34; 58 S.J. 47; 30 T.L.R. 38 279
M. I. G. Trust [1933] Ch. 542; 102 L.J.Ch. 179; [1933] W.N. 76; 49 T.L.R. 299; 149 L.T. 56; [1933] B. & C.R. 91 . . . . . 270, 408
Migotti's Case, South Blackpool Hotel Co., *Re* (1867) L.R. 4 Eq. 238; 36 L.J.Ch. 531; 16 L.T. 271; 15 W.R. 731 82
Milan Tramways Co., *Re*, Theys, *ex p.* (1884) 25 Ch.D. 587; 53 L.J.Ch. 1008; 50 L.T. 545; 32 W.R. 601 320
Miles *v.* New Zealand Alford Estate Co. (1886) 32 Ch.D. 266; 55 L.J.Ch. 801; 54 L.T. 582; 34 W.R. 669 . . . . . 186, 187
Miles Aircraft, Ltd., *Re* [1948] 1 Ch. 188 406
Millward (James) & Co., *Re* [1940] Ch. 333; 109 L.J.Ch. 161; 56 T.L.R. 330; 162 L.T. 257 381
Milward *v.* Thatcher (1787) 2 T.R.(Durn. & East) 81 170
Mining Shares Investment Co., *Re* (1893) 2 Ch. 660; 62 L.J.Ch. 434; 68 L.T. 578; 41 W.R. 376; 3 R. 480; 9 T.L.R. 335 62
Mitcalfe's Case, Diamond Fuel Co., *Re* (1879) 13 Ch.D. 169; 41 L.T. 717; 28 W.R. 417 191
Mitchell *v.* Egyptian Hotels [1915] A.C. 1022; 84 L.J.K.B. 1772; 113 L.T. 882; 31 T.L.R. 546 451
Molineaux *v.* London, Birmingham and Manchester Insurance Co. (1902) 2 K.B. 589; 71 L.J.K.B. 848; 87 L.T. 324; 51 W.R. 36; 18 T.L.R. 753 . . 165, 171
Monarch Insurance Co., *Re*. *See* Gorrissen's Case.
Monolithic Building Co., *Re*, Tacon *v.* The Company [1915] 1 Ch. 643; 84 L.J.Ch. 441; 112 L.T. 619; 59 S.J. 382 . . . . . 267, 270
Montaignac *v.* Shitta (1890) 15 App.Cas. 357; 39 W.R.Dig. 178 447
Montgomery Moore Ship Collision-Doors Syndicate, *Re* [1903] W.N. 121; 72 L.J. Ch. 624; 89 L.T. 126; 51 W.R.Dig. 84; 19 T.L.R. 554; 10 Mans. 327 . . 380
Montrotier Asphalt Co., *Re*. *See* Perry's Case.
Moor, *Ex p.* *See* Florence Land and Public Works Co., *Re*.
Moor *v.* Anglo-Italian Bank (1879) 10 Ch.D. 681; 40 L.T. 620; 27 W.R. 652 . 319, 380
Moore *v.* N.W. Bank [1891] 2 Ch. 599; 60 L.J.Ch. 627; 64 L.T. 456; 40 W.R. 93; 7 T.L.R. 490 110
Moriarty *v.* Regents Garage and Engineering Co., Ltd. [1921] 2 K.B. 766; 90 L.J.K.B. 793; 125 L.T. 560; 37 T.L.R. 581 169
Morison (G. H.) & Co., Ltd., *Re* (1912) 106 L.T. 781 401
Morrell *v.* Oxford Portland Cement Co. (1910) 26 T.L.R. 682 167
Morris *v.* Harris [1927] A.C. 252; 96 L.J.Ch. 253; 136 L.T. 587; [1927] B. & C.R. 65 415

Morris' Case, Oriental Commercial Bank, *Re* (1871) L.R. 7 Ch.App. 200; 41 L.J. Ch. 11; 25 L.T. 443; 20 W.R. 25 393
——, *Re* (1873) L.R. 8 Ch.App. 800, 804; 43 L.J.Ch. 47; 29 L.T. 256; 22 W.R. 22 393
Morris *v.* Kanssen [1946] A.C. 459; 174 L.T. 353; 115 L.J.Ch. 177; 62 T.L.R. 306 33, 175
Morrison Jones & Taylor [1914] 1 Ch. 50 298
Morrison *v.* Skerne Ironworks Co. (1889) 60 L.T. 588; 37 W.R.Dig. 40 316
—— *v.* Trustees, Executors and Securities Insurance Corporation (1898) 68 L.J.Ch. 11; 79 L.T. 605; 15 T.L.R. 34; 5 Mans. 356 131
Mortgage Insurance Corporation, Ltd. *v.* Canadian Agricultural Coal and Colonization Co. [1901] 2 Ch. 377; 70 L.J.Ch. 684; 84 L.T. 861; 50 W.R.Dig. 26 . 320
Mortimers, Ltd., *Re* [1937] W.N. 142; [1937] 1 Ch. 289; 53 T.L.R. 493; 106 L.J.Ch. 164; [1936–7] B. & C.R. 131 430
Morvah Consols Tin Mining Co., *Re*. *See* McKay's Case.
Moseley & Sons, *Re* [1939] Ch. 719; 55 T.L.R. 777; 161 L.T. 33; 108 L.J.Ch. 231 182
Moseley Green Coal and Coke Co., *Re*. *See* Barrett's Case.
Mosely *v.* Koffyfontein Mines, Ltd. [1904] 2 Ch. 108; 73 L.J.Ch. 569; 91 L.T. 266; 53 W.R. 140; 20 T.L.R. 557; 11 Mans. 294 305
—— *v.* Koffyfontein Mines, Ltd. [1911] A.C. 409; 80 L.J.Ch. 668; 105 L.T. 115; 27 T.L.R. 501; 55 S.J. 551; 18 Mans. 365 170
Moss Steamship Co. *v.* Whinney [1912] A.C. 254; 105 L.T. 305; 27 T.L.R. 513; 55 S.J. 631; 16 Com.Cas. 247 316
Mott's Case. *See* Cambrian Peat and Fuel Co., *Re*.
Mountain *v.* Bates. *See* Bates, *Re*.
Mount Morgan (West) Gold Mine Co., Ltd., *Re*, West, *ex p* (1887) 56 L.T. 622; 35 W.R.Dig. 40 . . . . . 345, 346, 347
Mowatt *v.* Castle Steel and Ironworks Co. (1886) 34 Ch.D. 58; 55 L.T. 645; 35 W.R.Dig. 82 249
Moxham *v.* Grant [1900] 1 Q.B. 88; 69 L.J.Q.B. 97; 81 L.T. 431; 48 W.R. 130; 16 T.L.R. 84; 7 Mans. 65 (C.A.) 160, 197, 411
Mozley *v.* Alston (1847) 16 L.J.Ch. 217; 1 Ph. 790; 11 Jur. 315; 4 Ry. & Can. Cas. 636 229
Muggeridge, *Re*, Muggeridge *v.* Sharp, Bank of London and National Provincial Insurance Association, *ex p.* (1870) L.R. 10 Eq. 443; 39 L.J.Ch. 620; 23 L.T. 296; 18 W.R. 963 393
Muhesa Rubber Plantations, *Ex p.*, Hilckes, *re* [1917] 1 K.B. 48; 86 L.J.K.B. 204; 115 L.T. 490; 33 T.L.R. 28; 61 S.J. 39 231
Muirhead, *Re*, Muirhead *v.* Hill [1916] 2 Ch. 181; 85 L.J.Ch. 598; 115 L.T. 65 . 205
Municipal Freehold Land Co. *v.* Pollington (1890) 59 L.J.Ch. 734; 63 L.T. 238; 39 W.R.Dig. 41; 2 Meg. 307 252
Munster *v.* Cammell Co. (1882) 21 Ch.D. 187, 188; 51 L.J.Ch. 731; 47 L.T. 44; 30 W.R. 812 . . . . . 161, 170
Munt *v.* Shrewsbury and Chester Ry. (1850) 13 Beav. 1; 20 L.J.Ch. 169; 16 L.T. (o.s.) 433; 15 Jur. 26 . . . . . 49, 51
Murex, Ltd. *v.* Inland Revenue Commissioners [1933] 1 K.B. 173; 102 L.J.K.B. 219; 148 L.T. 164 439
Murray *v.* Bush (1872–73) L.R. 6 H.L. 37, 50; 42 L.J.Ch. 586; 29 L.T. 217; 22 W.R. 280 174
Murray *v.* Pinkett (1846) 12 Cl. & Fin. 764 134
Mutoscope and Biograph Syndicate, *Re* [1899] 1 Ch. 896; 68 L.J.Ch. 417; 81 L.T. 22; 47 W.R. 520; 6 Mans. 298 394
Mutter *v.* Eastern and Midlands Ry. (1888) 38 Ch.D. 92; 57 L.J.Ch. 615; 59 L.T. 117; 36 W.R. 401; 4 T.L.R. 377 212
Mysore West Gold Mining Co., *Re* (1889) 42 Ch.D. 535; 58 L.J.Ch. 781; 61 L.T. 453; 37 W.R. 794; 1 Meg. 347; 5 T.L.R. 695 436

Naamlooze Vennootschap Handel Maatschappij Wokar, *Re* [1946] Ch. 98; 115 L.J.Ch. 41; 62 T.L.R. 95; 174 L.T. 101 450
Nant-y-glo and Blaina Ironworks Co. *v.* Grave (1878) 12 Ch.D. 738; 38 L.T. 345; 26 W.R. 504 195
Nash *v.* Calthorpe [1905] 2 Ch. 237; 74 L.J.Ch. 493; 93 L.T. 585; 21 T.L.R. 587; 12 Mans. 260 351
—— *v.* Lynde [1929] A.C. 158; 98 L.J.K.B. 127; 140 L.T. 146; 45 T.L.R. 42 . 343, 344
Nassau Steam Press *v.* Tyler (1894) 70 L.T. 376; 1 Mans. 459; 10 R. 582 . . . 256
Natal Investment Co., *Re*, Financial Corporation's Claim (1868) L.R. 3 Ch.App. 355; 37 L.J.Ch. 362; 18 L.T. 171; 16 W.R. 637 . . . . . 282, 288, 289, 290
Natal Land and Colonisation Co. *v.* Pauline Colliery and Development Syndicate [1904] A.C. 120; 73 L.J.P.C. 22; 89 L.T. 678; 52 W.R.Dig. 18; 11 Mans. 29 243
Nathan's Claim. *See* Havana Exploration Co., *Re*.
National and Provincial Marine Insurance Co., *Re*. *See* Parker, *Ex p.*
National Arms, etc., Co. (1885) 28 Ch.D. 474 418

National Bank, *Re*. *See* Imperial Land Co. of Marseilles, *Re*.
National Bank of Wales, *Re*, Taylor, Phillips and Rickard's Cases [1897] 1 Ch. 298; 66 L.J.Ch. 222; 76 L.T. 1; 45 W.R. 401; 13 T.L.R. 179 (C.A.) . . . 116
——, *Re*, Cory's Case [1899] 2 Ch. 629, 672; 68 L.J.Ch. 634; 81 L.T. 363; 48 W.R. 99; 15 T.L.R. 517; on appeal, sub nom. Dovey v. Cory [1901] A.C. 477 (see Dovey *v.* Cory) 188, 202, 234
National Boiler Insurance Co., *Re* [1892] 1 Ch. 306; 61 L.J.Ch. 501; 65 L.T. 849; 40 W.R.Dig. 39; 8 T.L.R. 135 60
National Co. for Distribution of Electricity by Secondary Generators, *Re* [1902] 2 Ch. 34; 71 L.J.Ch. 702; 87 L.T. 6; 50 W.R.Dig. 37; 9 Mans. 314 382
National Debenture and Assets Corporation, *Re* [1891] 2 Ch. 505; 60 L.J.Ch. 533; 64 L.T. 512; 39 W.R. 707; 7 T.L.R. 485 38
National Dwellings Society, *Re* (1898) 78 L.T. 144; 46 W.R.Dig. 27 77
National Dwellings Co. *v.* Sykes [1894] 3 Ch. 159; 63 L.J.Ch. 906; 42 W.R. 696; 1 Mans. 457; 10 T.L.R. 563; 8 R. 758 . . . . . 149, 156
National Equitable Provident Society, *Re*. *See* Wood's Case (1873).
National Exchange Co. of Glasgow *v.* Drew (1855) 2 Macq.Sc. 103; 25 L.T.(o.s.) 223; 3 W.R.Ch.Dig. 76 336
National Funds Assurance Co., *Re* (1878) 10 Ch.D. 118; 48 L.J.Ch. 163; 39 L.T. 420; 27 W.R. 302 . . . . . 191, 197, 411
National General Insurance Co., *Re*. *See* National Live Stock Insurance Co., *Re*.
National Insurance Co., *Ex p*. *See* Hallett, *Re*.
National Live Stock Insurance Co., *Re*, National General Insurance Co., *Re* [1917] 1 Ch. 628; 86 L.J.Ch. 391; 116 L.T. 466; (1917) 3 H.B.R. 119 398
National Motor Mail-Coach Co., *Re*, Clinton's Claim [1908] 2 Ch. 515; 77 L.J.Ch. 790; 99 L.T. 632 345
——, *Re*, Anstis and McLean's Claims [1908] 2 Ch. 228; 77 L.J.Ch. 796; 99 L.T. 334 . . . . . 86, 87, 326
National Patent Steam Fuel Co., *Re*. *See* Worth, *Ex p*.
National Provincial and Union Bank of England *v.* Charnley [1924] 1 K.B. 431; 93 L.J.K.B. 241; 130 L.T. 465; 68 S.J. 480; [1924] B. & Cr. 37 268
National Provincial Bank of England, *Ex p*. *See* Newton, *Re*
National Provincial Bank of England *v.* United Electric Theatres [1916] 1 Ch. 132; 85 L.J.Ch. 106; 114 L.T. 276; (1916) 2 H.B.R. 56; 80 J.P. 153; 14 L.G.R. 265, 60 S.J. 274, 32 T.L.R. 174 . . . . . 296, 318
National Provincial Insurance Corpn., *Re*, Cooper *v.* The Corpn. (1912) 56 S.J. 290 407
National Provincial Marine Insurance Co., *Re*. *See* Gilbert's Case.
——, *Re*. *See* Parker, *Ex p*.
National Savings Bank Association, *Re*. *See* Hebb's Case.
National Standard Life Assurance Corpn., *Re* [1917] 1 Ch. 193; 86 L.J.Ch. 172; 115 L.T. 751; 61 S.J. 146; 33 T.L.R. 65 370
National Stores, *Re* [1900] 1 Ch. 27; 81 L.T. 529; 48 W.R.Dig. 44; 16 T.L.R. 59 . 418
National Telephone Co., *Re* [1914] 1 Ch. 755; 83 L.J.Ch. 552; 109 L.T. 389; 29 T.L.R. 682; 21 Mans. 217 67
National Trustees Co. of Australasia *v.* General Finance Co. of Australasia [1905] A.C. 373; 74 L.J.P.C. 73; 92 L.T. 736; 54 W.R. 1; 21 T.L.R. 522 193
National Union of General and Municipal Workers *v.* Gillian [1946] 1 K.B. 81 . 7
National United Investment Corporation, *Re* [1901] 1 Ch. 950; 70 L.J.Ch. 461; 84 L.T. 766; 17 T.L.R. 396; 8 Mans. 399 401
Neal *v.* Quinn [1916] W.N. 223 . . . . . 175, 180
Neath Building Society *v.* Luce (1889) 43 Ch.D. 158; 59 L.J.Ch. 3; 61 L.T. 611; 38 W.R. 122; 6 T.L.R. 13 . . . . . 193, 262
Nell *v.* Atlanta Gold and Silver Consol Mines (1895) 11 T.L.R. 407 (C.A.) . . 166
Nelson, *Ex p*., Hoare, *re* (1880) 14 Ch.D. 41, 45; 49 L.J.Bk. 44; 42 L.T. 389; 28 W.R. 554 401
Nelson *v.* Anglo-American Land Mortgage Agency Co. [1897] 1 Ch. 130; 66 L.J.Ch. 112; 75 L.T. 482; 45 W.R. 171; 13 T.L.R. 77 212
—— *v.* James Nelson & Sons, Ltd. [1914] 2 K.B. 770; 83 L.J.K.B. 823; 110 L.T. 888; 30 T.L.R. 368 31
Nelson (E.) & Co. *v.* Faber & Co. [1903] 2 K.B. 367; 72 L.J.K.B. 771; 89 L.T. 21; 52 W.R.Dig. 21; 10 Mans. 427 . . . . . 296, 298
Neuschild *v.* British Equatorial Oil Co. [1925] Ch. 346; 94 L.J.Ch. 201; 133 L.T. 227; 41 T.L.R. 414; 69 S.J. 446 156
New Balkis Eersteling *v.* Randt Gold Mining Co. [1904] A.C. 165; 73 L.J.K.B. 364; 90 L.T. 494; 52 W.R. 561; 20 T.L.R. 396; 11 Mans. 159 (H.L.(E.)) . 131, 132, 133
New British Iron Co., *Re*. *See* Beckwith, *Ex p*.
New Brunswick and Canada Railway and Land Co. *v.* Muggeridge (1860) 1 Dr. & Sm. 363; 30 L.J.Ch. 242; 3 L.T. 651; 9 W.R. 193; 7 Jur.(N.S.) 132 . 95, 334
New Buxton Lime Co., *Re*. *See* Shaw's Case.
New Chili Gold Mining Co., *Re* (1890) 45 Ch.D. 598; 60 L.J.Ch. 90; 63 L.T. 344; 39 W.R. 59; 2 Meg. 355; 6 T.L.R. 462 181

New Chinese Antimony Co., Ltd., *Re* [1916] 2 Ch. 115; 85 L.J.Ch. 429; 114 L.T. 989; (1916) 2 H.B.R. 8; 60 S.J. 513 66
New City Constitutional Club Co., *Re*, Pursell, *ex p.* (1887) 34 Ch.D. 646; 56 L.J. Ch. 332; 56 L.T. 792; 35 W.R. 421; 3 T.L.R. 331 298
New Clydach Sheet and Bar Iron Co., *Re* (1868) L.R. 6 Eq. 514; 17 W.R.Ch. Dig. 79 278
New Durham Salt Co., Stevenson and Quin's Cases, *Re* (1890) 7 T.L.R. 13; 2 Meg. 360 . . . . . 276, 306
New Eberhardt Co., *Re*, Menzies, *ex p.* (1889) 43 Ch.D. 118; 59 L.J.Ch. 73; 62 L.T. 301; 38 W.R. 97; 1 Meg. 441; 6 T.L.R. 56 99
New London and Brazilian Bank *v.* Brocklebank (1882) 21 Ch. 302; 51 L.J.Ch. 711; 47 L.T. 3; 30 W.R. 737 . . . . . 134, 135, 137
New Mashonaland Exploration Co., *Re* [1892] 3 Ch. 577; 61 L.J.Ch. 617; 67 L.T. 90; 41 W.R. 75; 8 T.L.R. 738 190
New Oriental Bank Corporation, *Re* [1892] 3 Ch. 563; 62 L.J.Ch. 63; 67 L.T. 87; 41 W.R. 16 385
—— (No. 2) [1895] 1 Ch. 753 403
New Par Consols (No. 2), *Re* [1898] 1 Q.B. 669; 67 L.J.Q.B. 598; 78 L.T. 312; 46 W.R.Dig. 30; 5 Mans. 277 387
New Theatre Co., *Re*. *See* Bloxam's Case.
New Transvaal Co., *Re* [1896] 2 Ch. 750 394
New Weighing Machine Co., *Re* [1896] W.N. 48; *and see* Practice Direction [1898] W.N. 7 (10) 384
New Westminster Brewery Co., Ltd., *Re* [1911] W.N. 247; 105 L.T. 946; 56 S.J. 141 61
New York Exchange Co., *Re* (1888) 39 Ch.D. 415; 58 L.J.Ch. 111; 60 L.T. 66; 4 T.L.R. 721; 1 Meg. 78 433
New York Taxicab Co., *Re*, Sequin *v.* The Company [1913] 1 Ch. 1; 82 L.J.Ch. 41; 107 L.T. 813; 19 Mans. 389; 57 S.J. 98 . . . . . 310, 315
New Zealand and Australian Land Co. *v.* Scottish Union and National Insurance Co. [1921] 1 A.C. 172; 89 L.J.P.C. 220; 1920 S.C.(H.L.) 187; 124 L.T. 225; 36 T.L.R. 830; 65 S.J. 24 452
New Zealand Banking Corporation, *Ex p.* *See* Blakely Ordnance Co., *Re*.
——, *Re*. *See* Sewell's Case.
New Zealand Gold Extraction Co. (Newbery-Vautin Process), Ltd. *v.* Peacock [1894] 1 Q.B. 622; 63 L.J.Q.B. 227; 70 L. T. 110; 9 R. 669 . 49, 127, 128, 421
New Zealand Joint Stock and General Corporation, *Re* (1907) 23 T.L.R. 238 . . 389
New Zealand Kapanga Gold Mining Co., *Re*, Thomas, *ex p.* (1873) L.R. 18 Eq. 17 n.; 42 L.J.Ch. 781; 21 W.R. 782 106
New Zealand Loan and Mercantile Agency Co. *v.* Morrison [1898] A.C. 349 (H.L. (P.C.)); 67 L.J.P.C. 10; 77 L.T. 603; 46 W.R. 239; 14 T.L.R. 141; 5 Mans. 171 441
New Zealand Midland Ry., *Re*, Smith *v.* Lubbock [1901] 2 Ch. 357; 70 L.J.Ch. 595; 84 L.T. 852; 49 W.R. 529; 8 Mans. 363 320
Newbridge Sanitary Steam Laundry, *Re* [1917] 1 Ir. R. 67 378
Newdigate Colliery, Ltd., *Re*, Newdigate *v.* The Company [1912] 1 Ch. 468; 81 L.J.Ch. 235; 106 L.T. 133; 28 T.L.R. 207 316
Newhaven Local Board *v.* Newhaven School Board (1885) 30 Ch.D. 350; 53 L.T. 571; 34 W.R. 172; 1 T.L.R. 626 174
Newman (George) & Co., *Re* [1895] 1 Ch. 674; 64 L.J.Ch. 407; 72 L.T. 697; 43 W.R. 483; 12 R. 228; 2 Mans. 267; 11 T.L.R. 292 . . 42, 167, 191, 355, 363
Newman (R. S.) Ltd., *Re*, Raphael's Claim [1916] 2 Ch. 309; 85 L.J.Ch. 625; 115 L.T. 134; 60 S.J. 585 396
Newmann *v.* I. R. C. [1934] A.C. 215; [1934] W.N. 50; 103 L.J.K.B. 210; 50 T.L.R. 246; 150 L.T. 481; 18 T.C. 332 453
Newport and South Wales Shipowners' Co., *Re*. *See* Rowlands' Case.
Newspaper Proprietary Syndicate, *Re*, Hopkinson *v.* The Syndicate [1900] 2 Ch. 349; 69 L.J.Ch. 578; 83 L.T. 341; 48 W.R.Dig. 17; 16 T.L.R. 452 . . 401
Newton *v.* Anglo-Australian Investment, etc., Co. (The Debenture Holders and Liquidators of) [1895] A.C. 244; 64 L.J.P.C. 57; 72 L.T. 305; 43 W.R. 401; 11 R. 438; 2 Mans. 246; 11 T.L.R. 278 260
—— *v.* **Birmingham Small Arms Co.** [1906] 2 Ch. 378; 75 L.J.Ch. 627; 95 L.T. 135; 54 W.R. 621; 22 T.L.R. 664; 13 Mans. 267 220
Nicholson, *Ex p.* *See* Staffordshire Gas Co., *Re*.
Nicol's Case, Tufnell and Ponsonby's Case, Florence Land and Public Works Co., *Re* (1885) 29 Ch.D. 421; 52 L.T. 933; 33 W.R.Dig. 40; 1 T.L.R. 221 . 57, 81, 82, 90, 95
Nicol's Case, Royal British Bank, *Re* (1858–9) 3 De G. & J. 387, 440; 28 L.J.Ch. 257; 7 W.R. 217; 5 Jur.(N.S.) 205 348

Nokes *v.* **Doncaster Amalgamated Collieries** [1940] A.C. 1014; 109 L.J.K.B. 865; 56 T.L.R. 924; 163 L.T. 343 441
Nordberg (J. A.), Ltd., *Re* [1915] 2 Ch. 439; 84 L.J.Ch. 880; 113 L.T. 988; 59 S.J. 717 79
Normandy *v.* Ind Coope & Co. [1908] 1 Ch. 84; 77 L.J.Ch. 82; 97 L.T. 872; 24 T.L.R. 57; 15 Mans. 65 . . . . . 37, 147, 166, 229
Norris' Case. *See* London and Provincial Consolidated Coal Co., *Re*.
North Australian Territory Co., *Re* (1890) 45 Ch.D. 87; 59 L.J.Ch. 654; 63 L.T. 77; 38 W.R. 561; 2 Meg. 239 412
——, *Re* [1892] 1 Ch. 322. *See* Archer's Case.
North Australian Territory Co. *v.* Goldsbrough, Mort & Co. (No. 1) (1889) 61 L.T. 716; 38 W.R.Dig. 41 377
—— *v.* —— (No. 2) [1893] 2 Ch. 381; 62 L.J.Ch. 603; 69 L.T. 4; 41 W.R. 501; 2 R. 397 413
North Brazilian Sugar Factories Co., *Re* (1887) 37 Ch.D. 83; 57 L.J.Ch. 101; 58 L.T. 4; 36 W.R.Dig. 42; 4 T.L.R. 61 212
North Bucks Furniture Depositories [1939] Ch. 690; 55 T.L.R. 694; 160 L.T. 523; 108 L.J.Ch. 275 380
North Charterland, etc., Co., *Re* (1896) 13 T.L.R. 80 328
North Cheshire and Manchester Brewery Co. *v.* Manchester Brewery Co. [1899] A.C. 83; 68 L.J.Ch. 74; 79 L.T. 645; 47 W.R.Dig. 192; 15 T.L.R. 110 . 19, 238
North Cheshire Brewery Co., *Re* [1920] W.N. 149; 64 S.J. 463 80
North-Eastern Insurance Co., *Re*, [1915] W.N. 210; 85 L.J.Ch. 751; 113 L.T. 989; 59 S.J. 510; 31 T.L.R. 428 . . . . . 389, 391
——, *Re* [1919] 1 Ch. 198; 88 L.J.Ch. 121; 120 L.T. 223 180
North Hallenbeagle Mining Co., *Re*. *See* Knight's Case.
North of England Steamship Co., *Re* [1905] 2 Ch. 15; 74 L.J.Ch. 404; 93 L.T. 1; 53 W.R. 499; 21 T.L.R. 481; 12 Mans. 174 . . . . . 147, 226
North Sydney Investment and Tramway Co. *v.* Higgins [1899] A.C. 263; 68 L.J. P.C. 42; 80 L.T. 303; 47 W.R. 481; 6 Mans. 321; 15 T.L.R. 282 . . 100, 243
North Wales Produce and Supply Society, *Re* [1922] 2 Ch. 340; 91 L.J.Ch. 415; 127 L.T. 288; 38 T.L.R. 518; 66 S.J. 439; [1922] B. & C.R. 12 . . . 269
North Yorkshire Iron Co., *Re* (1878) 7 Ch.D. 661 402
Northern Assam Tea Co., *Re*, Universal Life Assurance Co., *ex p.* (1870) L.R. 10 Eq. 458; 39 L.J.Ch. 829; 23 L.T. 639 282
Northern Assurance, Ltd. *v.* Farnham United Breweries, Ltd. [1912] 2 Ch. 125; 81 L.J.Ch. 358; 106 L.T. 527; 19 Mans. 178; 28 T.L.R. 305; 56 S.J. 360 . 309
Northern Counties of England Fire Insurance Co., *Re*. *See* Macfarlane's Claim.
Northumberland and District Banking Co., *Re* (1858) 27 L.J.Ch. 356; 2 De G. & J. 357; 6 W.R. 527; 4 Jur.(N.S.) 419 39
Northumberland Avenue Hotel Co., *Re*, Sully's Case (1886) 33 Ch.D. 16; 54 L.T. 777; 35 W.R.Dig. 38 243
North West Transportation Co. *v.* Beatty (1887) L.R. 12 App.Cas. 589; 56 L.J.P.C. 102; 57 L.T. 426; 36 W.R. 647; 3 T.L.R. 789 . . . . . 48, 150
Norton *v.* Florence Land and Public Works Co. (1877) 7 Ch.D. 332; 38 L.T. 377; 26 W.R. 123 275
—— *v.* Yates [1906] 1 K.B. 112; 75 L.J.K.B. 252; 54 W.R. 183 297
Norwich Provident Insurance Society, *Re*. *See* Bath's Case.

Oak Pitts Colliery Co., *Re* (1882) 21 Ch.D. 322; 51 L.J.Ch. 768; 47 L.T. 7; 30 W.R. 759 . . . . . 395, 402, 403, 404
Oakbank Oil Co. *v.* Crum (1882) 8 App.Cas. 65 (H.L.(Sc.)); 48 L.T. 537; 31 W.R.Dig. 37 . . . . . 29, 32, 148, 198, 199
Oakes *v.* Turquand, Overend, Gurney & Co., *Re* (1867) L.R. 2 H.L. 325; 36 L.J.Ch. 949; 16 L.T. 808; 15 W.R. 1201 . . . . . 38, 104, 345, 395
Oatway, *Re*, [1903] 2 Ch. 365 410
O'Brien, *Ex p.* *See* R. *v.* Secretary of State for Home Affairs.
Ocean Coal Co. (The) *v.* The Powell Duffryn Steam Coal Co. [1932] 1 Ch. 654 . 109
Oceanic Steam Navigation Co., *Re* [1939] Ch. 41; 54 T.L.R. 1100; 159 L.T. 457; 108 L.J.Ch. 74 440
Odessa Tramways Co. *v.* Mendel (1878) 8 Ch.D. 235; 47 L.J.Ch. 505; 38 L.T. 731; 26 W.R. 887 . . . . . 95, 126
Odessa Waterworks Co., *Re* [1897] W.N. 166 (3); fuller report, *see* [1901] 2 Ch. 190 n. 394
Ogdens *v.* Nelson, Ogdens *v.* Telford [1905] A.C. 109; 74 L.J.K.B. 433; 92 L.T. 478; 53 W.R. 497; 21 T.L.R. 359 253
Ogilvie, *Re*, Ogilvie *v.* Ogilvie [1919] W.N. 32; 88 L.J.Ch. 159; 120 L.T. 436; 35 T.L.R. 218; 63 S.J. 246 206
Olathe Silver Mining Co., *Re* (1884) 27 Ch.D. 278; 33 W.R. 12 . . . . 319, 380
Old Silkstone Collieries, Ltd., Case. *See* Law Car and General Insurance Corporation, *Re*.
Olderfleet Shipbuilding Co., *Re* [1922] 1 Ir. R. 26 297

Oliver *v.* Bank of England [1902] 1 Ch. 610; 71 L.J.Ch. 388; 86 L.T. 248; 50 W.R. 340; 66 J.P. 294; 7 Com.Cas. 89; 18 T.L.R. 341 . . . . . 116, 173
Olympia, Ltd., *Re* [1898] 2 Ch. 153; 67 L.J.Ch. 433; 78 L.T. 629; 46 W.R.Dig. 32; 14 T.L.R. 451; 5 Mans. 139 324
Olympic Fire and General Reinsurance Co., *Re*, Pole's Case [1920] 2 Ch. 341; 89 L.J.Ch. 544; 123 L.T. 791; 36 T.L.R. 691 329
Omnium Electric Palaces *v.* Baines [1914] 1 Ch. 332; 83 L.J.Ch. 372; 109 L.T. 964; 30 T.L.R. 213; 58 S.J. 218; 21 Mans. 94 324
One and All Sickness and Accident Assurance Association, *Re* (1909) 25 T.L.R. 674 373
Onward Building Society, *Re* [1891] 2 Q.B. 463; 60 L.J.Q.B. 752; 65 L.T. 516; 40 W.R. 26 116
Ooregum Gold Mining Co. of India *v.* Roper, Wallroth *v.* Roper [1892] A.C. 125; 61 L.J.Ch. 337; 66 L.T. 427; 41 W.R. 90; 8 T.L.R. 486 . . 52, 97, 329
Openshaw *v.* Fletcher (1916) 32 T.L.R. 372 401
Opera, *Re* [1891] 3 Ch. 260; 60 L.J.Ch. 839; 65 L.T. 371; 39 W.R. 705; 7 T.L.R. 655 (C.A.) 296, 303
Oppenheimer, *Re*, Oppenheimer *v.* Boatman [1907] 1 Ch. 399; 76 L.J.Ch. 287; 96 L.T. 631; 14 Mans. 139 205
Oppenheimer *v.* British and Foreign Bank (1877) 6 Ch.D. 744 403
Oregon Mortgage Co., Ltd., 1910 S.C. 964 (Ct. of Sess.) (No. 145); 47 Sc.L.R. 702 74
Oriental Bank Corporation, *Re*, Guillemin, *ex p.* (1884) 28 Ch.D. 634; 54 L.J.Ch. 322; 52 L.T. 167; 33 W.R.Dig. 45; 1 T.L.R. 9 376
——, *Re* (1885) 54 L.J.Ch. 481; 52 L.T. 556; 33 W.R.Dig. 109; 1 T.L.R. 273 . 386
Oriental Commercial Bank, *Re*. *See* Morris' Case.
Oriental Financial Corporation, *Ex p.* *See* European Central Ry., *Re*.
Oriental Inland Steam Co. *v.* Briggs (1861) 4 De G. F. & J. 191; 31 L.J.Ch. 241; 5 L. T. 477; 10 W.R. 125; 8 Jur. (N.S.) 201 95
Orleans Motor Co., *Re* [1911] 2 Ch. 41; 80 L.J.Ch. 477; 104 L.T. 627; 18 Mans. 287 297
Ormerod's Case, Harvey's Oyster Co., *Re* [1894] 2 Ch. 474; 63 L.J.Ch. 578; 70 L.T. 795; 42 W.R. 701; 1 Mans. 153; 8 R. 715 . . . . . 94, 328
Ortigosa *v.* Brown, Janson & Co. (1878) 47 L.J.Ch. 168; 38 L.T. 145; 26 W.R.Dig. 48 112
Orton *v.* Cleveland Fire Brick and Pottery Co. (1865) 3 H. & C. 868; 13 W.R. 869; 11 Jur.(N.S.) 531 166
Osgood *v.* Nelson (1872) L.R. 5 H.L. (E. & Ir.App.) 636; 41 L.J.Q.B. 329 . . 183
Osmondthorpe Hall Freehold Garden, etc., Society, *Re* [1913] W.N. 243; 58 S.J. 13 377
Oswald Tillotson, Ltd. *v.* Inland Revenue Commissioners [1933] 1 K.B. 134; 101 L.J.K.B. 737; 147 L.T. 481; 48 T.L.R. 628 439
" Otto " Electrical Manufacturing Co. (1905), Ltd., *Re* Jenkin's Claim [1906] 2 Ch. 390; 75 L.J.Ch. 682; 95 L.T. 141; 54 W.R. 601; 22 T.L.R. 678; 50 S.J. 616 45, 244
Ottoman Co., *Re* [1867] W.N. 164; 15 W.R. 1069 413
Ottos Kopje Diamond Mines, *Re* [1893] 1 Ch. 618; 62 L.J.Ch. 166; 68 L.T. 138; 41 W.R. 258; 2 R. 257 . . . . . 113, 123
Outlay Assurance Society, *Re* (1887) 34 Ch.D. 479; 56 L.J.Ch. 448; 56 L.T. 477; 35 W.R. 343 40
Overend, Gurney & Co., *Ex p.* *See* Land Credit of Ireland, *Re*.
——, *Re* (1866). *See* Grissell's Case.
——, *Re* (1867) *See* Oakes *v.* Turquand.
Overend Gurney & Co. *v.* Gibb (1872) L.R. 5 H.L. (E. & Ir.App.) 480; 42 L.J.Ch. 67 . . . . . 187, 188, 189
Owen and Ashworth's Claim, Whitworth's Claim, Bank of Syria, *Re* [1901] 1 Ch. 115; 70 L.J.Ch. 82; 83 L.T. 547; 49 W.R. 100; 17 T.L.R. 84; 8 Mans. 105 32, 84
Owen (D.) & Co. *v.* Cronck [1895] 1 Q.B. 265; 64 L.J.Q.B. 288; 43 W.R.Dig. 147; 14 R. 229; 2 Mans. 115; 11 T.L.R. 76 317
Oxford Benefit Building and Investment Society, *Re* (1886) 35 Ch.D. 502; 56 L.J. Ch. 98; 55 L.T. 598; 35 W.R. 116; 3 T.L.R. 46 . . . . . 159, 167
Oxted Motor Co., *Re* [1921] 3 K.B. 32; 90 L.J.K.B. 1145; 126 L.T. 56; 37 T.L.R. 737 228

Pacaya Rubber and Produce Co., *Re* [1913] 1 Ch. 218; 82 L.J.Ch. 134; 108 L.T. 21; 29 T.L.R. 129 . . . . . 346, 407
——, *Re*, Burns' Application [1914] 1 Ch. 542; 83 L.J.Ch. 432; 110 L.T. 578; 30 T.L.R. 260; 58 S.J. 269; 21 Mans. 186 346
Pacific Coast Coal Mines *v.* Arbuthnot [1917] A.C. 607; 86 L.J.P.C. 172; 117 L.T. 613 145
Pacific Coast Syndicate, *Re*, British Columbian Fisheries, *ex p.* [1913] 2 Ch. 26; 82 L.J.Ch. 404; 108 L.T. 823; 57 S.J. 518; 20 Mans. 219 407
Padstow Total Loss and Collision Assurance Association, *Re* (1882) 20 Ch.D. 137; 51 L.J.Ch. 344; 45 L.T. 774; 30 W.R. 326 . . . . . 373, 374

Page *v.* **International Agency and Industrial Trust (1893) 62 L.J.Ch. 610; 68 L.T. 435; 41 W.R.Dig. 31, 32; 3 R. 596** 260
Palace Hotel, Ltd., *Re* **[1912] 2 Ch. 438; 81 L.J.Ch. 695; 107 L.T. 521; 56 S.J. 649; 19 Mans. 295** 80
Palace Restaurants, Ltd., *Re* **[1914] 1 Ch. 492; 83 L.J.Ch. 427; 110 L.T. 534; 58 S.J. 268; 30 T.L.R. 248; 21 Mans. 109** 396
Palmer's Decoration and Furnishing Co., *Re* **[1904] 2 Ch. 743; 73 L.J.Ch. 828; 91 L.T. 772; 53 W.R. 142** 283
Panama, New Zealand and Australian Royal Mail Co., *Re* **(1870) L.R. 5 Ch.App. 318; 39 L.J.Ch. 482; 22 L.T. 424; 18 W.R. 441** 295, 299
Panama and South Pacific Telegraph Co. *v.* **India Rubber, Gutta Percha and Telegraph Works Co. (1875) L.R. 10 Ch.App. 515; 45 L.J.Ch. 121; 32 L.T. 517; 23 W.R. 583** 177
Panhard & Levassor *v.* **Panhard Levassor.** *See* **Société (la) Anonyme Panhard, etc.**
Panther Lead Co. [1896] 1 Ch. 978 403
Paraguassu Steam Tramroad Co., *Re.* *See* **Black & Co.'s Case.**
——, *Re* **(1874).** *See* **Adamson's Case.**
Parbury's Case, Building Estates Brickfields Co., *Re* **[1896] 1 Ch. 100; 65 L.J.Ch. 104; 73 L.T. 506; 44 W.R. 107; 2 Mans. 616** 124
Parent Tyre Co., Ltd., *Re* **[1923] 2 Ch. 222; 92 L.J.Ch. 358; 129 L.T. 244; 39 T.L.R. 426** 60
Paris Skating Rink Co., *Re* **(1877) 5 Ch.D. 959; 37 L.T. 298; 25 W.R. 701** . . 380
Park *v.* **Anglo-Canadian Lands, Ltd.** *See* **Anglo-Canadian Lands,** *Re.*
—— *v.* **Lawton [1911] 1 K.B. 588; 80 L.J.K.B. 396; 104 L.T. 184; 75 J.P. 163; 27 T.L.R. 192; 18 Mans. 151** 101, 141
—— *v.* **Royalties Syndicate, Ltd. [1912] 1 K.B. 330; 81 L.J.K.B. 313; 106 L.T. 185; 76 J.P. 93; 19 Mans. 97** 358
Park, Ward & Co., *Re* **[1926] Ch. 828; 95 L.J.Ch. 584; 135 L.T. 575; 70 S.J. 670** 194, 386, 406
Parker & Cooper, Ltd. *v.* **Reading [1926] Ch. 975; 96 L.J.Ch. 23; 136 L.T. 117** . 53
Parker, *Ex p.*, **National and Provincial Marine Insurance Co.,** *Re* **(1867) L.R. 2 Ch.App. 685; 15 W.R. 1217** 106
Parker *v.* **Lewis, Gray** *v.* **Lewis (1873) L.R. 8 Ch.App. 1035; 43 L.J.Ch. 281, 285; 29 L.T. 199; 21 W.R. 928** 177
— — *v.* **McKenna (1874) L.R. 10 Ch. 96; 44 L.J.Ch. 425; 31 L.T. 739; 23 W.R. 271** 175, 177, 191, 447
Parkes Garage (Swadlincote), *Re* **[1929] 1 Ch. 139; 98 L.J.Ch. 9; 140 L.T. 174; 45 T.L.R. 11** 297
Parrott, *Re.* *See* **Cullen,** *Ex p.*
Parsons *v.* **Sovereign Bank of Canada [1913] A.C. 160; 82 L.J.P.C. 60; 107 L.T. 572; 20 Mans. 94; 29 T.L.R. 38** 318
—— *v.* **Surgey (1864) 4 Fos. & Fin.N.P.Cas. 247** 155
Parsons and Robjent's Case. *See* **Western Counties Steam Bakeries,** *Re.*
Partridge *v.* **Rhodesia Goldfields, Rhodesia Goldfields,** *Re* **[1910] 1 Ch. 239; 79 L.J.Ch. 133; 102 L.T. 126; 54 S.J. 135** 283, 304, 321
Patent Castings Syndicate *v.* **Etherington [1919] 2 Ch. 254; 88 L.J.Ch. 398; 121 L.T. 9; 35 T.L.R. 528; 63 S.J. 573** 208
Patent File Co., *Re*, **Birmingham Banking Co.,** *ex p.* **(1870) 23 L.T. 484; on appeal (1870) L.R. 6 Ch.App. 83; 40 L.J.Ch. 190; 19 W.R. 193** 49, 172, 259
Patent Invert Sugar Co., *Re* **(1885) 31 Ch.D. 166; 55 L.J.Ch. 924; 53 L.T. 698; 34 W.R. 169; 2 T.L.R. 196** 74
Paterson (R.) & Sons, Ltd. *v.* **Paterson [1916] W.N. 352; 54 S.L.R. 19** 204
Pathé Frères, *Ex p.*, **Worthington,** *re* **[1914] 2 K.B. 299; 83 L.J.K.B. 885; 110 L.T. 599; 21 Mans. 119** 328
Patrick & Lyon, Ltd., *Re* **[1933] 1 Ch. 786; 102 L.J.Ch. 300; [1933] W.N. 98; 49 T.L.R. 372; 149 L.T. 231; [1933] B. & C.R. 151** 409
Paul *v.* **Piccadilly Hotel Co.** *See* **Piccadilly Hotel, Ltd.,** *Re.*
Paulin, *Re* **[1935] 1 K.B. at pp. 26, 57; 104 L.J.K.B. 124; [1934] W.N. 173; 152 L.T. 98; 50 T.L.R. 572** 64
Payne (David) & Co., *Re.* *See* **Young** *v.* **David Payne & Co.**
Payne *v.* **The Cork Co. [1900] 1 Ch. 308; 69 L.J.Ch. 156; 82 L.T. 44; 48 W.R. 325; 7 Mans. 225; 16 T.L.R. 135** 26, 37, 437
Pearce *v.* **Foster (1886) 17 Q.B.D. 536; 55 L.J.Q.B. 306; 54 L.T. 664; 34 W.R. 602; 51 J.P. 213; 2 T.L.R. 534** 253
Pearks, Gunston and Tee *v.* **Richardson [1902] 1 K.B. 91; 71 L.J.K.B. 18; 85 L.T. 616; 50 W.R. 286; 66 J.P. 119; 18 T.L.R. 78; 20 Cox C.C. 96** 222
Pearson *v.* **Gee and Braceborough, Ltd. [1934] A.C. 272; 103 L.J.Ch. 151; [1934] W.N. 66; 50 T.L.R. 324; 151 L.T. 21** 402
Pearson, *Ex p.* *See* **Wiltshire Iron Co.,** *Re.*
Pearson's Case, Caerphilly Colliery Co., *Re* **(1877) 5 Ch.D. 336; 46 L.J.Ch. 389; 25 W.R. 618** 166, 191, 411

Peat *v.* Clayton [1906] 1 Ch. 659; 75 L.J.Ch. 344; 94 L.T. 465; 54 W.R. 416; 22 T.L.R. 312; 13 Mans. 117 110
—— *v.* Gresham Trust [1934] A.C. 252; 103 L.J.Ch. 173; [1934] W.N. 75; 50 T.L.R. 345; 151 L.T. 63; [1934] B. & C.R. 33 . . . . . 270, 408
Pedlar *v.* Road Block Gold Mines of India [1905] 2 Ch. 427; 74 L.J.Ch. 753; 93 L.T. 665; 54 W.R. 44; 12 Mans. 422 54
Peek *v.* Gurney (1873) L.R. 6 H.L. (E. & Ir.App.) 377; 43 L.J.Ch. 19; 22 W.R. 29 335, 348, 412
Peel's Case, Barned's Banking Co., *Re* (1867) L.R. 2 Ch.App. 674; 36 L.J.Ch. 757; 16 L.T. 780; 15 W.R. 1100 . . . . . 24, 38, 344
Peel *v.* L. & N. W. Ry. [1907] 1 Ch. 5; 76 L.J.Ch. 152; 95 L.T. 897; 23 T.L.R. 85; 14 Mans. 30 154
Pegge *v.* Neath and District Tramways Co. [1898] 1 Ch. 183; 67 L.J.Ch. 17; 77 L.T. 550; 46 W.R. 243; 14 T.L.R. 62 306
Pell's Case, Heyford Co., *Re* (1869) L.R. 5 Ch.App. 11; 39 L.J.Ch. 120; 21 L.T. 412; 18 W.R. 31 96
Pellatt's Case, Richmond Hill Hotel Co., *Re* (1867) L.R. 2 Ch.App. 527; 36 L.J.Ch. 613; 16 L.T. 442; 15 W.R. 726 . . . . . 88, 96
Pelly, *Ex p.*, Anglo-French Co-operative Society, *re* (1882) 21 Ch.D. 492; 47 L.T. 638; 31 W.R. 177 159
Penarth Pontoon Slipway and Ship-repairing Co., *Re* [1911] W.N. 240; 56 S.J. 124 148
Pender *v.* Lushington (1877) 6 Ch.D. 70; 46 L.J.Ch. 317; 25 W.R.Dig. 64 . 28, 150, 151, 153
Penn *v.* Lord Baltimore (1750) 1 Ves.Sen. 443; Ridg. Reps. *temp.* Hardwicke 332; W. & Tu.L.C. 8th ed. 800; 9th ed. 638 261
Pennington and Owen, *Re* [1925] Ch. 825; 95 L.J.Ch. 93; 134 L.T. 66; 41 T.L.R. 657; [1926] B. & C.R. 39; 69 S.J. 759 397
Penrose *v.* Martyr (1858) E. B. & E. 499; 28 L.J.Q.B. 28; 6 W.R. 603; 5 Jur.(N.S.) 362 256
Pen-y-Van Colliery Co., *Re* (1877) 6 Ch. D. 477; 46 L.J.Ch. 390; 25 W.R.Dig. 70 380
Pépé *v.* City and Suburban Permanent Building Society [1893] 2 Ch. 311; 62 L.J. Ch. 501; 68 L.T. 846; 41 W.R. 548; 3 R. 471 36
Percival *v.* Wright [1902] 2 Ch. 421; 71 L.J.Ch. 846; 51 W.R. 31; 18 T.L.R. 697; 9 Mans. 443 . . . . . 84, 160, 172
Percy and Kelly Nickel, etc., Mining Co., *Re*. *See* Jenner's Case.
Performing Right Society *v.* London Theatre of Varieties [1922] 2 K.B. 433; 91 L.J.K.B. 908; 127 L.T. 760; 38 T.L.R. 791; 66 S.J. 764 20
Perkins, *Re*, Mexican Santa Barbara Mining Co., *ex p.* (1890) 24 Q.B.D. 613; 59 L.J.Q.B. 226; 38 W.R. 710; 2 Meg. 197; 7 Morr. 32; 6 T.L.R. 203 . . 135
Perrins *v.* Bellamy [1899] 1 Ch. 797; 68 L.J.Ch. 397; 80 L.T. 478; 47 W.R. 417 . 193
Perrott and Perrott *v.* Stephenson [1934] Ch. 171; 103 L.J.Ch. 47; [1933] W.N. 252; 50 T.L.R. 44; 150 L.T. 189 228
Perry's Case, Montrotier Asphalt Co., *Re* [1876] W.N. 170; 34 L.T. 716; 24 W.R. Dig. 57 190
Perth Electric Tramways, *Re*, Lyons *v.* Tramways Syndicate and Perth Electric Tramways [1906] 2 Ch. 216; 75 L.J.Ch. 534; 94 L.T. 815; 54 W.R. 535; 22 T.L.R. 533; 13 Mans. 195 . . . . . 278, 308
Peruvian Amazon Co., *Re* (1913) 29 T.L.R. 384 378
Peruvian Guano Co., *Re*, Kemp, *ex p.* [1894] 3 Ch. 690; 63 L.J.Ch. 818; 71 L.T. 611; 43 W.R. 170; 8 R. 544; 1 Mans. 423; 10 T.L.R. 585 167
Peruvian Railway Construction Co., *Re* [1915] 2 Ch. 144, 442; 85 L.J.Ch. 129; 113 L.T. 1176; 60 S.J. 25; 32 T.L.R. 46 . . . . . 278, 397
Peruvian Railways *v.* Thames and Mersey Marine Insurance Co., Peruvian Railways, *Re* (1867) L.R. 2 Ch.App. 617; 36 L.J.Ch. 864; 16 L.T. 644; 15 W.R. 1002 . . . . . 49, 55, 255
Peruvian Railways, *Re*. *See* Crawley's Case, Robinson's Case.
——, *Re*. *See* Wallis's Case.
Pethick, Dix & Co., *Re*, Burrows *v.* The Company [1915] 1 Ch. 26; 84 L.J.Ch. 285; 112 L.T. 212; 59 S.J. 74; (1915) 1 H.B.R. 59; 8 B.W.C.C. 337; W.C. & Ins.Rep. 5 401
Pethybridge *v.* Unibifocal Co. [1918] W.N. 278 284
Peveril Gold Mines, *Re* [1898] 1 Ch. 122; 67 L.J.Ch. 77; 77 L.T. 505; 46 W.R. 198; 14 T.L.R. 86; 4 Mans. 398 . . . . . 26, 37, 379
Pharaon (R.) et Fils, *Re* [1916] 1 Ch. 1; 85 L.J.Ch. 68; 113 L. T. 1138; 32 T.L.R. 47 151
Phénix (Le), *Re* (1888) 58 L.T. 512 370
Phillips *v.* Manufacturers' Securities, Ltd. (1915) 31 T.L.R. 451 (motion for injunction); hearing (1917) 86 L.J.Ch. 305; 116 L.T. 290 362
Phillips' Case. *See* National Bank of Wales, *Re*.
Phœnix Bessemer Co., *Re* (1875) 44 L.J.Ch. 683; 32 L.T. 854 . . . . . 259, 260
Phosphate of Lime Co., *Re*. *See* Austin's Case.

Piccadilly Hotel, Ltd., *Re*, Paul *v.* Piccadilly Hotel [1911] 2 Ch. 534; 81 L.J.Ch. 89; 105 L.T. 775; 56 S.J. 52 303
Pickard *v.* Sears (1837) 6 Ad. & E. 469; 2 Nev. & P. 488 123
Picker *v.* London and County Banking Co. (1887) 18 Q.B.D. 515; 56 L.J.Q.B. 299; 35 W.R. 469; 3 T.L.R. 444 294
Piercy, *Re*, Whitwham *v.* Piercy [1907] 1 Ch. 289; 76 L.J.Ch. 116; 95 L.T. 868; 14 Mans. 23 . . . . . 76, 206
Piercy *v.* S. Mills & Co. [1920] 1 Ch. 77; 88 L.J.Ch. 509; 122 L.T. 20; 35 T.L.R. 703 172
Pilkington *v.* United Railways, etc. [1930] 2 Ch. 108; 99 L.J.Ch. 555; [1930] W.N. 116; 46 T.L.R. 370 71
Pinkett *v.* Wright (1842) 12 L.J.Ch. 119; 2 Ha. 120; 6 Jur. 1102; affirmed on appeal (1846) 12 Cl. & Fin. 764 (*sub nom.* Murray *v.* Pinkett) 134
Pirie *v.* Stewart, 1904, 6 F. 847 (Ct. of Sess.) (No. 141) 381
Pitkin (James) & Co., *Re* (1916) 85 L.J.Ch. 318; [1916] W.N. 112; 114 L.T. 673; 60 S.J. 369 97
Pitman and Edwards, *Ex p.* *See* Hamilton's Windsor Ironworks, *Re*.
Pittard *v.* Oliver [1891] 1 Q.B. 474; 60 L.J.Q.B. 219; 64 L.T. 758; 39 W.R. 311; 55 J.P. 100 155
Plantations Trusts, Ltd. *v.* Bila (Sumatra) Rubber Lands, Ltd. (1916) 85 L.J.Ch. 801; 114 L.T. 676 161
Pocock's Claim. *See* Romford Canal Co., *Re*.
Pole's Case, Olympic Fire and General Reinsurance Co., *Re* [1920] 2 Ch. 341; 89 L.J.Ch. 544; 123 L.T. 786; 36 T.L.R. 691 328
Pollard, *Ex p.*, Courtney, *re* (1838–40) 4 Deac.Cas. in Bank. 27; Mont. & Chitty Cas. in Bank. 239 . . . . . 261, 315
Ponsonby's Case. *See* Nichol's Case.
Pool Shipping Co., *Re* [1920] 1 Ch. 251; 89 L.J.Ch. 111; 122 L.T. 388; 36 T.L.R. 53; 64 S.J. 115 109
Pool *v.* Guardian Investment Trust Co., Ltd. [1922] 1 K.B. 347; 91 L.J.K.B. 242; 126 L.T. 540; 38 T.L.R. 177 453
Pool's Case. *See* Tunnel Mining Co., *Re*.
Poole, Jackson and Whyte's Case, Wincham Shipbuilding Boiler and Salt Co., *Re* (1878) 9 Ch.D. 322; 48 L.J.Ch. 48; 38 L.T. 659; 26 W.R. 823 129
Poole *v.* National Bank of China [1907] A.C. 229; 76 L.J.Ch. 458; 96 L.T. 889; 23 T.L.R. 567; 14 Mans. 218 . . . . . 76.
—— *v.* Stephenson. *See* Stephenson (Robert) & Co., *Re*.
Popham *v.* Pickburn (1862) 31 L.J.Ex. 133; 7 H. & N. 891; 5 L.T. 846; 10 W.R. 324; 8 Jur.(N.S.) 179 155
Popple *v.* Sylvester (1882) 22 Ch.D. 98; 52 L.J.Ch. 54; 47 L.T. 329; 31 W.R. 116 276, 321
Poppleton, *Ex p.* *See* Thomas, *Re*.
Popular Life Assurance Co., *Re* [1909] 1 Ch. 80; 78 L.J.Ch. 37; 99 L.T. 909; 25 T.L.R. 58; 53 S.J. 47 370
Portsmouth Banking Co., *Re*. *See* Helby's, Stokes' and Horsey's Cases.
Portsmouth (Borough of), Kingston, etc., Tramways, *Re* [1892] 2 Ch. 362; 61 L.J. Ch. 462; 66 L.T. 671; 40 W.R. 553; 8 T.L.R. 516 . . . . . 319, 380
Portuguese Consolidated Copper Mines, *Re*, Badman, *ex p.* Bosanquet, *ex p.* (1890) 45 Ch.D. 16, 26; 63 L.T. 423; 39 W.R. 25 180
——, *Re*, Steele's Case (1889) 42 Ch.D. 160; 58 L.J.Ch. 813; 62 L.T. 88; 38 W.R.Dig. 38; 1 Meg. 246 (C.A.) 84, 106
——, *Re*. *See* Inchiquin (Lord), *Ex p.*
Postage Stamp Automatic Delivery Co., *Re* [1892] 3 Ch. 566; 61 L.J.Ch. 597; 67 L.T. 88; 41 W.R. 28 191
Postlethwaite *v.* Port Phillip and Colonial Gold Mining Co. (1889) 43 Ch.D. 452; 59 L.J.Ch. 201; 62 L.T. 60; 38 W.R. 246; 2 Meg. 10; 6 T.L.R. 130 . . . 437
Pound (Henry) Son and Hutchins, *Re* (1889) 42 Ch.D. 402; 58 L.J.Ch. 792; 62 L.T. 137; 38 W.R. 18; 1 Meg. 363; 5 T.L.R. 720 (C.A.) 286
Powell *v.* London and Provincial Bank [1893] 2 Ch. 555; 62 L.J.Ch. 795; 69 L.T. 421; 41 W.R. 545; 9 T.L.R. 446; 2 R. 482 . . . . 110, 112, 114
Powell (W.) & Sons, *Re* [1892] W.N. 94; 36 S.J. 523 380
Powell and Thomas *v.* Evan Jones & Co. [1905] 1 K.B. 11; 74 L.J.K.B. 115; 92 L.T. 430; 53 W.R. 277; 21 T.L.R. 55; 10 Com.Cas. 36 447
Préfontaine *v.* Grenier [1907] A.C. 101; 76 L.J.P.C. 4; 95 L.T. 623; 23 T.L.R. 27; 13 Mans. 401 186
Premier Industrial Bank *v.* Carlton Manufacturing Co. and Crabtree, Ltd. [1909] 1 K.B. 106; 78 L.J.K.B. 103; 99 L.T. 810; 25 T.L.R. 17; 16 Mans. 22 . 257
Premier Underwriting Association (No. 1), *Re*, Great Britain Mutual Marine Insurance Association, *ex p.* [1913] 2 Ch. 29; 82 L.J.Ch. 383; 108 L.T. 824; 57 S.J. 594; 20 Mans. 189 . . . . . 365, 377
——, *Re* (No. 2) Cory's Case [1913] 2 Ch. 81; 82 L.J.Ch. 378; 108 L.T. 826; 57 S.J. 594; 20 Mans. 183 365
Price *v.* Anderson (1847) 15 Sim. 473 206

Printing and Numerical Registering Co., *Re* (1878) 8 Ch.D. 535; 47 L.J.Ch. 580; 38 L.T. 676; 26 W.R. 627 . . . . . 396, 401
Pritchard's Case, Tavarone Mining Co., *Re* (1873) L.R. 8 Ch.App. 956; 42 L.J. Ch. 768; 29 L.T. 363; 21 W.R. 829 81
Pritchard, Offer & Co., *Re* [1893] W.N. 153; 38 S.J. 25 435
Professional Commercial, etc., Benefit Building Society, *Re* (1871) L.R. 6 Ch.App. 856; 25 L.T. 397; 19 W.R. 1153 . . . . . 378, 382, 385
Progress Assurance Co., *Re*, 9 Eq. 370 403
Property Insurance Co., *Re* [1914] 1 Ch. 775; 83 L.J.Ch. 525; 110 L.T. 973; 58 S.J. 472 413
Prudential Insurance Co. *v.* Commissioners of Inland Revenue [1904] 2 K.B. 658; 73 L.J.K.B. 734; 91 L.T. 520; 53 W.R. 108; 20 T.L.R. 621 369
Puddephatt *v.* Leith [1916] 1 Ch. 200; 85 L.J.Ch. 185; 114 L.T. 454; 32 T.L.R. 228; 60 S.J. 210 150
Pugh and Sharman's Case, Hercules Insurance Co., *Re* (1872) L.R. 13 Eq. 566; 41 L.J.Ch. 580; 26 L.T. 274; 20 W.R.Ch.Dig. 45, 50 . . . . . 83, 93
Pulbrook *v.* Richmond Consolidated Mining Co. (1878) 9 Ch.D. 610; 48 L.J.Ch. 65; 27 W.R. 377 . . . . . 28, 165, 183
Pulsford *v.* Devenish [1903] 2 Ch. 625; 73 L.J.Ch. 35; 52 W.R. 73; 19 T.L.R. 688; 11 Mans. 393 . . . . . 389, 395, 428, 431
—— *v.* Richards (1853) 17 Beav. 87; 22 L.J.Ch. 559; 1 W.R. 295; 17 Jur. 865 336
Punt *v.* Symons & Co. [1903] 2 Ch. 506; 72 L.J.Ch. 768; 89 L.T. 525; 52 W.R. 41; 10 Mans. 415 . . . . . 31, 35, 37, 172
Pursell, Ex p. See New City Constitutional Club Co., Re.
Pyke and Gibson's Case. *See* Kharaskhoma Exploring, etc., Syndicate, *Re.*
Pyle Works, *Re* (No. 1) (1890) 44 Ch.D. 534; 59 L.J.Ch. 489; 62 L.T. 887; 38 W.R. 674; 2 Meg. 83; 6 T.L.R. 268 . . . . . 129, 259
——, *Re* (No. 2) [1891] 1 Ch. 173; 60 L.J.Ch. 114; 63 L.T. 628; 39 W.R. 235; 2 Meg. 327 . . . . . 172, 197, 233

QUARTERMAINE'S Case, London, Windsor and Greenwich Hotels Co., *Re* [1892] 1 Ch. 539; 61 L.J.Ch. 273; 66 L.T. 19; 40 W.R. 298; 8 T.L.R. 204 . . 321
Queen *v.* Gurney. *See* R. *v.* Gurney.
—— *v.* Morton. *See* R. *v.* Morton.
—— *v.* Sir Charles Reed. *See* R. *v.* Reed (Sir Charles)
Queen's Benefit Building Society, *Re* (1871) L.R. 6 Ch.App. 815; 40 L.J.Ch. 381; 19 W.R. 762 377
Queensland Land and Coal Co., *Re* Davis *v.* Martin [1894] 3 Ch. 181; 63 L.J.Ch. 810; 71 L.T. 115; 42 W.R. 600; 1 Mans. 355; 8 R. 476; 10 T.L.R. 550 246, 306
Quin and Axtens *v.* Salmon [1909] A.C. 442; 78 L.J.Ch. 506; 100 L.T. 820; 25 T.L.R. 590; 16 Mans. 230; 53 S.J. 575 . . . . . 151, 230

R. *v.* Arnaud (1846) 16 L.J.Q.B. 50; 9 Q.B.Reps. (Ad. & El.) 806; 11 Jur. 279 . 42
—— *v.* Birmingham and Gloucester Ry. Co. (1840) 9 Car. & P. 469; question of demurrer (1842) 3 Q.B.Reps. (Ad. & El.) 223 57
—— *v.* Chester (Archdeacon of) (1834) 3 L.J.M.C. 95; 1 Ad. & El. 342; 3 Nev. & Mans. (Reps. in K.B.) 413 153
—— *v.* Daily Mirror Newspapers, Ltd. [1922] 2 K.B. 530; 91 L.J.K.B. 712; 127 L.T. 218; 38 T.L.R. 531; 66 S.J. 559 41
—— *v.* Esdaile (1858) 1 Fos. & Fin. 213; 6 W.R. 60 . . . . . 196, 200
—— *v.* Findlater [1939] 1 K.B. 594; 108 L.J.K.B. 289; 55 T.L.R. 330; 160 L.T. 182 358
—— *v.* Gaborian (1809) 11 East 77 156
—— *v.* Graham (1861) 9 W.R. 738; 25 J.P. 437 153
—— *v.* Gurney and others, Finlason's (W.F.) Report on Case (1870) 1 Vol. at p. 254; (1869) 11 Cox C.C. 414 195
—— *v.* I.C.R. Haulage Ltd. [1944] K.B. 551; 113 L.J.K.B. 492; 171 L.T. 180; 60 T.L.R. 399 41
—— *v.* Kylsant [1932] 1 K.B. 442; 101 L.J.K.B. 97; 146 L.T. 21; 23 Cr.App.R. 83; 48 T.L.R. 62 . . . . . 195, 196
—— *v.* Lambeth (Rector, etc., of St. Mary's) (1838) 8 Ad. & El. 356 . . . 153
—— *v.* Lorang (1930) 22 Cr.App.R. 167 52
—— *v.* Mariquita and New Granada Mining Co. (1858) 28 L.J.Q.B. 67; 1 E. & E. 289; 7 W.R. 98; 5 Jur. (N.S.) 725 212
—— *v.* Morton (1873) L.R. 2 C.C.R. 22; 42 L.J.M.C. 58; 28 L.T. 452; 21 W.R. 629; 12 Cox C.C. 456 . . . . . 125, 249
—— *v.* Reed (Sir Charles) (1880) 5 Q.B.D. 483; 49 L.J.Q.B. 600; 42 L.T. 835; 28 W.R. 787; 44 J.P. 633 258
—— *v.* Registrar of Companies [1912] 3 K.B. 23; 71 L.J.K.B. 914; 107 L.T. 62; 19 Mans. 280; 28 T.L.R. 457 . . . . . 18, 238
—— *v.* Saddlers' Co. (1861) 30 L.J.Q.B. 186; on appeal (1863), 10 H.L.Cas. (Clark) 404 171

R. v. St. Pancras (Vestrymen, etc., of) (1839) 11 Ad. & El. 15; 4 Per. & Dav. 66 n. 153
—— **v. Thames Navigation Commissioners** (1839) 8 Ad. & El. 901, n . . . 103
—— **v. Tizzard** (1829) 7 L.J. (o.s.) K.B. 275; 9 B. & C. 418; 4 Man. & Ry. 400 171
—— **v. Tyler and The International Commercial Co.** [1891] 2 Q.B. 588; 61 L.J.M.C. 38; 65 L.T. 662; 40 W.R.Dig. 178; 56 J.P. 118; 7 T.L.R. 720 (C.A.) 57, 101
—— **v. Webb** (1811) 14 East 406 5
—— **v. Wigan (Mayor, etc., of)** (1885) 14 Q.B.D. 908; 54 L.J.Q.B. 338; 52 L.T. 435; 33 W.R. 547; 49 J.P. 372; 1 T.L.R. 370 170
—— **v. Wilts and Berks Canal Co.** (1835) 3 Ad. & El. 477; 5 Nev. & Man. 344 103
—— **v. Wimbledon Local Board** (1882) 8 Q.B.D. 459; 51 L.J.Q.B. 219; 46 L.T. 47; 30 W.R. 400; 46 J.P. 292 . . . . . 152, 153
Radford and Bright, Ltd., *Re* (No. 1) [1901] 1 Ch. 272; 70 L.J.Ch. 78; 84 L.T. 150; 49 W.R. 270; 17 T.L.R. 81 392
——, *Re* (No. 2) [1901] 1 Ch. 735; 70 L.J.Ch. 352; 84 L.T. 150, 153; 49 W.R.Dig. 33; 17 T.L.R. 200 392
Railway and Electric Appliance Co., *Re* (1888) 38 Ch.D. 597; 57 L.J.Ch. 1027; 59 L.T. 22; 36 W.R. 730 254
Railway and General Light Improvement Co., *Re*. *See* Marzetti's Case.
Railway Debenture and General Trust Co. *v.* Glyncorrwg Colliery Co. *See* Glyncorrwg Co., *Re*.
Railway Time Tables Publishing Co., *Re* Sandys, *ex p.* (1889) 42 Ch.D. 98; 58 L.J.Ch. 504; 61 L.T. 94; 37 W.R. 531; 1 Meg. 208; 5 T.L.R. 397 94, 105
Rainbow Syndicate, Ltd., *Re*, Owen *v.* Rainbow Syndicate [1916] W.N. 178 . . 305
Rainford *v.* James Keith and Blackman Co. [1905] 2 Ch. 147; 74 L.J.Ch. 531; 92 L.T. 786; 54 W.R. 189; 12 Mans. 278; 21 T.L.R. 582 . . . 50, 125, 136
Rainham Chemical Works Ltd. (In Liquidation) *v.* Belvedere Fish Guano Co., Ltd. [1921] 2 A.C. 465; 90 L.J.K.B. 1252; 126 L.T. 70; 37 T.L.R. 973; 66 S.J. & W.R. 7; 19 L.G.R. 657 41
Ramel Syndicate, Ltd., *Re* [1911] 1 Ch. 749; 80 L.J.Ch. 455; 104 L.T. 842 . 394
Ramsay *v.* Margrett [1894] 2 Q.B. 18; 63 L.J.Q.B. 513; 70 L.T. 788; 10 T.L.R. 355; 9 R. 407; 1 Mans. 184 269
Ramsden *v.* Sharrat & Sons (1930) 35 Com.Cas. 314 208
Ramsgate Victoria Hotel Co. *v.* Montefiore (1866) L.R. 1 Ex. 109; 35 L.J.Ex. 90; 4 H. & C. 164; 13 L.T. 715; 14 W.R. 335; 12 Jur. (N.S.) 455 . . . 92
Ramskill *v.* Edwards (1885) 31 Ch.D. 100; 55 L.J.Ch. 81; 53 L.T. 949; 34 W.R. 96; 2 T.L.R. 37 197
Rance's Case, County Marine Insurance Co., *Re* (1870) L.R. 6 Ch.App. 104; 40 L.J.Ch. 277; 23 L.T. 828; 19 W.R. 291 191
Randall (H. E.), Ltd. *v.* British and American Shoe Co. [1902] 2 Ch. 354; 71 L.J.Ch. 683; 87 L.T. 442; 50 W.R. 697; 18 T.L.R. 611; 10 Mans. 109; 19 R.P.C. 393 19
Randt Gold Mining Co., *Re* [1904] 2 Ch. 468; 73 L.J.Ch. 598; 91 L.T. 174; 53 W.R. 90; 20 T.L.R. 619; 12 Mans. 93 . . . . . 131, 133
Randt Gold Mining Co. *v.* New Balkis Eersteling [1904] A.C. 165; 73 L.J.K.B. 384; 90 L.T. 494; 52 W.R. 561; 11 Mans. 159; 20 T.L.R. 396 . . . 111, 133
—— *v.* Wainwright [1901] 1 Ch. 184; 70 L.J.Ch. 90; 84 L.T. 348; 49 W.R.Dig. 31; 8 Mans. 61; 17 T.L.R. 29 . . . . . 111, 131
Ranger *v.* Great Western Ry. (1854) 5 H.L.Cas. (Clark) 72; 24 L.T. (o.s.) 22; 18 Jur. 795 56
Raphael's Claim. *See* Newman (R. S.), Ltd., *Re*.
Rapid Road Transit Co., *Re* [1909] 1 Ch. 96; 78 L.J.Ch. 132; 99 L.T. 774; 53 S.J. 83 427
Rapier *v.* London Tramways Co. [1893] 2 Ch. 588; 63 L.J.Ch. 36; 69 L.T. 361; 9 T.L.R. 468; 37 S.J. 493 57
Rashdall *v.* Ford (1866) L.R. 2 Eq. 750; 35 L.J.Ch. 769; 14 W.R. 950 . . . 263
Rawlins *v.* Wickham (1858) 28 L.J.Ch. 188; 3 De G. & J. 304; 7 W.R. 145; 5 Jur. (N.S.) 278 346
Rayner, *Re*, R. *v.* R. [1904] 1 Ch. 176; 73 L.J.Ch. 111; 89 L.T. 381; 52 W.R. 273; 48 S.J. 178 273
Reddaway *v.* Banham [1896] A.C. 199; 65 L.J.Q.B. 381; 74 L.T. 289; 44 W.R. 638; 12 T.L.R. 295 (H.L. (E.)) 238
Redgrave *v.* Hurd (1881) 20 Ch.D. 1; 51 L.J.Ch. 113; 45 L.T. 485; 30 W.R. 251 347
Red Rock Gold Mining Co., *Re* (1889) 61 L.T. 785; 38 W.R.Dig. 40, 41; 1 Meg. 436 378
Reese River Silver Mining Co., *Re*, Smith's Case (1867) L.R. 2 Ch.App. 604; 36 L.J.Ch. 618; 16 L.T. 549; 15 W.R. 882 . . . . . 344, 395
—— *v.* Smith (1869) L.R. 4 H.L. 64; 39 L.J.Ch. 849; 17 W.R. 1042 . 104, 105, 107, 345, 346
Reeves & Son, *Re*, Whitefriars Financial Co., *Re* (1889) 1 Ch. 184. *And see* Whitefriars Financial Co., *Re*.
Regal (Hastings), Ltd. *v.* Gulliver [1942] 1 All E.R. 378 178

Regent Finance, etc., Co. [1930] W.N. 84 410
Regent Street Fur Co. *v.* Diamant. *See* Menell et Cie, *Re*.
Regent United Service Stores, *Re* (1878) 8 Ch.D. 616 403
Regent's Canal Ironworks Co., *Re*, Grissell, *ex p.* (1875) 3 Ch.D. 411; 25 W.R. Dig. 50 423
—— *Re* (1876) 3 Ch.D. 43; 45 L.J.Ch. 620; 35 L.T. 288; 24 W.R. 687 . 305, 306, 308
Reid (John) & Sons, *Re* [1900] 2 Q.B. 634; 69 L.J.Q.B. 736; 83 L.T. 196; 49 W.R. 15; 16 T.L.R. 444 387
Ried *v.* Explosives Co. (1887) 19 Q.B.D. 264; 56 L.J.Q.B. 388; 57 L.T. 439; 35 W.R. 509; 3 T.L.R. 588 . . . . . 253, 318
Reidpath's Case, Constantinople and Alexandria Hotel Co., *Re* (1870) L.R. 11 Eq. 86; 40 L.J.Ch. 39; 23 L.T. 834; 19 W.R. 219 89
Reigate *v.* Union Manufacturing Co. (Ramsbottom), Ltd., and Elton, etc., Co. [1918] 1 K.B. 592; 87 L.J.K.B. 724; 118 L.T. 479 253
Reliance Taxi-Cab, *Re* [1912] 28 T.L.R. 529 412
Renishaw Iron Co., *Re*, Claims of Stothard and Wilson [1917] 1 Ch. 199; 86 L.J.Ch. 190; 115 L.T. 755; 61 S.J. 147 401
Repertoire Opera Co., *Re* (1895), 2 Mans. 314 194
Repetition Engineering Services, Ltd., *Re* (1945) 173 L.T. 75 412
Reuss *v.* Pickeley (1866) L.R. 1 Ex.Cas. 342; 35 L.J.Ex. 218; 4 H. & C. 588; 15 L.T. 25; 14 W.R. 924; 12 Jur. (N.S.) 628 246
Reuss (*Princess of*) *v.* Bos (1871) L.R. 5 H.L. 176; 40 L.J.Ch. 655; 24 L.T. 641; 20 W.R.(H.L. & P.C.) Dig. 12 . . . . . 23, 39, 93, 375
Revere Trust *v.* Wellington Handkerchief Works [1931] N.Ir. 55 297
Reversionary Interest Society, Ltd., *Re* [1892] 1 Ch. 615; 61 L.J.Ch. 379; 66 L.T. 460; 40 W.R. 389 60
Reynolds *v.* Ashby & Son [1904] A.C. 466 298
Reynolds *v.* Atherton (1922) 127 L.T. 189; 66 S.J. 404 179
Rhodes *v.* Forwood (1876) 1 App.Cas. 256; 47 L.J.Ex. 396; 34 L.T. 890; 24 W.R. 1078 254
Rhodesia Goldfields, *Re*. *See* Partridge *v.* Rhodesia Goldfields.
Rica Gold Washing Co., *Re* (1879) 11 Ch.D. 36; 40 L.T. 531; 27 W.R. 715 . . 382
Richard Mills & Co. (Brierly Hill), Smith *v.* The Company [1905] W.N. 36 . . 415
Richards and The Home Assurance Association, *Re* (1871) L.R. 6 C.P.Cas. 591; 40 L.J.C.P. 290; 24 L.T. 752; 19 W.R. 893 90
Richardson's Case, Imperial Mercantile Credit Association, *Re* (1875) L.R. 19 Eq. 588; 44 L.J.Ch. 252; 32 L.T. 18; 23 W.R. 467 83
Richmond's Case, and Painter's Case, Athenæum Life Assurance Society, *Re* (1858) 4 K. & J. 805 172
Richmond Hill Hotel Co., *Re* (1867). *See* Elkington's Case.
——, *Re* (1867). *See* Pellatt's Case.
Rimington's Case. *See* Feiling's Case.
Ritso's Case, Universal Non-Tariff Fire Insurance Co., *Re* (1877) 4 Ch.D. 774, 782; 25 W.R.Dig. 51 82
Robb *v.* Greene [1895] 2 Q.B. 315; 64 L.J.Q.B. 593; 73 L.T. 15; 44 W.R. 25; 59 J.P. 695; 14 R. 580; 11 T.L.R. 517 254
Robert Batcheller & Co. *v.* Batcheller [1945] Ch. 169; 114 L.J.Ch. 156; 61 T.L.R. 233; 172 L.T. 298 183
Roberts *v.* Security Co. [1897] 1 Q.B. 111; 66 L.J.Q.B. 119; 75 L.T. 531; 45 W.R. 214; 13 T.L.R. 79 249
Roberts and Cooper, *Re* [1929] 2 Ch. 383; 98 L.J.Ch. 450; [1929] W.N. 187; 141 L.T. 636 66
Robinson's Case, Crawley's Case, Peruvian Railways Co., *Re* (1869) L.R. 4 Ch.App. 322; 20 L.T. 96; 17 W.R. 454 89
Robinson *v.* Montgomeryshire Brewery Co. [1896] 2 Ch. 841; 65 L.J.Ch. 915; 45 W.R.Dig. 25; 3 Mans. 279 57
Robinson Printing Co. *v.* Chic, Ltd. [1905] 2 Ch. 123; 74 L.J.Ch. 399; 93 L.T. 262; 53 W.R. 681; 21 T.L.R. 446; 12 Mans. 314 . . . . . 318, 319
Robson *v.* Att.-Gen. *See* Customs and Excise, etc., Fund, *Re*.
—— *v.* Premier Oil and Pipe Line Co. [1915] 2 Ch. 124; 84 L.J.Ch. 629; 113 L.T. 523; 31 T.L.R. 420 151
—— *v.* Smith [1895] 2 Ch. 118; 64 L.J.Ch. 457; 72 L.T. 559; 43 W.R. 632; 13 R. 529; 2 Mans. 422; 11 T.L.R. 351 . . . . . 272, 300, 303
Rogers & Co. *v.* British and Colonial Colliery Supply Association (1899) 68 L.J. Q.B. 14; 79 L.T. 494; 47 W.R.Dig. 28; 6 Mans. 305 312
Rogers' Case, Bank of Hindustan, China and Japan, *Re* (1871) 25 L.T. 406; 19 W.R. 1057 (*sub nom.* Snow's Case) 111
Rogers' Case, Harrison's Case, Universal Banking Co., *Re* (1868) L.R. 3 Ch.App. 633; 18 L.T. 779; 16 W.R. 556, 881 92
Rogerstone Brick and Stone Co., *Re*, Southall *v.* Westcombe [1919] 1 Ch. 110; 88 L.J.Ch. 49; 120 L.T. 33 299

Rolland *v.* **Hart** (1871) L.R. 6 Ch.App. 678; 40 L.J.Ch. 701; 25 L.T. 191; 19 W.R. 962 (C.A.) 223
Romford Canal Co., *Re*, Pocock's Tickett's and Carew's Claims (1883) 24 Ch.D. 85; 52 L.J.Ch. 729; 49 L.T. 118; 31 W.R.Dig. 49 149
Roomwood Investments *v.* I. R. C. [1942] 1 All E.R. 290 455
Roots *v.* **Williamson** (1888) 38 Ch.D. 485; 57 L.J.Ch. 995; 58 L.T. 802; 36 W.R. 758 110
Roper *v.* Castell and Brown, Ltd. *See* Castell and Brown, Ltd., *Re*.
Roscoe (Jas.) *v.* **Winder** [1915] 1 Ch. 62 410
Rose & Co. *v.* **Gardden Lodge, etc., Co.** (1878) 3 Q.B.D. 235 430
Rosenberg *v.* **Northumberland Building Society** (1889) 22 Q.B.D. 373; 60 L.T. 558; 37 W.R. 368; 5 T.L.R. 265 86
Ross *v.* Estates Investment Co. (1868) L.R. 3 Ch.App. 682; 37 L.J.Ch. 873; 19 L.T. 61; 16 W.R. 1151 . . . . . 336, 346
Rosyth Building and Estate Co., 1921 S.C. 372 452
Rotherham Alum and Chemical Co., *Re* (1883) 25 Ch.D. 103; 53 L.J.Ch. 290; 50 L.T. 219; 32 W.R. 131 . . . . . 29, 234, 243, 251, 252, 325
Roundwood Colliery Co., *Re*, Lee *v.* The Company [1897] 1 Ch. 373; 66 L.J.Ch. 186; 75 L.T. 641; 45 W.R. 324; 13 T.L.R. 175 298
Roussell *v.* **Burnham** [1909] 1 Ch. 127; 78 L.J.Ch. 94; 100 L.T. 39; 25 T.L.R. 61 86, 336
Routledge (George) & Sons, *Re*, Hummel *v.* Routledge (George) & Sons, Ltd. [1904] 2 Ch. 474; 73 L.J.Ch. 843; 91 L.T. 288; 53 W.R. 44; 11 Mans. 404 278, 308
Rover *v.* South African Breweries [1918] 2 Ch. 233; 87 L.J.Ch. 516; 119 L.T. 481; 34 T.L.R. 478; 62 S.J. 636 452
Row *v.* Dawson (1749) 1 Ves. Sen. 331 296
Rowe's Trustees' Claim. *See* West Coast Goldfields, *Re*.
Rowell *v.* **John Rowell & Sons, Ltd.** [1912] 2 Ch. 609; 81 L.J.Ch. 759; 107 L.T. 374; 19 Mans. 371; 56 S.J. 704 75
Rowland's Case, Newport and South Wales Shipowners' Co., *Re* [1880] W.N. 80; 42 L.T. 785; 28 W.R.Dig. 39 124
Royal British Bank, *Re*. *See* Nicol's Case.
Royal British Bank *v.* Turquand (1856) 25 L.J.Q.B. 317; 6 El. & Bl. 327; 2 Jur. (N.S.) 663 . . . . . 33, 84, 180, 243, 248, 262, 268
Rubber and Produce Investment Trust, *Re* [1915] 1 Ch. 382; 84 L.J.Ch. 534; 112 L.T. 1129; (1915) 1 H.B.R. 120; 31 T.L.R. 253 . . . . . 391, 429
Ruben *v.* **Great Fingall Consolidated** [1906] A.C. 439; 75 L.J.K.B. 843; 95 L.T. 214; 22 T.L.R. 712; 13 Mans. 248 . . . . . 34, 116, 123, 248
Ruffle, *Ex p.*, Dummelow, *re* (1873) L.R. 8 Ch.App. 997, 42 L.J.Bk. 82; 29 L.T. 384; 21 W.R. 932 388
Rumball *v.* **Metropolitan Bank** (1877) 2 Q.B.D. 194; 46 L.J.Q.B. 346; 36 L.T. 240; 25 W.R. 366 294
Russell, Cordner & Co., *Re* [1891] 3 Ch. 171; 60 L.J.Ch. 805; 65 L.T. 740; 39 W.R. 685 433
Russell *v.* **Wakefield Waterworks Co.** (1875), L.R. 20 Eq. 474; 44 L.J.Ch. 496; 32 L.T. 685; 23 W.R. 887 160
Russian and English Bank, *Re* [1932] 1 Ch. 663 449
—— *v.* Baring Bros. [1932] 1 Ch. 435; [1932] W.N. 22; 48 T.L.R. 193 . . 449
—— *v.* —— [1936] A.C. 405; 105 L.J.Ch. 174; 154 L.T. 602; 52 T.L.R. 393 . 449
Russian Petroleum and Liquid Fuel Co., *Re*, London Investment Trust *v.* Russian Petroleum, etc., Co. [1907] 2 Ch. 540; 77 L.J.Ch. 21; 97 L.T. 564; 23 T.L.R. 746 (C.A.) 278, 308
Russian Spratts Patent, Ltd., *Re*, Johnson *v.* Russian Spratts Patent, Ltd. *See* Johnson *v.* Russian Spratts Patent, Ltd.
Russian (Vyksounsky) Iron Works, *Re* (1867). *See* Cachar Co., *Re*.
——, *Re* (1866). *See* Stewart's Case.
——, *Re* (1867). *See* Taite's Case.
Rutherford *v.* **Farmery** (1915, R. No. 1524) 143

Sadgrove *v.* **Bryden** [1907] 1 Ch. 318; 76 L.J.Ch. 184; 96 L.T. 361; 14 Mans. 47; 23 T.L.R. 255 154
Sadler *v.* **Worley** [1894] 2 Ch. 170; 63 L.J.Ch. 551; 70 L.T. 494; 42 W.R. 476; 8 R. 194; 10 T.L.R. 364 319
Safety Explosives, Ltd., *Re* [1904] 1 Ch. 226; 73 L.J.Ch. 184; 90 L.T. 331; 52 W.R. 470; 11 Mans. 76 . . . . . 401, 402
Sailing Ship 'Kentmere' Co., *Re* [1897] W.N. 58 . . . . . 183, 378
St. Hilda's Incorporated College, Cheltenham, *Re* [1901] 1 Ch. 556; 70 L.J.Ch. 266; 49 W.R. 279; 8 Mans. 430 . . . . . 62, 241
St. James' Court Estates, Ltd., *Re* [1944] Ch. 6; 112 L.J.Ch. 198; 170 L.T. 179 69
Sale, *Re* [1913] 2 Ch. 697 206

Sale Hotel and Botanical Gardens Co., *Re*, Hesketh's Case [1898] W.N. 40; 78 L.T. 366; 46 W.R. 617; 14 T.L.R. 344 . . . . . **324**
Salford (Mayor, Aldermen, etc., of) *v.* Lever [1891] 1 Q.B. 168; 60 L.J.Q.B. 39; 63 L.T. 658; 39 W.R. 85; 7 T.L.R. 18 . . . . . **177**
Salisbury Gold Mining Co. *v.* Hathorn [1897] A.C 268; 66 L.J.P.C. 62; 76 L.T. 212; 45 W.R. 591; 13 T.L.R. 272 . . . . . **149, 156**
Salisbury-Jones and Dale's Case, Bolton (R.) & Co., *Re* [1894] 3 Ch. 356; 64 L.J.Ch. 27; 71 L.T. 284; 43 W.R.Dig 37; 1 Mans. 431; 10 T.L.R. 614; 7 R. 504 . . . . . **31, 94, 165**
Salmon *v.* Quin and Axtens [1909] 1 Ch. 311; 78 L.J.Ch. 367; 100 L.T. 161; 25 T.L.R. 164; 16 Mans. 127; 53 S.J. 150 . . . . . **173**
Salomon *v.* Salomon & Co. [1897] A.C. 22 (H.L.); 66 L.J Ch. 35; 75 L.T. 426; 45 W.R. 193; 13 T.L.R. 46; 4 Mans. 89; 41 S.J. 63 . 41, 42, 43, 324, 355, 359
Saloon Steam Packet Co., *Re*. *See* Smedley and Fletcher, *Ex p.*
Salt *v.* Northampton (Marquis of) [1892] A.C. 1; 61 L.J.Ch. 49; 65 L.T. 765; 40 W.R. 529; 8 T.L.R. 104 . . . . . **198**
Salton *v.* New Beeston Cycle Co. (No. 1) [1899] 1 Ch. 775; 68 L.J.Ch. 370; 80 L.T. 521; 47 W.R. 462 . . . . . **168, 169**
Samuel Allen & Sons, Ltd. [1907] 1 Ch. 575 . . . . . **298**
Samuel *v.* Commissioners of Inland Revenue [1918] 2 K.B 553; 88 L.J.K.B. 588; 119 L.T. 542; 34 T.L.R. 552 . . . . . **453**
Sandback, *Re* [1933] 1 Ch. 505; 102 L.J.Ch. 173; 149 L.T. 44 . . . . . **205**
Sanders, *Re*, Whinney, *ex p.* (1884), 13 Q.B.D. 476; 32 W.R.Dig. 11; 1 Morr. 185 393
Sanders *v.* Bromley. *See* Bromley, *Re.*
Sandwell Park Colliery Co., *Re* [1914] 1 Ch. 589; 83 L.J.Ch. 549; 110 L.T. 766; 21 Mans. 212; 58 S.J. 432 . . . . . **441**
Sandys, *Ex p.* *See* Railway Time Tables Publishing Co., *Re.*
Sangster *v.* Netter (1893) 9 T.L.R. 441 . . . . . **328**
Sanitary Burial Association, *Re* [1900] 2 Ch. 283; 69 L.J.Ch. 551; 82 L.T. 639; 48 W.R. 529 . . . . . **435**
Sanitary Carbon Co., *Re* (1877) W.N. 223 . . . . . **148**
San Paulo (Brazilian) Ry. Co. *v.* Carter (Surveyor of Taxes) [1896] A.C. 31; 65 L.J.Q.B. 161; 73 L.T. 538; 44 W.R. 336; 60 J.P. 84, 452; 12 T.L.R. 107 . 451
Saragossa and Mediterranean Ry. Co. *v.* Collingham [1904] A.C. 159; 73 L.J.Ch. 568; 52 W.R. 609; 60 J.P. 212; 20 T.L.R. 354 (H.L. (E.)) **320**
Saunders (T. H.) & Co., *Re* [1908] 1 Ch. 415; 77 L.J.Ch. 289; 98 L.T. 533; 15 Mans. 142; 24 T.L.R. 263; 52 S.J. 225 . . . . . **118**
Saunderson *v.* Bowes (1811) 14 East 500 . . . . . **287**
Saunderson & Co. *v.* Clark (1913) 29 T.L.R. 579 . . . . . **267**
Scad, Ltd., *Re* [1941] 1 Ch. 386; 57 T.L.R. 585; 165 L.T. 108 . . . . . **415**
Scadding *v.* Lorant (1851) 3 H.L.Cas. (Clark) 418; 15 Jur. 955 . . . . . **156**
Scheibler, *Re*. *See* Holthausen, *Ex p.*
Scholey *v.* Central Ry. of Venezuela (1868) L.R. 9 Eq. 266 n.; 39 L.J.Ch. 354 . 344
Schweitzer *v.* Mayhew (1862) 31 Beav. 37 . . . . . **319**
Schweppes, Ltd. [1914] 1 Ch. 322 . . . . . **70**
Scientific Poultry Breeders' Association, Ltd., *Re* [1933] Ch. 227; [1932] W.N. 223; 101 L.J.Ch. 423; 148 L.T. 68; 49 T.L.R. 4 . . . . . **61**
Scott *v.* Frank F. Scott (London), Ltd. [1940] Ch. 794; 56 T.L.R. 924; 163 L.R. 140; 109 L.J.Ch. 417 . . . . . **37, 118**
—— *v.* Hastings (Lord) (1858) 4 K. & J. 633; 6 W.R. 862; 5 Jur. (N.S.) 240 . 115
—— *v.* Scott [1943] W.N. 18 . . . . . **172**
—— *v.* The Corporation of Liverpool (1858) 3 De G. & J. 334; 28 L.J.Ch. 230; 32 L.T.(O.S.) 265; 7 W.R. 153; 5 Jur.(N.S.) 105 . . . . . **53**
Scottish Economic Life Assurance Society, *Ex p.* (1890) 45 Ch.D. 220; 60 L.J.Ch. 14; 62 L.T. 926; 38 W.R. 684; 6 T.L.R. 386; 2 Meg. 271 . . . . . **370**
Scottish Petroleum Co., *Re* (1881). *See* Anderson's Case.
——, *Re*, Wallace's Case (1883) 23 Ch.D. 413; 49 L.T. 348; 31 W.R. 846 . 82, 83, 105, 163, 180, 344, 346
Scottish Union Co. *v.* New Zealand Land, etc., Co.. 57 Sc.L.R. 15 . . . . **452**
Sea, Fire and Life Assurance Co., *Re*. *See* Greenwood's Case.
Seal *v.* Claridge (1881) 7 Q.B.D. 516; 50 L.J.Q.B. 316; 44 L.T. 501; 29 W.R. 598 13
Seaton's Case. *See* Victoria Brick Works, *Re.*
Second East Dulwich 745th Starr-Bowkett Building Society, *Re* (1899) 68 L.J.Ch. 196; 79 L.T. 726; 47 W.R. 408 . . . . . **193**
Securities Properties Investment Corporation *v.* Brighton Alhambra [1893] W.N. 15; 62 L.J.Ch. 566; 68 L.T. 249; 41 W.R.Dig. 34; 3 R. 302 . . . . **319**
Serpell & Co. [1944] Ch. 283; 113 L.J.Ch. 165; 170 L.T. 335; 60 T.L.R. 309 . 68
Services' Club Estate Syndicate, *Re* [1930] 1 Ch. 78; [1929] W.N. 214; 99 L.J.Ch. 33; 142 L.T. 127 . . . . . **220**
Severn and Wye and Severn Bridge Ry., *Re* [1896] 1 Ch. 559; 65 L.J.Ch. 400; 74 L.T. 219; 44 W.R. 347; 12 T.L.R. 262; 3 Mans. 90 . . . . . **205**

Sewell's Case, New Zealand Banking Corporation, *Re* (1868) L.R. 3 Ch.App. 131; 18 L.T. 2; 16 W.R. 381 . . . . . 32, 104
Seymour *v.* Royal Naval School [1910] 1 Ch. 806; 79 L.J.Ch. 366; 102 L.T. 490; 26 T.L.R. 382; 54 S.J. 407 23
Shackleford, Ford & Co. *v.* Dangerfield (1868) L.R. 3 C.P. 407; 37 L.J.C.P. 151; 18 L.T. 289; 16 W.R. 675 239
Sharp *v.* Dawes (1876) 2 Q.B.D. 26; 46 L.J.Q.B. 104; 36 L.T. 188; 25 W.R. 66 . . . . . 127, 148
Sharpe, *Re* [1892] 1 Ch. 154 . . . . . 191, 411
Sharpe *v.* Tophams [1939] Ch. 373; 55 T.L.R. 342; 108 L.J.Ch. 135; 160 L.T. 251 122
Sharpley *v.* Louth and East Coast Ry. (1876) 2 Ch.D. 663; 46 L.J.Ch. 259; 35 L.T. 71; 24 W.R.Dig. 62 345
Shaw, *Ex p.* (1874). *See* Denton Colliery Co., *Re*.
Shaw (A. R.), *Ex p.*, Diamond Rock Boring Co., *re* (1877) 2 Q.B.D. 463; 46 L.J. Q.B. 394; 36 L.T. 573; 25 W.R. 569 106
Shaw *v.* Benson (1883) 11 Q.B.D. 563; 52 L.J.Q.B. 575; 49 L.T. 651; 31 W.R. Dig. 38 374
—— *v.* Holland [1900] 2 Ch. 305; 69 L.J.Ch. 621; 82 L.T. 782; 48 W.R. 680; 7 Mans. 409 84
—— *v.* Port Philip and Colonial Gold Mining Co. (1884) 13 Q.B.D. 103; 53 L.J. Q.B. 369; 50 L.T. 685; 32 W.R. 771 116
—— *v.* Royce, Ltd. [1911] 1 Ch. 138; 80 L.J.Ch. 163; 103 L.T. 712; 55 S.J. 188; 18 Mans. 159 309
—— *v.* Tati Concessions, Ltd. [1913] 1 Ch. 292; 82 L.J.Ch. 159; 108 L.T. 487; 57 S.J. 322; 29 T.L.R. 261; 20 Mans. 104 154
Shaw (John) & Sons (Salford), Ltd. *v.* Shaw [1935] 2 K.B. 113; 104 L.J.K.B. 549; 153 L.T. 245 . . . . . 211, 230
Shaw's Case, New Buxton Lime Co., *Re* (1876) 34 L.T. 715 92
Shaws, Bryant & Co., *Re* [1901] W.N. 124; 45 S.J. 580 169
Shearman, *Ex p.* *See* Dunlop Truffault Cycle, etc., Co., *Re*.
Sheffield and South Yorkshire Permanent Building Society *v.* Aizlewood (1889) 44 Ch.D. 412; 59 L.J.Ch. 34; 62 L.T. 678; 38 W.R.Dig. 25; 6 T.L.R. 25 . . . . . 41, 50, 189
Sheffield (Corporation of) *v.* Barclay [1905] A.C. 392; 74 L.J.K.B. 747; 93 L.T. 83; 54 W.R. 49; 69 J.P. 385; 21 T.L.R. 642; 12 Mans. 248; 10 Com.Cas. 287; 3 L.G.R. 922 (H.L.(E.)) 116
Sheffield and South Yorkshire Permanent Building Society (In Liquidation), *Re* (1889) 22 Q.B.D. 470; 58 L.J.Q.B. 265; 60 L.T. 186; 37 W.R.Dig. 29; 53 J.P. 375; 5 T.L.R. 192 41
Sheffield (Earl of) *v.* London Joint Stock Bank (1888) 13 App.Cas. 333 (H.L. (E.)); 57 L.J.Ch. 986; 58 L.T. 735; 37 W.R. 33; 4 T.L.R. 389 . . . . . 125, 447
Sheldrick *v.* South African Breweries, Ltd. [1923] 1 K.B. 173; 92 L.J.K.B. 112; 128 L.T. 485; 39 T.L.R. 26; 67 S.J. 95 452
Shepheard *v.* Bray [1907] 2 Ch. 571; 76 L.J.Ch. 692; 97 L.T. 729; 24 T.L.R. 17 (C.A.) 191
—— *v.* Broome [1904] A.C. 342; 73 L.J.Ch. 608; 91 L.T. 178; 53 W.R. 111; 20 T.L.R. 540; 11 Mans. 283 (H.L.(E.)) 351
—— *v.* Brown and Gregory, Ltd. *See* Brown and Gregory, Ltd., *Re*.
Sheppey Portland Co., *Re* [1892] W.N. 184 428
Sherwell *v.* Combined Incandescent Mantles Syndicate [1907] W.N. 110; 28 T.L.R. 482; 51 S.J. 446 333
Sherrington's Case. *See* Fisher's Case.
Shipley *v.* Marshall (1863) 14 C.B.(N.S.) 566; 32 L.J.C.P. 258; 8 L.T. 430; 11 W.R.C.L.Dig. 13; 9 Jur.(N.S.) 1060 267
Shipway *v.* Broadwood [1899] 1 Q.B. 369; 68 L.J.Q.B. 360; 80 L.T. 11; 47 W.R. Dig. 160; 15 T.L.R. 145 177
Shirlaw *v.* Southern Foundries. *See* Southern Foundries *v.* Shirlaw.
Shropshire Union Railways and Canal Co. *v.* The Queen (1875) L.R. 7 H.L. 496; 45 L.J.Q.B. 31; 32 L.T. 233; 23 W.R. 709 . . . . . 110, 123
Shuttleworth *v.* Cox Bros. & Co. (Maidenhead) [1927] 2 K.B. 9; 96 L.J.K.B. 104; 136 L.T. 337; 43 T.L.R. 83 . . . . . 36, 37
Siddall, *Re* (1885) 29 Ch.D. 1; 54 L.J.Ch. 682; 52 L.T. 114; 33 W.R. 509; 1 T.L.R. 209 374
Sidebottom *v.* Kershaw, Leese & Co. [1920] 1 Ch. 154; 89 L.J.Ch. 113; 122 L.T. 325; 36 T.L.R. 45; 64 S.J. 114 87
Siemens Bros.' Dynamo Works *v.* Burns (No. 1) [1918] 2 Ch. 324; 87 L.J.Ch. 572; 119 L.T. 352 . . . . . 150, 152
—— *v.* —— (No. 2) [1919] 1 Ch. 225. *And* see Burns *v.* Siemens Bros' Dynamo Works.
Silberhütte Supply Co., *Re* [1910] W.N. 81 386
Silkstone and Dodworth Co. (1881) 17 Ch.D. 158 403
Silverstone, *Ex p.*, Goldberg, *re* [1912] 1 K.B. 384; 81 L.J.K.B. 382; 105 L.T. 959; 19 Mans. 44 410

Simm *v.* Anglo-American Telegraph Co. (1879) 5 Q.B.D. 188; 49 L.J.Q.B. 392; 42 L.T. 37; 28 W.R. 290; 44 J.P. 280 124
Simpson *v.* Denison (1852) 10 Hare 51; 16 Jur. 828 . . . . . 49, 115
—— *v.* Westminster Palace Hotel Co. (1860) 8 H.L.Cas. 712; 2 L.T. 707; 9 W.R.H.L.Dig. 8 . . . . . 46, 49, 50, 53, 55
Simpson's Claim. *See* Cunningham (R. N.) & Co., *Re.*
Sims and Woods, Ltd., Woods *v.* The Company [1916] W.N. 223; 60 S.J. 539 . 316
Simultaneous Colour Printing Syndicate *v.* Foweraker [1901] 1 K.B. 771; 70 L.J. K.B. 453; 49 W.R.Dig. 25; 8 Mans. 307; 17 T.L.R. 368 . . . . 296, 306
Sinclair *v.* Brougham [1914] A.C. 398; 83 L.J.Ch. 465; 111 L.T. 1; 30 T.L.R. 315 262, 410
Sir John Moore Co., *Re* (1877) 12 Ch.D. 326 429
Sissons (Harold) *v.* Sissons (1910) 54 S.J. 802 171
Skelton's Case (1894) 68 L.T. 210 344
Skinner *v.* City of London Marine Insurance Corporation (1885) 14 Q.B.D. 882; 54 L.J.Q.B. 437; 53 L.T. 191; 33 W.R. 628; 1 T.L.R. 426 113
Sleigh *v.* Glasgow and Transvaal Options, 1904, 6 F. 420 (5th ser.), No. 70, Ct. of Sess. 333
Slobodinsky, *Re*, Moore, *ex p.* [1903] 2 K.B. 517; 72 L.J.K.B. 883; 89 L.T. 190; 52 W.R. 156; 19 T.L.R. 616; 10 Mans. 341 410
'Slogger' Automatic Feeder Co., *Re*, Hoare *v.* The Company [1915] 1 Ch. 478; 84 L.J.Ch. 587; 112 L.T. 579; (1915) 1 H.B.R. 138; 59 S.J. 272 . . 315
Sloman *v.* Bank of England (1845) 14 L.J.Ch. 226; 14 Sim. 475; 9 Jur. 243 . . 115
Sly, Spink & Co., Hertslet's Case, Macdonald's Case [1911] 2 Ch. 430; 81 L.J.Ch. 55; 105 L.T. 364; 19 Mans. 65 163
Small *v.* Smith (1884) 10 App.Cas. 119 (H.L. (Sc.)) 307
Smedley and Fletcher, *Ex p.*, Saloon Steam Packet Co., *re* (1867) 37 L.J.Ch. 49; [1867] W.N. 259; 17 L.T. 136; 16 W.R. 75 90
Smedley *v.* Registrar of Companies [1919] 1 K.B. 97; 88 L.J.K.B. 345; 120 L.T. 277; 35 T.L.R. 92 141
Smelting Corporation, *Re*, Seaver *v.* The Company [1915] 1 Ch. 472; 84 L.J.Ch. 571; 113 L.T. 44; (1915) 1 H.B.R. 126 278
Smith, *Ex p.* *See* Homer District Consolidated Gold Mines, *Re.*
Smith *v.* Anderson (1879–80) 15 Ch.D. 247; 50 L.J.Ch. 39; 43 L.T. 329; 29 W.R. 21 . . . . . 158, 373, 374
—— *v.* Brown [1896] A.C. 614; 65 L.J.P.C. 89; 75 L.T. 213; 45 W.R. 132 . 99
—— *v.* Chadwick (1884) 9 App.Cas. 187; 53 L.J.Ch. 873, 50 L.T. 697; 32 W.R. 687; 48 J.P. 644 . . . . . 346, 347
—— *v.* London United Breweries. *See* London United Breweries, *Re.*
—— *v.* Lubbock. *See* New Zealand Midland Ry., *Re.*
—— *v.* Manchester (Duke of) (1883) 24 Ch.D. 611; 53 L.J.Ch. 96; 49 L.T. 96; 32 W.R. 83 197
—— *v.* Paringa Mines, Paringa Mines *v* Blair [1906] 2 Ch. 193; 75 L.J.Ch. 702; 94 L.T. 571; 13 Mans. 316 156
—— *v.* Richard Mills & Co. (Brierly Hill), Ltd. *See* Mills (Richard) & Co. (Brierly Hill), *Re.*
—— *v.* Thompson, Smith, *Re* (1902) 71 L.J.Ch. 411; 86 L.T. 401; 50 W.R.Dig. 175; 18 T.L.R. 432 193
—— *v.* Wilkinson. *See* Victoria Steamboats Co. *Re.*
Smith's Case, Rees River Silver Mining Co., *Re* (1867) L.R. 2 Ch.App. 604; 36 L.J.Ch. 618; 16 L.T. 549; 15 W.R. 882 344
Smith (Richard) & Co., *Re* [1901] 1 Ir.R. 73 321
Smith, Knight & Co., *Re*. *See* Weston's Case.
Smith and Fawcett, Ltd. [1942] Ch. 304; 111 L.J.Ch. 265; 166 L.T. 279; [1942] 1 All E.R. 542 109
Smithson's Case. *See* May's Metal Separating Syndicate, *Re.*
Smyth *v.* Darley (1849) 2 H.L.C. (Cl. & Fin.) 789 145
Sneath *v.* Valley Gold Co., Ltd. [1893] 1 Ch. 477; 68 L.T. 602; 41 W.R.Dig. 31; 9 T.L.R. 137; 2 R. 292 309
Sneyd, *Re*, Fewings, *ex p.* (1883) 25 Ch.D. 338; 53 L.J.Ch. 545; 50 L.T. 109; 32 W.R. 352 321
Snow's Case (1871) 19 W.R. 1057. *See* Rogers' Case, Bank of Hindustan, China and Japan, *Re* 111
Snow (W.R.) & Co., Ltd., *Re* [1930] W.N. 68 254
Société Générale de Paris *v.* Walker (1885) 11 App.Cas 20; 55 L.J.Q.B. 169; 54 L.T. 389; 34 W.R. 662; 2 T.L.R. 200 . . . . 110, 113, 114, 122, 125
Société (La) Anonyme Panhard, etc., Panhard et Levassor *v.* Panhard Levassor Motor Co. [1901] 2 Ch. 513; 70 L.J.Ch. 738; 85 L.T. 20; 50 W.R. 74; 17 T.L.R. 680; 18 R.P.C. 405 19
Society for Promoting Employment of Women [1927] W.N. 145; 71 S.J. 583 . 61
Somerset *v.* Land Securities Co. [1897] W.N. 29 212

Somervail *v.* **Cree (1879) 4 App.Cas. 648 (H.L. (Sc.)); 41 L.T. 353; 28 W.R. 34 . 98**
Sorsbie *v.* **Tea Corporation, Tea Corporation,** *Re* **[1904] 1 Ch. 12; 73 L.J.Ch. 57; 89 L.T. 516; 52 W.R. 177; 20 T.L.R. 57; 11 Mans. 34 (C.A.) 441**
Sound City (Films), Ltd., *Re* **[1947] Ch. 169; 62 T.L.R. 678; [1947] L.J.R. 220; 176 L.T. 28 . . . . . 73**
South African Territories, Ltd. *v.* **Wallington [1898] A.C. 309; 67 L.J.Q.B. 470; 78 L.T. 426; 46 W.R. 545; 14 T.L.R. 298 . . . . . 310, 329**
South African Trust and Finance Co., *Re*, **Hirsch & Co.,** *ex p.* **(1896) 74 L.T. 769; 44 W.R.Dig. 50; 12 T.L.R. 493 . . . . . 325**
South Blackpool Hotel Co., *Re*. *See* **Migotti's Case.**
South-East Lancashire Insurance Co. [1935] 1 Ch. 225; 104 L.J.Ch. 158; [1934] W.N. 225; 152 L.T. 245; 51 T.L.R. 143; 50 Ll.L.Rep. 105 370
South Hetton Coal Co. *v.* **North-Eastern News Association [1894] 1 Q.B. 133 . 41**
South Llanharran Colliery Co., *Re*. *See* **Jegon,** *Ex p.*
South London Fish Market Co., *Re*, **Plimsoll's Case (1888) 39 Ch.D. 324; 60 L.T. 68; 37 W.R. 3; 1 Meg. 92; 4 T.L.R. 764 . . . . . 376**
South London Greyhound Racecourses, Ltd. *v.* **Wake [1931] 1 Ch. 496; 100 L.J.Ch. 169; [1930] W.N. 243; 144 L.T. 607 . . . . . 33, 123, 249**
South of England Natural Gas and Petroleum Co., *Re* **[1911] 1 Ch. 573; 80 L.J.Ch. 358; 104 L.T. 378; 18 Mans. 241; 55 S.J. 442 . . . . 334, 343**
South of Ireland Colliery Co. *v.* **Waddle (1869) L.R. 4 C.P. 671; 38 L.J.C.P. 338; 17 W.R. 896 . . . . . 244**
South Rhondda Colliery Co. (1898) Ltd., *Re* **[1928] W.N. 126 . . . 405, 430**
South Wales Atlantic Steamship Co., *Re* **(1876) 2 Ch.D. 763; 46 L.J.Ch. 177; 35 L.T. 294; 24 W.R.Dig. 69 . . . . . 373**
South-Western of Venezuela (Barqui-Simeto) Ry., *Re* **[1902] 1 Ch. 701; 71 L.J. Ch. 407; 86 L.T. 321; 50 W.R. 300; 9 Mans. 193 . . . . . 318**
Southall *v.* **British Mutual Life Assurance Society (1871) L.R. 6 Ch.App. 614; 40 L.J.Ch. 698; 19 W.R. 865 . . . . . 147, 178, 368, 416, 437**
—— *v.* **Westcombe.** *See* **Rogerstone Brick and Stone Co.,** *Re*.
Southampton Dock Co. *v.* **Richards (1840) 1 Man. & Gr. 448; 2 Ry. & Can.Cas. 215; 1 Scott N.R. 219 . . . . . 233, 286**
Southampton Imperial Hotel Co., *Re*. *See* **Hunt's Claim.**
Southern Foundries (1926) *v.* **Shirlaw [1940] A.C. 701; 56 T.L.R. 637; 109 L.J. K.B. 461; 164 L.T. 751 . . . . . 37, 253**
Southport, etc., Banking Co., *Re*. *See* **Fisher's Case, Sherrington's Case.**
Southsea Garage, Ltd., *Re* **(1911) 27 T.L.R. 295; 55 S.J. 314 . . . . . 376**
Sovereign Life Assurance Co., *Re* **(1889) 42 Ch.D. 540; 58 L.J.Ch. 811; 61 L.T. 455; 38 W.R. 58; 5 T.L.R. 702 . . . . . 371**
Sovereign Life Assurance Co. *v.* **Dodd [1892] 2 Q.B. 573; 62 L.J.Q.B. 19; 67 L.T. 396; 41 W.R. 4; 8 T.L.R. 684 . . . . . 397**
Spackman *v.* **Evans (1868) L.R. 3 H.L. (E. & Ir.App.) 171, 186, 236; 37 L.J.Ch. 752; 19 L.T. 151; 17 W.R.(H.L.)Dig. 7, 8 . . . . . 128, 130, 219**
Spain *v.* **Arnott (1817) 2 Stark. 256 . . . . . 253**
Spanish Prospecting Co., *Re* **[1911] 1 Ch. 92; 80 L.J.Ch. 210; 103 L.T. 609; 27 T.L.R. 76; 55 S.J. 63; 18 Mans. 191 . . . . . 201, 202, 208**
Spargo's Case, Harmony and Montague Tin and Copper Mining Co., *Re* **(1873) L.R. 8 Ch. App. 407; 42 L.J.Ch. 488; 28 L.T. 153; 21 W.R. 306 . . . . 100**
Sparks *v.* **Liverpool Waterworks Co. (1807) 13 Ves. 428 . . . . . 131**
Speir, *Re*, **Holt** *v.* **Speir [1924] 1 Ch. 359; 93 L.J.Ch. 225; 130 L.T. 564; 68 S.J. 251 . . . . . 206**
Spencer *v.* **Ashworth, Partington & Co. [1925] 1 K.B. 589; 94 L.J.K.B. 447; 132 L.T. 753 . . . . . 116**
—— *v.* **Kennedy [1926] Ch. 125; 95 L.J.Ch. 240; 134 L.T. 591 . . . 165, 182**
Speyer Bros. *v.* **Commissioners of Inland Revenue [1908] A.C. 92; 77 L.J.K.B. 302; 98 L.T. 286; 24 T.L.R. 257 . . . . . 272**
Spiers and Bevan's Case. *See* **Roxburghe Press,** *Re*.
Spiers and Pond, *Re* **[1895] W.N. 135; 13 R. 888; 2 Mans. 596 . . . . 60**
Spiller *v.* **Mayo (Rhodesia) Development Co. (1908), Ltd. [1926] W.N. 78 . . 154**
Spiral Globe Co., *Re* **[1902] 1 Ch. 396; 71 L.J.Ch. 128; 85 L.T. 778; 50 W.R. 187; 18 T.L.R. 154; 9 Mans. 52 . . . . . 269**
——, *Re* **(No. 2).** *See* **Watson & Co.** *v.* **Spiral Globe Co., Ltd. (No. 2).**
Spitzel *v.* **Chinese Corporation (1899) 80 L.T. 347; 47 W.R.Dig. 34; 15 T.L.R. 281; 6 Mans. 355 . . . . . 91, 105**
Spottiswoode, Dixon and Hunting, Ltd., *Re* **[1912] 1 Ch. 410; 81 L.J.Ch. 446; 106 L.T. 28; 56 S.J. 272; 28 T.L.R. 214; 19 Mans. 240 . . . . . 415**
Springbok Agricultural Estates, Ltd., *Re* **[1920] 1 Ch. 563; 89 L.J.Ch. 362; 123 L.T. 322; 64 S.J. 359 . . . . . 66**
Stacey (F.) & Co. *v.* **Wallis (1912) 106 L.T. 544; 28 T.L.R. 209 . . . . 185**
Staffordshire Gas and Coke Co., *Re*, **Nicholson,** *ex p.* **(1892) 66 L.T. 413; 40 W.R.Dig. 85 . . . . . 174**

Standard Manufacturing Co., *Re*, Lowe and others, *ex p.* [1891] 1 Ch. 627; 60 L.J.Ch. 292; 64 L.T. 487; 39 W.R. 369; 7 T.L.R. 282; 2 Meg. 418 (C.A.) 296, 303
Standard Rotary Machine Co., *Re* (1906) 95 L.T. 829 300
Stanfield *v.* Gibbon [1925] W.N. 11; 69 S.J. 291 144
Stanhope's Case, Agriculturist Cattle Insurance Co., *Re* (1865-6) L.R. 1 Ch.App. 161; 35 L.J.Ch. 296; 14 L.T. 468; 14 W.R. 266; 12 Jur.(N.S.) 79 . . . 95
Stanhope Silkstone Collieries Co., *Re* (1879) 11 Ch.D. 160; 48 L.J.Ch. 409; 40 L.T. 204; 27 W.R. 561 401
Stanley (G.) & Co., *Re* [1925] Ch. 148; 94 L.J.Ch. 187; 133 L.T. 37; [1925] B. & C.R. 1; 69 S.J. 86 408
Stanley's Case, British Provident Life and Fire Assurance Society, *Re* (1864) 4 De G.J. & S. 407; 33 L.J.Ch. 535; 10 L.T. 674; 12 W.R. 894; 10 Jur. (N.S.) 713 259
Stanton (F. & E.), Ltd., *Re* [1928] 1 K.B. 464; 97 L.J.K.B. 131; 138 L.T. 175; 44 T.L.R. 118; [1927] B. & C.R. 187; on appeal, [1929] 1 Ch. 180; 140 L.T. 372 . . . . . 297, 376
Stapleford Colliery Co., *Re*. *See* Barrow's Case.
Staples *v.* Eastman Photographic Materials Co. [1896] 2 Ch. 303; 65 L.J.Ch. 682; 74 L.T. 479; 44 W.R.Dig. 34; 12 T.L.R. 403 66
Stapley *v.* Read Bros. [1924] 2 Ch 1.; 93 L.J.Ch. 513; 131 L.T. 629; 40 T.L.R. 442; 68 S.J. 519 202
Star Steam Laundry *v.* Dukas [1913] W.N. 39; 108 L.T. 367; 29 T.L.R. 269; 57 S.J. 390 171
Star Tea Co. [1930] W.N. 4 441
Stark, *Ex p.* *See* Consort Deep Level Gold Mines, *Re*.
Starkey *v.* Bank of England [1903] A.C. 114; 72 L.J.Ch. 402; 88 L.T. 244; 51 W.R. 513; 19 T.L.R. 312; 8 Com.Cas. 142 . . . . . 116, 173
State of Wyoming Syndicate, *Re* [1901] 2 Ch. 431; 70 L.J.Ch. 727; 84 L.T. 868; 49 W.R. 650; 17 T.L.R. 631 . . . . . 142, 180, 416
Stead, Hazel & Co. *v.* Cooper [1933] 1 K.B. 840; [1933] W.N. 43; 148 L.T. 384; 49 T.L.R. 200; 102 L.J.K.B. 533; [1933] B. & C.R. 72 . . . . 391, 422
Steel Wing Co., Ltd., *Re* [1921] 1 Ch. 349; 90 L.J.Ch. 116; 124 L.T. 664; 65 S.J. 240, 579, 808 380
Steele's Case. *See* Portuguese Consolidated Copper Mines, *Re*.
Steele *v.* Harmer, Benham and Laxton (1845) 14 M. & W. 831; 15 L.J.Ex. 217 . 255
Steinberg *v.* Scala (Leeds), Ltd. [1923] 2 Ch. 452; 92 L.J.K.B. 944; 129 L.T. 624; 39 T.L.R. 542; 67 S.J. 656 95
Stenotyper, Ltd., *Re*, Hastings Bros. *v.* The Company [1901] 1 Ch. 250; 70 L.J. Ch. 94; 84 L.T. 149; 49 W.R.Dig. 10; 8 Mans. 203 408
Stenning, *Re* [1895] 2 Ch. 433 410
Stephen, Walters & Sons, Ltd., *Re* [1926] W.N. 236; 70 S.J. 953 80
Stephens *v.* Mysore Reefs (Kangundy) Mining Co. [1902] 1 Ch. 745; 71 L.J.Ch. 295; 86 L.T. 221; 50 W.R. 509; 18 T.L.R. 327; 9 Mans. 199 54
Stephenson (Robert) & Co., *Re*, Poole *v.* The Company [1913] 2 Ch. 201; 83 L.J. Ch. 121; 107 L.T. 33; 20 Mans. 358; 56 S.J. 648 301
Stephenson's Case. *See* Farmers' United, Ltd., *Re*
Stevens *v.* Hudson's Bay Co. (1909) 101 L.T. 96; 25 T.L.R. 709 451
Stevenson and Quin's Cases. *See* New Durham Salt Co., *Re*.
Stevenson *v.* Wilson, 1907 Ct. of Sess.Cas. 445 (No. 68) 113
Stewart Precision Carburettor Co., *Re* [1912] W.N. 100; 28 T.L.R. 335; 56 S.J. 413 80
Stewart's Case, Russian (Vyksounsky) Ironworks Co., *Re* (1866), L.R. 1 Ch.App. 574; 35 L.J.Ch. 738; 14 L.T. 817; 14 W.R. 948; 12 Jur. (N.S.) 755 . . 106
Stirling *v.* Passburg Grains Syndicate (1891) 8 T.L.R. 71 346
Stocken's Case, Blakely Ordnance Co., *Re* (1868) L.R. 3 Ch.App. 412; 37 L.J.Ch. 230; 17 L.T. 554; 16 W.R. 322 . . . . . 128, 132
Stocker *v.* Brocklebank (1851) 20 L.J.Ch. 401; 3 Mac. & Gr. 250; 15 Jur. 591 . 252
Stockton Malleable Iron Co., *Re* (1875) 2 Ch.D. 101; 45 L.J.Ch. 168; 24 W.R. Dig. 51 108
Stothard and Wilson's Claims. *See* Renishaw Iron Co., *Re*.
Strand Hotel Co., *Re* [1868] W.N. 2 407
Strand Music Hall Co., Ltd., *Re*, European and American Finance Corporation, *ex p.* (1865) 3 De G. J. & S. 147; 13 L.T. 177; 14 W.R. 6 . . . 276, 306
Strand Wood Co., *Re* [1904] 2 Ch. 1; 73 L.J.Ch. 550; 90 L.T. 800; 53 W.R. 69; 11 Mans. 291 411
Stranton Iron and Steel Co., *Re* (1873) L.R. 16 Eq. 559; 43 L.J. Ch. 215 . . 106, 151
Strapp *v.* Bull, Sons & Co. [1895] 2 Ch. 1; 64 L.J.Ch. 658; 72 L.T. 514; 43 W.R. 641; 2 Mans. 441; 12 R. 387 319
Stratton's Independence, Ltd., *Re* (1916) 33 T.L.R. 98 378
Streatham and General Estates Co., *Re* [1897] 1 Ch. 15; 66 L.J.Ch. 57; 75 L.T. 574; 45 W.R. 105; 13 T.L.R. 59 262

Stringer's Case, Mercantile Trading Co., *Re* (1869) L.R. 4 Ch.App. 475; 38 L.J. Ch. 698; 20 L.T. 591; 17 W.R. 694 191
Strong *v.* **Carlyle Press** [1893] 1 Ch. 268; 62 L.J.Ch. 541; 68 L.T. 396; 41 W.R. 404; 2 R. 283; 9 T.L.R. 135 320
Stroud *v.* **Royal Aquarium and Summer and Winter Garden Society** [1903] W.N. 146; 89 L.T. 243; 52 W.R.Dig. 28; 19 T.L.R. 656 . . . . 155, 166, 445
Stuart *v.* **Maskelyne British Typewriter Co.** *See* **Maskelyne British Typewriter Co., *Re*.**
Stubbs *v.* **Slater** [1910] 1 Ch. 632; 79 L.J.Ch. 420; 102 L.T. 444 114
Stubbs, (Joshua) Ltd. [1891] 1 Ch. 475 320
Suburban and Provincial Stores, *Re* [1943] Ch. 156; 112 L.J.Ch. 145; 168 L.T. 247; 59 T.L.R. 186 73
Suburban Hotel Co., *Re* (1867) L.R 2 Ch.App. 737; 36 L.J.Ch. 710; 17 L.T. 22; 15 W.R. 1096 . . . . . 381, 407
Sugden *v.* **Alsbury.** *See* Alsbury, *Re*.
Sulley *v.* **Att.-Gen.** (1860) 2 Tax Cas. 149; 5 H. & N. 711; 29 L.J.Ex. 464; 2 L.T. 439; 8 W.R. 472; 6 Jur. (N.S.) 1018 451
Sullivan *v.* **Mitcalfe** (1880) 5 C.P.D. 455; 49 L.J.C.P. 815; 44 L.T. 8; 29 W.R. 181 . . . . . 350, 351
Sully's Case. *See* Northumberland Avenue Hotel Co., *Re*.
Sunken Vessels Recovery Co., *Re*. *See* Wood's Case (1858).
Sunlight Incandescent Gas Lamp Co. [1900] 2 Ch. 728 429
Sussex Brick Co., *Re* [1904] 1 Ch. 598; 73 L.J.Ch. 308; 90 L.T. 426; 52 W.R. 371; 11 Mans. 66 . . . . . 106, 116
Sutherland (Duke of) *v.* **British Dominions Land Settlement Corporation** [1926] Ch. 746; 95 L.J.Ch. 542; 135 L.T. 782 109
Sutton *v.* **English and Colonial Produce Co.** [1902] 2 Ch. 502; 71 L.J.Ch. 685; 87 L.T. 438; 50 W.R. 571; 18 T.L.R. 647; 10 Mans. 101 . . . 109, 120, 165
Sutton's Hospital Case (1612) 10 Co.Rep. 30 b 3
Swabey *v.* **Port Darwin Gold Mining Co.** (1889) 1 Meg. 385 . 31, 167, 168, 246
Swan Brewery Co. *v.* **The King** [1914] A.C. 231; 83 L.J.P.C. 134; 110 L.T. 211; 30 T.L.R. 199 207
Swedish Central Ry. *v.* **Thompson** [1925] A.C. 495; 94 L.J.K.B. 527; 133 L.T. 97; 41 T.L.R. 385; 9 Tax Cas. 342 451
Sweny *v.* **Smith** (1869) L.R. 7 Eq. 324; 38 L.J.Ch. 446; 17 W.R.Ch.Dig. 89 131
Sykes's Case, European Central Ry., *Re* (1872) L.R. 13 Eq. 255; 41 L.J.Ch. 251; 26 L.T. 92; 20 W.R.Ch.Dig. 49 129
Symington *v.* **Symington's Quarries, Ltd.**, 1905, 8 F. (5th ser.) 121 (Ct. of Sess.) (No. 18) 381
Symons' Case, Asiatic Banking Corporation, *Re* (1870) L.R. 5 Ch.App. 298; 39 L.J.Ch. 461; 22 L.T. 217; 18 W.R. 366 94

Tacon *v.* **Monolithic Building Co.** *See* Monolithic Building Co., *Re*.
Taff Vale Ry. *v.* **Amalgamated Society of Railway Servants** [1901] A.C. 426; 70 L.J.Q.B. 905; 85 L.T 147; 50 W.R. 44; 65 J.P. 596; 17 T.L.R. 698 . . 7
Tahiti Cotton Co., *Re* Sargent, *ex p.* (1874) L.R. 17 Eq. 273; 43 L.J.Ch. 425; 22 W.R. 815 114
Tailby *v.* **Official Receiver** (1888) 13 App.Cas. 523; 58 L.J.Q.B. 75; 60 L.T. 162; 37 W.R. 513; 4 T.L.R. 726 . . . . . 267, 296, 306
Tait *v.* **MacLeay** [1906] A.C. 24; 75 L.J.Ch. 90; 94 L.T. 68; 54 W.R. 365; 22 T.L.R. 149 (H.L.(E.)) 351
Taite's Case, Russian (Vyksounsky) Ironworks Co., *Re* (1867) L.R. 3 Eq. 795; 36 L.J.Ch. 475; 16 L.T. 343; 15 W.R. 891 344
Tal-y-Drws Slate Co., *Re*. *See* Mackley's Case.
Talbott, *Re*, King *v.* **Chick** (1888) 39 Ch.D. 567; 58 L.J.Ch. 70; 60 L.T. 45; 37 W.R. 233 321
Taldua Rubber Co., Ltd., *Re* [1946] 2 All E.R. 763 54
Tasker (W.) & Sons, *Re*, Hoare *v.* **Tasker (W.) & Sons** [1905] 2 Ch. 587; 74 L.J.Ch. 643; 93 L.T. 195; 54 W.R. 65; 12 Mans. 302; 21 T.L.R. 786 . 278, 306
Taunton, Delmard, Lane & Co., *Re*, Christie *v.* **The Company** [1893] 2 Ch. 175; 62 L.J.Ch. 385; 68 L.T. 638; 41 W.R. 475; 3 R. 404 . . . . 283, 314, 321
Taunton *v.* **Royal Insurance Co.** (1864) 2 H. & M. 135; 33 L.J.Ch. 406; 10 L.T. 156; 12 W.R. 549; 10 Jur.(N.S.) 291 55
—— *v.* **Sheriff of Warwickshire** [1895] 2 Ch. 319; 64 L.J.Ch. 497; 72 L.T. 712; 43 W.R. 579; 13 R. 368, n. 296, 303
Taurine Co., *Re* (1883) 25 Ch.D. 118; 53 L.J.Ch. 271; 49 L.T. 514; 32 W.R. 129 181
Tavarone Mining Co., *Re*. *See* Pritchard's Case.
Tavistock Ironworks, *Re*. *See* Lyster's Case.
Taylor, Phillips and Rickard's Cases, National Bank of Wales, *Re* [1897] 1 Ch. 298; 66 L.J.Ch. 222; 76 L.T. 1; 45 W.R. 401; 13 T.L.R. 179 . . . 107, 206

Tea Corporation, *Re*, Sorsbie *v.* Tea Corporation [1904] 1 Ch. 12; 73 L.J.Ch. 57; 89 L.T. 516; 52 W.R. 177; 20 T.L.R. 57; 11 Mans. 34 (C.A.) . . . 441
Teasdale's Case (1873) 9 Ch.App. 54 75
Tebrau (Johore) Rubber Syndicate, Ltd. *v.* **Farmer (Surveyor of Taxes)**, 1910 S.C. 906 (No. 138); 47 Sc.L.R. 816 451
Teede and Bishop, Ltd., *Re* [1901] W.N. 52; 70 L.J.Ch. 409; 84 L.T. 561; 49 W.R.Dig. 35; 8 Mans. 217; 17 T.L.R. 282 . . . . . 146, 155
Tees Bottle Co., *Re*, Davies' Case (1876) 33 L.T. 834; 24 W.R.Dig. 63 . . . 114
Telescriptor Syndicate, *Re* [1903] 2 Ch. 174; 72 L.J.Ch. 480; 88 L.T. 389; 51 W.R. 409; 19 T.L.R. 271; 10 Mans. 213 414
Thairlwall *v.* **Great Northern Ry.** [1910] 2 K.B. 509; 79 L.J.K.B. 924; 103 L.T. 186; 54 S.J. 652; 26 T.L.R. 555; 17 Mans. 247 207
Thames Conservators *v.* **Smeed, Dean & Co.** [1897] 2 Q.B. 334; 66 L.J.Q.B. 716; 77 L.T. 325; 45 W.R. 691; 13 T.L.R. 524 11
Thames Ironworks, Shipbuilding and Engineering Co., *Re*, Farrer *v.* **The Company** [1912] W.N. 66; 106 L.T. 674; 28 T.L.R. 372; 56 S.J. 413 . . . 316
Thames Plate Glass Co. *v.* **Land and Sea Telegraph Construction Co.** (1871) L.R. 6 Ch.App. 642; 25 L.T. 236; 19 W.R. 764 406
Theatrical Trust, *Re*, Chapman's Case [1895] 1 Ch. 771; 64 L.J.Ch. 488; 72 L.T. 461; 43 W.R. 553; 11 T.L.R. 310; 13 R. 462; 2 Mans. 304 96
Theys, *Ex p.* *See* **Milan Tramways Co., *Re*.**
Thomas De La Rue & Co., Ltd. and Reduced, *Re* [1911] 2 Ch. 361; 81 L.J.Ch. 59; 105 L.T. 542; 55 S.J. 715; 19 Mans. 71 77
Thomas, *Ex p.* *See* **New Zealand Kapanga Gold Mining Co., *Re*.**
Thomas, *Re*, Andrew *v.* **Thomas** [1916] 2 Ch. 331; 85 L.J.Ch. 519; 114 L.T. 885; 32 T.L.R. 530; 60 S.J. 537 206
——, *Re*, **Poppleton, *Ex p.*** (1884) 14 Q.B.D. 379; 54 L.J.Q.B. 336; 51 L.T. 602; 33 W.R. 583 374
Thomas *v.* **Patent Lionite Co.** (1881) 17 Ch.D. 250; 50 L.J.Ch. 544; 44 L.T. 392; 29 W.R. 596 401
—— *v.* **Todd** [1926] 2 K.B. 511; 95 L.J.K.B. 808; 135 L.T. 377; 42 T.L.R. 494 286
—— *v.* **United Butter Companies of France** [1909] 2 Ch. 484; 79 L.J.Ch. 14; 101 L.T. 388; 53 S.J. 733; 25 T.L.R. 824 . . . . . 12, 437
Thomas (William) & Co., *Re*, Thomas (William) & Co. *v.* **Sully** [1915] 1 Ch. 325; 84 L.J.Ch. 232; 112 L.T. 408 48
Thomas Turner (Leicester), Ltd. *v.* **Rickman (Surveyor of Taxes)** (1898) 4 Tax Cas. (Part I) 25 451
Thompson *v.* **Hudson** (1869) L.R. 4 H.L. (E. & Ir.App.) 1; 38 L.J.Ch. 431; 17 W.R.(H.L.)Dig. 5 283
Thomson's Case, Life Association of England, *Re* (1865) 34 L.J.Ch. 525; 4 De G.J. & S. 749; 12 L.T. 717; 13 W.R. 958; 11 Jur.(N.S.) 574 92
Thomson *v.* **Drysdale**, 1925 S.C. 311 (Sess. Cas.) (No. 36) 378
—— *v.* **Henderson's Transvaal Estates, Ltd.** [1908] 1 Ch. 765; 77 L.J.Ch. 501; 98 L.T. 815; 24 T.L.R. 539; 15 Mans. 220 . . . . . 147, 416
—— *v.* **Clanmorris (Lord)** [1900] 1 Ch. 718; 69 L.J.Ch. 337; 82 L.T. 277; 48 W.R. 488; 16 T.L.R. 296; 8 Mans. 51 349
Thorley, Crowther *v.* *See* **Crowther** *v.* **Thorley.**
Thorn *v.* **City Rice Mills** (1889) 40 Ch.D. 357; 58 L.J.Ch. 297; 60 L.T. 359; 37 W.R. 398 287
Thorne (H. E.) & Son, Ltd., *Re* [1914] 2 Ch. 438; 84 L.J.Ch. 161; 112 L.T. 30; 58 S.J. 755; (1915) 1 H.B.R. 19 . . . . . 397, 398
Thornton *v.* **Hutchinson & Sons.** *See* **Hutchinson (W. H.) & Sons, *Re*.**
Thornycroft (J. I.) & Co. *v.* **Thornycroft (L.)** (1927) 44 T.L.R. 9 66
Thurso New Gas Co., *Re* (1889) 42 Ch.D. 486; 61 L.T. 351; 38 W.R. 156; 1 Meg. 380; 5 T.L.R. 562 . . . . . 406, 430
Tibbatts *v.* **Boulter** (1895) 73 L.T. 534; 40 W.R.Dig. 170 345
Tiessen *v.* **Henderson** [1899] 1 Ch. 861; 68 L.J.Ch. 353; 80 L.T. 489; 47 W.R. 459; 6 Mans. 340 . . . . . 147, 437
Tilson *v.* **Warwick Gas Light Co.** (1825) 4 B. & C. 962; 7 Dowl. & Ryl. 376; 4 L.J.(O.S.)K.B. 53 29
Tilt Cove Copper Co., *Re*, Trustees, etc., Insurance Corporation *v.* **The Company** [1913] 2 Ch. 588; 82 L.J.Ch. 545; 109 L.T. 138; 57 S.J. 773 . . . 315
"Titian" S.S. Co., *Re* (1888) 58 L.T. 178; 36 W.R. 347 432
Tomkinson *v.* **S.E. Ry.** (1887) 35 Ch.D. 675; 56 L.J.Ch. 982; 56 L.T. 812; 35 W.R. 758 . . . . . 51, 445
Tomlin's Case, Brinsmead (T. E.) & Sons, *Re* [1898] 1 Ch. 104; 67 L.J.Ch. 11; 77 L.T. 521; 46 W.R. 171; 4 Mans. 384; 14 T.L.R. 58 345
Torbock *v.* **Westbury (Lord)** [1902] 2 Ch. 871; 71 L.J.Ch. 845; 87 L.T. 165; 51 W.R. 133 146
Tothill's Case, Llanharry Hematite Iron Co., *Re* (1865) L.R. 1 Ch.App. 85; 35 L.J.Ch. 120; 13 L.T. 485; 14 W.R. 153; 11 Jur.(N.S.) 1009 283
Totterdell *v.* **Fareham Blue Brick and Tile Co.** (1866) L.R. 1 C.P. 674; 35 L.J. C.P. 278; 14 W.R. 919; 12 Jur.(N.S.) 901 181

Touche *v.* Metropolitan Railway Warehousing Co. (1871) L.R. 6 Ch.App. 671; 20 W.R.Ch.Dig. 99 395
Tovarishestvo Manufacture Lindvig-Rabenek, *Re* [1944] Ch. 404; 113 L.J.Ch. 250; 171 L.T. 66; 60 T.L.R. 467 450
Towers *v.* African Tug Co. [1904] 1 Ch. 558; 73 L.J.Ch. 395; 90 L.T. 298; 52 W.R. 532; 20 T.L.R. 292; 11 Mans. 198 (C.A.) 204
Transport *v.* Schonberg (1905) 21 T.L.R. 305 174
Transvaal Exploring Co. *v.* Albion (Transvaal) Gold Mines [1899] 2 Ch. 370; 68 L.J.Ch. 670; 48 W.R. 108; 7 Mans. 51 100
Transvaal Lands Co. *v.* New Belgium (Transvaal) Land and Development Co. [1914] 2 Ch. 488; 84 L.J.Ch. 94; 112 L.T. 965; 31 T.L.R. 1 176
Transvaal United Trust and Finance Co., *Re*. *See* Empire Builders, Ltd., *Re*.
Tredegar Iron and Coal Co., Ltd., *Re*. *See* Brown (John), Ltd., *Re*.
Trench Tubeless Tyre Co., Bethell *v.* Trench Tubeless Tyre Co., *Re* [1900] 1 Ch. 408; 69 L.J.Ch. 218; 82 L.T. 247; 48 W.R. 310; 16 T.L.R. 207 (C.A.) 156
Trenchard *v.* Wood Green and Hornsey Steam Laundry. *See* Wood Green, etc., Laundry, *Re*.
Trevor *v.* Whitworth (1887) L.R. 12 App.Cas. 409; 57 L.J.Ch. 28; 57 L.T. 457; 36 W.R. 145; 3 T.L.R. 745 . . . . 26, 49, 51, 74, 75, 95, 106, 200, 363
Trickett's Claim. *See* Romford Canal Co., *Re*.
Tritonia, Ltd. *v.* Equity and Law Life Aromana Society [1943] A.C. 584; 112 L.J.P.C. 33; 169 L.T. 306; 60 T.L.R. 3 41
Trueman's Estate, *Re* (1872) L.R. 14 Eq. 278 423
Truman's Case, Brewery Assets Corporation, *Re* [1894] 3 Ch. 272; 63 L.J.Ch. 635; 71 L.T. 328; 43 W.R. 73; 1 Mans. 359; 8 R. 508 . . . . 83, 94, 223
Truman, Hanbury, Buxton & Co., *Re* [1910] 2 Ch. 498; 79 L.J.Ch. 740; 103 L.T. 553 79
Truro Corporation *v.* Rowe [1901] 1 K.B. 875 449
Tufnell and Ponsonby's Case. *See* Nicol's Case.
Turner, *Re*, Barker *v.* Ivimey [1897] 1 Ch. 536; 66 L.J.Ch. 282; 76 L.T. 116; 45 W.R. 495; 13 T.L.R. 249 193
Turner *v.* Goldsmith [1891] 1 Q.B. 544; 60 L.J.Q.B. 247; 64 L.T. 301; 39 W.R. 547; 7 T.L.R. 233 253
Turner (Thomas), (Leicester), Ltd. *v.* Rickman (Surveyor of Taxes) (1898) 4 Tax Cas. (Part I) 25 451
Turquand *v.* Marshall (1869) L.R. 4 Ch.App. 376; 38 L.J.Ch. 639; 20 L.T. 766; 17 W.R. 935 . . . . . 187, 188, 189
Tussaud *v.* Tussaud (1890) 44 Ch.D. 678; 59 L.J.Ch. 631; 62 L.T. 633; 38 W.R. 503; 2 Meg. 120; 6 T.L.R. 272 19
Tussaud (Madame) & Sons, Ltd., *Re*. *See* Madame Tussaud & Sons, Ltd., *Re*.
Tweddle (John) & Co., *Re* [1910] 2 K.B. 697; 80 L.J.K.B 20; 103 L.T. 257; 26 T.L.R. 583 414
Twycross *v.* Grant (1877) 2 C.P.D. 469; 46 L.J.C.P. 636; 36 L.T. 812; 25 W.R. 701 . . . . . 322, 351
Tyne Mutual Steamship Insurance Association *v.* Brown (1896) 74 L.T. 283; 44 W.R.Dig. 31 . . . . . 84, 174

Umney *v.* Fireproof Doors, Ltd. *See* Fireproof Doors, Ltd., *Re*.
Underwood (A. L.), Ltd. *v.* Bank of Liverpool [1924] 1 K.B. 775, at pp. 785–7 . 34
Underwood *v.* London Music Hall, Ltd. [1901] 2 Ch. 309; 70 L.J.Ch. 743; 84 L.T. 759; 49 W.R. 507; 17 T.L.R. 517; 8 Mans. 396 . . . . 65, 70, 72
Union Bank of Kingston-upon-Hull, *Re* (1880) 13 Ch.D. 808; 49 L.J.Ch. 264; 42 L.T. 390; 28 W.R. 808 436
Union Bank of Manchester, *Ex p.* Jackson, *re* (1871) L.R. 12 Eq. 354; 40 L.J.Bk. 57; 24 L.T. 951; 19 W.R. 872 12
Union Hill Silver Co., *Re* (1870) 22 L.T. 400; 18 W.R.Ch.Dig. 68, 69, 73 . . . 221
United British Assurance Co., *Re* [1929] 2 Ch. 430; 98 L.J.Ch. 444; 142 L.T. 12, 13 371
United Club and Hotel Co., *Re* (1889) 60 L.T. 665; 37 W.R.Dig. 45; 1 Meg. 186 380
United Ordnance and Engineering Co., *Ex p.* *See* Hooley, *Re*.
United Provident Assurance Co., *Re* [1910] 2 Ch. 477; 79 L.J.Ch. 639; 103 L.T. 531 441
United Service Co., *Re*, Johnston's Claim (1870–1) L.R. 6 Ch.App. 212; 40 L.J. Ch. 286; 24 L.T. 115; 19 W.R. 457 57
Universal Banking Corporation, *Re*. *See* Gunn's Case.
Universal Banking Co., *Re*. *See* Rogers' Case.
Universal Life Assurance Co., *Ex p.* *See* Northern Assam Tea Co., *Re*.
Universal Non-Tariff Fire Insurance Co., *Re*. *See* Ritso's Case.
Urmston Grange Steamship Co., *Re* (1901) 17 T.L.R. 553 429
Uruguay Central and Hygueritas Ry. of Monte Video, *Re* (1879) 11 Ch.D. 372; 48 L.J.Ch. 540; 27 W.R. 571 . . . . . 319, 381
Usher's Wiltshire Brewery, Ltd. *v.* Bruce (Surveyor of Taxes) [1915] A.C. 433; 84 L.J.K.B. 417; 112 L.T. 651; 31 T.L.R. 104; 6 Tax Cas. 399 445

VACHELL, Wakley *v.* *See* Wakley, *Re.*
Vale of Neath and South Wales Brewery Joint Stock Co., *Re.* *See* Lawes's Case.
Valletort Sanitary Steam Laundry, *Re*, Ward *v.* The Company [1903] 2 Ch. 654; 72 L.J.Ch. 674; 89 L.T. 60; 52 W.R.Dig. 20; 19 T.L.R. 593 309
Van den Hurk *v.* Martens (R.) & Co. [1920] 1 K.B. 850; 89 L.J.K.B. 545; 123 L.T. 110; 25 Com. Cas. 170 407
Vance *v.* East Lancashire Ry. (1856) 3 K. & J. 50 49
Varieties, Ltd., *Re* [1893] 2 Ch. 235; 62 L.J.Ch. 526; 68 L.T. 214; 41 W.R. 296; 3 R. 324; 9 T.L.R. 259 . . . . . 382, 434
Venables *v.* Baring Brothers & Co. [1892] 3 Ch. 527; 61 L.J.Ch. 609; 67 L.T. 110; 40 W.R. 699 . . . . . 294, 295
Venners Electrical Cooking and Heating Appliances *v.* Thorpe [1915] 2 Ch. 404; 84 L.J.Ch. 925; 113 L.T. 1137; 60 S.J. 27 405
Verner *v.* General and Commercial Investment Trust [1894] 2 Ch 239; 63 L.J.Ch. 456; 70 L.T. 516; 38 S.J. 384; 7 R. 170; 1 Mans. 136; 10 T.L.R. 393 . . . . . 200, 201, 203
Vernon Heaton Co., Ltd., *Re* [1936] Ch. 289; 105 L.J.Ch. 115; [1936] W.N. 10; 52 T.L.R. 156; 154 L.T. 374; [1934–5] B. & C.R. 305 376
V.M.G. Holdings, *Re* [1942] Ch. 235; 111 L.J.Ch. 145; 58 T.L.R. 131 . . 52
Vic Mill, Ltd., *Re* [1913] 1 Ch. 465; 82 L.J.Ch. 251; 108 L.T. 444; 57 S.J. 404 396
Victor Battery Co., Ltd. *v.* Curry's Ltd. [1946] Ch. 242; 115 L.J.K.B. 148 . 52
Victoria Brickworks, *Re*, Seaton's Case [1898] W.N. 162; 5 Mans. 350 . . 100
Victoria Society, Knottingley, *Re* [1913] 1 Ch 167; 82 L.J.Ch. 176; 107 L.T. 755; 29 T.L.R. 94 377
Victoria Steamboats Co., *Re* Smith *v.* Wilkinson [1897] 1 Ch. 158; 66 L.J.Ch. 21; 75 L.T. 374; 45 W.R. 135 315
Victors, Ltd. *v.* Lingard [1927] 1 Ch. 323; 96 L.J Ch. 132; 136 L.T. 476; 70 S.J. 1197 178
Vigers *v.* Dean of St. Paul's (1849) 18 L.J.Q.B. 97 449
Ving *v.* Robertson and Woodcock, Ltd. (1912) 56 S.J. 412 229
Viola *v.* Anglo-American Cold Storage Co. [1912] 2 Ch. 305; 81 L.J.Ch. 581; 107 L.T. 118; 19 Mans. 287 . . . . . 313, 316
Vivian (H.H.) & Co., *Re* Metropolitan Bank of England and Wales *v.* The Company [1900] 2 Ch. 654; 69 L.J.Ch. 659; 82 L.T. 674; 48 W.R. 636; 7 Mans. 470 49
Vocalion (Foreign), Ltd. [1932] 2 Ch. 196 405
Vron Colliery Co., *Re* (1882) 20 Ch.D. 442; 51 L.J.Ch. 389; 30 W.R. 388 . 380, 405
Vulcan Ironworks Co., *Re* [1885] W.N. 120 124
Vulcan Motor and Engineering Co. (1906), Ltd. *v.* Hampson [1921] 3 K.B. 597; 90 L.J.K.B. 1366; 125 L.T. 717 208

WAINWRIGHT, *Ex p.* Metropolitan Coal Consumers' Association, *Re* (1890) 63 L.T. 429; 6 T.L.R. 413 346
Wakefield *v.* Whiteaway, Laidlaw & Co. [1922] 1 Ch. 200; 90 L.J.Ch. 521; 127 L.T. 120; 37 T.L.R. 569 452
Wakefield Rolling Stock Co., *Re* [1892] 3 Ch. 165; 61 L.J.Ch. 670; 67 L.T. 83; 40 W.R. 700; 8 T.L.R. 660 . . . . . 129, 395
Wakley, *Re* Wakley *v.* Vachell [1920] 2 Ch. 205; 89 L.J.Ch. 321; 123 L.T. 150; 36 T.L.R. 325; 64 S.J. 357 205
Wala Wynaad Indian Gold Mining Co., *Re* (1882) 21 Ch.D. 849; 52 L.J.Ch. 86; 47 L.T. 128; 30 W.R. 915 382
Walker *v.* Banagher Distillery Co. (1875) 1 Q.B.D. 129 430
—— *v.* Remmett (1846) 15 L.J.C.P. 174; 2 C.B. 850; 10 Jur. 380 329
Walker and Smith, Ltd., *Re* [1903] W.N. 82; 72 L.J.Ch. 572; 88 L.T. 792; 51 W.R. 491; 19 T.L.R. 429 79
Walker's Settlement, *Re* [1935] Ch. 567; 104 L.J.Ch. 274; [1935] W.N. 54; 51 T.L.R. 389; 153 L.T. 66 443
Wall *v.* Exchange Investment Corporation [1926] Ch. 143; 95 L.J.Ch. 132; 134 L.T. 399 149
—— *v.* London and Northern Assets Corporation (No. 1) [1898] 2 Ch. 469; 67 L.J.Ch. 596; 79 L.T. 249; 47 W.R. 219; 14 T.L.R. 496, 547 . 150, 151, 155
—— *v.* —— (No. 2) [1899] 1 Ch. 550; 68 L.J.Ch. 248; 80 L.T. 70; 47 W.R.Dig. 35; 6 Mans. 312. 149
—— *v.* London and Provincial Trust [1920] 2 Ch. 582; 90 L.J.Ch. 43; 125 L.T. 57; 36 T.L.R. 729; 64 S.J. 635 202
Wallace's Case (1883). *See* Scottish Petroleum Co., *Re.*
Wallace's Case, Metropolitan Fire Insurance Co., *Re* [1900] 2 Ch. 671; 69 L.J.Ch. 777; 83 L.T. 403; 49 W.R.Dig. 38; 16 T.L.R. 513 . . . . 83, 89
Wallace *v.* Evershed [1899] 1 Ch. 891; 68 L.J.Ch. 415; 80 L.T. 523; 47 W.R.Dig. 133; 6 Mans. 351 319
—— *v.* Universal Automatic Machines Co. [1894] 2 Ch. 547; 63 L.J.Ch. 598; 70 L.T. 852; 1 Mans. 315; 7 R. 316; 10 T.L.R. 501 (C.A.) 284, 315

Waller *v.* **Loch** (1881) 7 Q.B.D. 619; 51 L.J.Q.B. 274; 45 L.T. 242; 30 W.R. 18; 46 J.P. 484 155
Wallingford *v.* **Mutual Society** (Directors of) (1880) L.R. 5 App.Cas. 685; 50 L.J.Q.B. 49; 43 L.T. 258; 29 W.R. 81 283
Wallis' Case, Peruvian Ry., *Re* (1868) 18 L.T. 676; on appeal (1868) L.R. 4 Ch.App. 325, n. 89, 90
Wallscourt's (Lord) Case, Companies Guardian Society, *Re* [1899] W.N. 258; 7 Mans. 235 130
Walsh *v.* **Bardsley** (1931) 47 T.L.R. 564 197
Walter Symons, Ltd., *Re* [1934] 1 Ch. 308 . . . . . 66, 197
Walters' Deed of Guarantee, *Re* [1933] Ch. 321; [1933] W.N. 29; 49 T.L.R. 192; 102 L.J.Ch. 149; 148 L.T. 473 204
Walters (Stephen) & Sons, Ltd. [1926] W.N. 236 80
Wandsworth and Putney Gaslight and Coke Co. *v.* **Wright** (1870) 22 L.T. 404; 18 W.R. 728 . . . . . 149, 152
Ward *v.* **Alpha Co., Alpha Co.,** *Re* [1903] 1 Ch. 203; 72 L.J.Ch. 91; 87 L.T. 646; 51 W.R. 201; 10 Mans. 237 320
Ward *v.* **British Oak Insurance Co.** [1932] 1 K.B. 392 406
—— *v.* **Dublin North City Milling Co.** [1919] 1 Ir.R. 5 205
—— *v.* **Royal Exchange Shipping Co., Harrison,** *Ex p.* (1887) 58 L.T. 174; 36 W.R.Dig. 36; 6 Asp.M.C. 239 300
—— *v.* **Valletort Sanitary Steam Laundry.** *See* **Valletort Sanitary Steam Laundry,** *Re.*
Ward's Will Trusts, *Re* [1936] Ch. 704; 105 L.J.Ch. 315; [1936] W.N. 193; 155 L.T. 346; 52 T.L.R. 605 207
Warden & Hotchkiss, Ltd., *Re* [1945] Ch. 270; 114 L.J.Ch. 342; 172 L.T. 102, 386; 61 T.L.R. 296 221
Ware *v.* **Egmont (Lord)** (1854) 24 L.J.Ch. 361; 4 De G.M. & G. 460; 3 Eq.Reps. 1; 24 L.T. (o.s.) 195; 3 W.R. 48; 1 Jur. (N.S.) 97 223
Warner Engineering Co. *v.* **Brennan** (1913) 30 T.L.R. 191 328
Warner International and Overseas Engineering Co., Ltd. *v.* **Kilburn, Brown & Co.** [1914] W.N. 61; 84 L.J.K.B. 365; 110 L.T. 456; 30 T.L.R. 284 (C.A.) 328
Warrant Finance Co.'s Case. *See* **Humber Ironworks and Shipbuilding Co.,** *Re* . 395
Washington Diamond Mining Co., *Re* [1893] 3 Ch. 95; 62 L.J.Ch. 895; 69 L.T. 27; 41 W.R. 681; 2 R. 523; 9 T.L.R. 509 . . . . . 129, 409
Waterhouse *v.* **L. & S.W. Ry.** *See* **Coates** *v.* **Same.**
Waterproof Materials Co., *Re* [1893] W.N. 18; 37 S.J. 231 435
Waters *v.* **Taylor** (*Re* Taylor) [1926] Ch. 923; 96 L.J.Ch. 17; 137 L.T. 17 . . 206
Watkins, *Re.* *See* **Evans,** *Ex p.*
Watson & Co. *v.* **Spiral Globe, Ltd., Spiral Globe, Ltd (No. 2),** *Re* [1902] 2 Ch. 209; 71 L.J.Ch. 538; 86 L.T. 499; 18 T.L.R. 532 267
Watson, *Ex p.* *See* **Argyll Coal and Cannell Co.,** *Re.*
Watson *v.* **Eales** (1856) 26 L.J.Ch. 361; 23 Beav. 294; 28 L.T. (o.s.) 243; 5 W.R.Ch.Dig. 52, 81; 3 Jur. (N.S.) 53 130
Watts *v.* **Bucknall** [1903] 1 Ch. 766; 72 L.J.Ch. 447; 88 L.T. 845; 51 W.R. 433; 19 T.L.R. 320; 10 Mans. 176 351
Wear Engine Works Co., *Re* (1875) L.R. 10 Ch.App. 188; 44 L.J.Ch. 256; 32 L.T. 314; 23 W.R. 735 383
Webb *v.* **Earle** (1875) L.R. 20 Eq. 556; 44 L.J.Ch. 608; 24 W.R. 46 . . 65, 199
—— *v.* **Whiffin** (1872) L.R. 5 H.L. 711; 42 L.J.Ch. 161 393
Webb, Hale & Co. *v.* **Alexandria Water Co.** (1905) 93 L.T. 339; 54 W.R.Dig. 80; 21 T.L.R. 572 120
Webb (H. J.) & Co. (Smithfield, London), Ltd., *Re* [1922] 2 Ch. 369; 91 L.J.Ch. 741; 127 L.T. 373; 38 T.L.R. 579; 66 S.J. 438; affirmed on appeal, *sub nom.* **Food Controller** *v.* **Cork** (*see* that heading) 398
Wedgwood Coal and Iron Co., *Re.* *See* **Anderson's Case.**
Weeks *v.* **Propert** (1873) L.R. 8 C.P. 427; 42 L.J.C.P. 129; 21 W.R. 676 . 173, 263
Weikersheim's Case, Land Credit Co. of Ireland, *Re* (1873) L.R. 8 Ch.App. 881; 42 L.J.Ch. 435; 28 L.T. 653; 21 W.R. 612 102
Weiss, Biheller & Brooks, Ltd. *v.* **Farmer** [1923] 1 K.B. 226; 92 L.J.K.B. 179; 128 L.T. 471; 39 T.L.R. 118 451
Weld *v.* **Petre** [1929] 1 Ch. 33; 97 L.J.Ch. 399; 139 L.T. 596; 44 T.L.R. 457, 739; 72 S.J. 569 115
Wells, *Re* **Swinburne-Hanham** *v.* **Howard** [1933] Ch. 29; 101 L.J.Ch. 346; [1932] W.N. 193; 148 L.T. 5; 48 T.L.R. 687 415
Welsbach Incandescent Gas Light Co., *Re* [1904] 1 Ch. 87; 73 L.J.Ch. 104; 89 L.T. 645; 52 W.R. 327; 20 T.L.R. 122; 11 Mans. 47 . . . . 65, 72, 77
Welsh Flannel and Tweed Co., *Re* (1875) L.R. 20 Eq. 360; 44 L.J.Ch. 391; 32 L.T. 361; 23 W.R. 558 128
Welton *v.* **Saffery** [1897] A.C. 299; 66 L.J.Ch. 362; 76 L.T. 505; 45 W.R. 508; 13 T.L.R. 340; 4 Mans. 269 . . . . . 26, 28, 52, 394, 492

Wenborn & Co., *Re* [1905] 1 Ch. 418; 74 L.J.Ch. 283; 92 L.T. 228; 53 W.R. 332; 21 T.L.R. 229; 12 Mans. 45 407
Wenlock (Baroness) *v.* River Dee Co. (No. 1) (1885) L.R. 10 App.Cas. 354; 54 L.J.Q.B. 577; 53 L.T. 62; 33 W.R.Dig. 228; 49 J.P. 773; 1 T.L.R. 477 258, 262
—— *v.* ——(No. 2) (1887) 19 Q.B.D. 155; 56 L.J.Q.B. 569; 57 L.T. 320; 35 W.R. 822; 3 T.L.R. 603 . . . . . 3, 258
West, *Ex p.* *See* Mount Morgan (West) Gold Mine Co., *Re*.
West's Case. *See* International Life Assurance Society, *Re*.
West African Telegraph Co., *Re* Vivian (H. H.) & Co., Ltd. and Reduced, 55 L.J.Ch. 436; [1886] W.N. 32; 54 L.T. 384; 34 W.R. 411; 2 T.L.R. 334 76
West Coast Goldfields, *Re* Rowe's Trustees' Claim [1906] 1 Ch. 1; 75 L.J.Ch. 23; 93 L.T. 609; 54 W.R. 116; 12 Mans. 414; 22 T.L.R. 39 . . . 128, 395
West Devon Mine, *Re* [1884] W.N. 139; 32 W.R. 890 385
West End Hotels Syndicate *v.* Bayer (1912) 29 T.L.R. 92 230
West Hartlepool Ironworks Co., *Re* (1875) L.R. 10 Ch.App. 618; 44 L.J.Ch. 668; 33 L.T. 149; 13 W.R. 938 . . . . . 380, 407
West London Commercial Bank *v.* Kitson (1884) 13 Q.B.D. 360; 53 L.J.Q.B. 345; 50 L.T. 656; 32 W.R. 757 263
West of England Bank, *Re* Budden and Roberts, *ex p.* (1879) 12 Ch.D. 288; 48 L.J.Ch. 764; 41 L.T. 179; 27 W.R. 906 119
West Yorkshire Darracq Agency *v.* Coleridge [1911] 2 K.B. 326; 80 L.J.K.B. 1122; 105 L.T. 215; 18 Mans. 307 167
Westbury *v.* Twigg & Co. [1892] 1 Q.B. 77; 61 L.J.Q.B. 32; 66 L.T. 225; 40 W.R. 208 . . . . . 430, 432
Western and Brazilian Telegraph Co. *v.* Bibby [1880] W.N. 145; 42 L.T. 821; 28 W.R.Dig. 48 407
Western Counties Steam Bakeries and Milling Co., *Re* Parson's and Robjent's Case [1897] 1 Ch. 617; 66 L.J.Ch. 354; 76 L.T. 239; 45 W.R. 418; 13 T.L.R. 276 . . . . . 218, 411
Western of Canada Oil, Lands and Works Co., *Re* (1873) L.R. 17 Eq. 1; 43 L.J.Ch. 184; 22 W.R. 44 . . . . . 319, 380, 385
Western of Canada Oil, Lands, etc., Co., *Re*. *See* Carling, Hespeler and Walsh's Cases 407
Westminster Corporation and United Travellers' Club *v.* Chapman [1916] 1 Ch. 161; 85 L.J.Ch. 334; 114 L.T. 63; 80 J.P. 74; (1916) 2 H.B.R. 12 . 317, 401
Westminster Garage Co., *Re*, Boyers *v.* The Company (1914) 84 L.J.Ch. 753; 112 L.T. 393 317
Westmoreland Green and Blue Slate Co. *v.* Feilden [1891] 3 Ch. 15; 60 L.J.Ch. 680; 65 L.T. 428; 40 W.R. 23; 7 T.L.R. 585 393
Weston's Case, Smith, Knight & Co., *Re* (1868) L.R. 4 Ch.App. 20; 38 L.J.Ch. 49; 19 L.T. 337; 17 W.R. 62 . . . . . 108, 111, 492
Whaley Bridge Calico Printing Co. *v.* Green and Smith (1879) 5 Q.B.D. 109; 49 L.J.Q.B. 326; 41 L.T. 674; 28 W.R. 351 . . . . . 177, 323
Wheatcroft's Case, Matlock Old Bath Hydropathic Co., *Re* (1873) 42 L.J.Ch. 853; 29 L.T. 324 . . . . . 92, 107, 251
Wheatley *v.* Silkstone and High Moor Coal Co (1885) 29 Ch D. 715; 54 L.J.Ch. 778; 52 L.T. 798; 33 W.R. 797 . . . . . 296, 299
Wheeler (M) & Co. *v.* Warren [1928] Ch. 840; 97 L.J.Ch. 486; 139 L.T. 543; 44 T.L.R. 693 236
Whinney, *Ex p.*, David and Adlard, *Re* [1914] 2 K.B. 694; 83 L.J.K.B. 1173; 110 L.T. 942; 21 Mans. 148; 58 S.J. 340; 30 T.L.R. 366 410
——, *Ex p.* *See* Sanders, *Re*.
White Pass and Yukon Ry., *Re* [1918] W.N. 323; 63 S.J. 55 441
White's Case, Government Security Fire Insurance Co., *Re* (1879) 12 Ch.D. 511; 48 L.J.Ch. 820; 41 L.T. 333; 27 W.R. 895 100
White *v.* Land and Water Co. [1883] W.N. 174 222
—— *v.* Lincoln (1803) 8 Ves. 363 209
Whitechurch (George), Ltd. *v.* Cavanagh [1902] A.C. 117; 71 L.J.K.B. 400; 85 L.T. 349; 50 W.R. 218; 17 T.L.R. 746; 9 Mans. 351 . . . . . 118, 267
Whitefriars Financial Co., *Re*, Reeves & Son, *Re* [1899] 1 Ch. 184; 68 L.J.Ch. 79; 79 L.T. 546; 47 W.R.Dig. 25; 6 Mans. 72 100
Whitehall Court, *Re* (1887) 56 L.T. 280; 35 W.R.Dig. 42; 3 T.L.R. 402 . . 167
Whitehead & Bros., *Re* [1900] 1 Ch. 804; 69 L.J.Ch. 607; 82 L.T. 670; 48 W.R. 585 100
Whitehouse, *Ex p.* *See* General Horticultural Co., *Re*.
White Star Line, *Re* [1938] Ch. 458; 54 T.L.R. 473; 158 L.T. 315; 107 L.J.Ch. 225 97
Whitfield, *Re* [1920] W.N. 256 207
—— *v.* S. E. Ry. (1858) 27 L.J.Q.B. 229; E.B. & E. 115; 31 L.T. (o.s.) 118; 6 W.R. 545; 4 Jur. (N.S.) 688 56
Whitley Partners, *Re*, Callan's Case (1886) 32 Ch.D. 337; 55 L.J.Ch. 540; 54 L.T. 912; 34 W.R. 505; 2 T.L.R. 541 90
Whitmore *v.* Inland Revenue Commrs. (1925) 10 Tax Cas. 645 453
Whittaker, *Ex p.* *See* Parrott, *Re*.

Whittaker *v.* **Kershaw, Kershaw,** *Re* (1890) 45 Ch.D. 320; 60 L.J.Ch. 9; 63 L.T. 203; 39 W.R. 22 126
Whitwham *v.* **Piercy.** *See* **Piercy,** *Re.*
Whitwood Chemical Co. *v.* **Hardman** [1891] 2 Ch. 416; 60 L.J.Ch. 428; 64 L.T. 716; 39 W.R. 433; 7 T.L.R. 325 252
Whitworth's Claim. *See* **Bank of Syria,** *Re.*
Wigfield *v.* **Potter** (1881) 45 L.T. 612; 30 W.R.Dig. 40; 46 J.P. 485 . . . 374
Wilcox & Co., *Re*, **Hilder** *v.* **The Company** [1903] W.N 64 320
Wilkins (H.) and Elkington, Ltd. *v.* **Milton** (1916) 32 T.L.R. 618 278
Wilkinson Sword Co., Ltd., *Re* [1913] W.N. 27; 29 T.L.R. 242; 57 S.J. 340 . 96, 99
Will *v.* **United Lankat Plantations Co., Ltd.** [1914] A.C. 11 (H.L. (E.)); 83 L.J.Ch. 195; 109 L.T. 754; 30 T.L.R. 37; 58 S.J. 29; 21 Mans. 24 . . 66, 67
Williams *v.* **Colonial Bank** (1888) 38 Ch.D. 388; 57 L.J.Ch. 826; 59 L.T. 643; 36 W.R. 625; 4 T.L.R. 497 125
—— *v.* **Hopkins, Hopkins,** *Re* (1881) 18 Ch.D. 370; 45 L.T. 117; 29 W.R. 767 . 402
Willmott *v.* **London Celluloid Co.** (1886) 34 Ch.D. 147; 56 L.J.Ch. 89; 55 L.T 696; 35 W.R. 145; 3 T.L.R. 121 409
Wills *v.* **Murray** (1850) 4 Ex.Reps. 843; 19 L.J.Exch. 209 . . . . . 146, 156
Wilmer *v.* **McNamara & Co.** [1895] 2 Ch. 245; 64 L.J.Ch. 516; 72 L.T. 552; 43 W.R. 519; 13 R. 513; 11 T.L.R. 371 200
Wilson, *Ex p.* (1872) 8 Ch.App. 45; 42 L.J.Ch. 81; 27 L.T. 597; 21 W.R. 46 . . 191
Wilson *v.* **Brett** (1843) 12 L.J.Ex. 264; 11 M. & W. 113 188
—— *v.* **Kelland** [1910] 2 Ch. 306; 79 L.J.Ch. 580; 103 L.T. 17; 26 T.L.R. 485; 54 S.J. 542; 17 Mans. 233 . . . . . 298, 300
—— *v.* **London, Midland and Scottish Ry.** [1940] Ch. 393 . . . . . 154, 178
—— *v.* **West Hartlepool Ry.** (1865) 2 De G.J. & S. 475; 34 L.J.Ch. 241; 11 L.T. 692; 13 W.R. 361; 11 Jur. (N.S.) 124 . . . . . 57, 246
Wiltshire Iron Co., *Re*, **Pearson,** *ex p.* (1868) L.R. 3 Ch.App. 443; 37 L.J.Ch. 554; 18 L.T. 38; 16 W.R. 682 194
Wimbledon Olympia, Ltd., *Re* [1910] 1 Ch. 630; 79 L.J.Ch. 481; 102 L.T. 425; 17 Mans. 220 343
Wimbush, *Re* [1940] Ch. 92; 56 T.L.R. 151; 162 L.T. 133; 109 L.J.Ch. 71 . . 205
Windermere District Gas and Water Co. *v.* **Whitehead** [1931] 1 Ch. 558; 100 L.J. Ch. 147; 144 L.T. 636; [1929–30] B. & C.R. 276 66
Windsor Steam Coal Co. (1901), Ltd., *Re* [1929] 1 Ch 151; 140 L.T. at p. 81 390, 424, 431
Winget, *Re*, **Burn** *v.* **The Company** [1924] 1 Ch. 550; 40 T.L.R. 488; 68 S.J. 499 400
Winterbottom, *Re*, **Winterbottom,** *ex p.* (1886) 18 Q.B.D. 446; 56 L.J.Q.B. 238; 56 L.T. 168; 35 W.R.Dig. 18; 4 Morr. 5 128
Wise *v.* **Lansdell** [1921] 1 Ch. 420; 90 L.J.Ch. 178; 124 L.T. 502; 37 T.L.R. 167; [1920] B. & C.R. 145 . . . . . 119, 150
Withernsea Brick Works, *Re* (1880) 16 Ch.D. 337; 50 L.J.Ch. 185; 43 L.T. 713; 29 W.R. 178 402
Wood *v.* **Connolly Bros.** *See* **Connolly Bros., Ltd. (No. 2),** *Re.*
—— *v.* **Odessa Waterworks Co.** (1889) 42 Ch.D. 636; 58 L.J.Ch. 628; 37 W.R. 733; 1 Meg. 265; 5 T.L.R. 596 . . . . . 28, 29, 207
Wood Green and Hornsey Steam Laundry, *Re*, **Trenchard** *v.* **The Company** [1918] 1 Ch. 423; 87 L.J.Ch. 171; 118 L.T. 501; 62 S.J. 349 316
Wood, Skinner & Co., *Re* [1944] Ch. 323; 113 L.J.Ch. 215; 171 L.T. 37; 60 T.L.R. 396 66
Wood's (A. M.) Ships Woodite Protection Co., *Re* (1890) 62 L.T. 760; 2 Meg. 164; 6 T.L.R. 301 129
Wood's Application, *Re* [1941] Ch. 112; 110 L.J.Ch. 73 312
Wood's Case, National Equitable Provident Society, *Re* (1873) L.R. 15 Eq. 236; 42 L.J.Ch. 403; 21 W.R. 645 92
— —, **Sunken Vessels Recovery Co.,** *Re* (1858) 3 De G. & J. 85; 28 L.J.Ch. 899; 2 L.T. 68; 5 Jur. (N.S.) 1377 92
Woods (Bristol), Ltd., *Re* [1931] 2 Ch. 320; [1931] W.N. 159; 100 L.J.Ch. 385; 145 L.T. 444; 47 T.L.R. 464 406
Woods *v.* **Winskill** [1913] 2 Ch. 303; 82 L.J.Ch. 447; 109 L.T. 399; 57 S.J. 740 . 317
Worcester Corsetry, Ltd. *v.* **Witting** [1936] Ch. 640; 105 L.J.Ch. 385 . . . 161
Worthington, *Re.* *See* **Pathé Frères,** *ex p.*
Wragg, Ltd., *Re* [1897] 1 Ch. 796; 66 L.J.Ch. 419; 76 L.T. 397; 45 W.R. 557; 13 T.L.R. 302; 4 Mans. 179 . . . . . 96, 97
Wrexham, Mold and Connah's Quay Ry., *Re* [1899] 1 Ch. 440; 68 L.J.Ch. 270; 80 L.T. 130; 47 W.R. 464; 15 T.L.R. 122, 209; 6 Mans. 218 262
Wright *v.* **Horton** (1887) L.R. 12 App.Cas. 371; 56 L.J.Ch. 873; 56 L.T. 782; 36 W.R. 17; 52 J.P. 179 (H.L. (E.)) 263
Wright's Case, London and Mediterranean Bank, *Re* (1871) L.R. 12 Eq. 335 n. 341 n.; (1871) L.R. 7 Ch.App. 55; 41 L.J Ch. 1; 25 L.T. 471; 20 W.R. 45 . . . . . 155, 345

Wrightson *v.* **McArthur and Hutchinsons (1919), Ltd.** [1921] 2 K.B. 807; 90 L.J.K.B. 842; 125 L.T. 383; 37 T.L.R. 575 269
Wyley *v.* **Exhall Coal Mining Co.** (1864) 33 Beav. 538 406

Xenos *v.* **Wickham** (1866-7) L.R. 2 H.L. 296; 36 L.J.C.P. 313; 16 L.T. 800; 16 W.R. 38 248

Yagerphone, Ltd., *Re* [1935] Ch. 392; [1935] W.N. 21; 51 T.L.R. 226; 104 L.J.Ch. 156; 152 L.T. 555; [1934-5] B. & C.R. 240 409
Yates, Norton *v.* [1905] W.N. 175. *See* Norton *v.* Yates.
Yenidje Tobacco Co., *Re* [1916] 2 Ch. 426; 86 L.J.Ch. 1; 115 L.T. 530; 32 T.L.R. 709; 60 S.J. 674, 707 378
Yeoland Consols, Ltd. (No. 2), *Re* (1888) 58 L.T. 922; 36 W.R.Dig. 33; 1 Meg. 39 94
Yolland, Husson and Birkett, Ltd., *Re*, Leicester *v.* The Company, [1908] 1 Ch. 152; 77 L.J.Ch. 43; 97 L.T. 824; 14 Mans. 346 268
York and North Midland Ry. *v.* **Hudson** (1853) 22 L.J.Ch. 529; 16 Beav. 485; 1 W.R. 187, 510 158
York Tramways Co. *v.* **Willows** (1882) 8 Q.B.D 685; 51 L.J.Q.B. 257; 46 L.T. 296; 30 W.R. 624 . . . . . 84, 160, 161, 174, 228
Yorkshire Fibre Co., *Re* (1870) L.R. 9 Eq. 650; 18 W.R. 541 212
Yorkshire Insurance Co. *v.* **Metropolitan Amalgamated Estates, Ltd.** *See* Metropolitan Amalgamated Estates, *Re*.
Young *v.* **David Payne & Co., Payne (David) & Co.,** *Re* [1904] 2 Ch. 608; 73 L.J.Ch. 849; 91 L.T. 777; 53 W.R.Dig. 23; 20 T.L.R. 590; 11 Mans. 437; 48 S.J. 572 (C.A.) 223
—— *v.* **Ladies' Imperial Club** [1920] 2 K.B. 523; 89 L.J.K.B. 563; 123 L.T. 191; 64 S.J. 374; 36 T.L.R. 392 . . . . . 145, 179
—— *v.* **Naval, Military and Civil Service Co-operative Society of S. Africa** [1905] 1 K.B. 687; 74 L.J.K.B. 302; 92 L.T. 458; 53 W.R. 447; 21 T.L.R. 293; 12 Mans. 212 . . . . . 169, 197
—— *v.* **South African and Australian Exploration and Development Syndicate** [1896] 2 Ch. 268; 65 L.J.Ch. 683; 74 L.T. 527; 44 W.R. 509 . . 146, 149
Ystalyfera Gas Co., *Re* [1887] W.N. 30; 3 T.L.R. 321 106
Yuill *v.* **Greymouth Point Elizabeth Ry.** *See* Greymouth Point Elizabeth Ry., *Re*.

Zoutpansberg Prospecting Co., *Ex p.* *See* Johannesburg Hotel Co., *Re* [1891] 1 Ch. 119.
Zucco, *Re*. *See* Cooper, *Ex p.*

CHAPTER 1

PRELIMINARY

THE following pages treat almost exclusively of companies incorporated under the Companies Acts. Of these the first was the Companies Act, 1862—the Magna Carta of co-operative enterprise. This statute, with others amending and extending it, was re-enacted by the Companies (Consolidation) Act, 1908, which, after various amendments, was repealed and replaced by the Companies Act, 1929. This Act, after being amended in many respects by the Companies Act, 1947,[1] was repealed and the whole consolidated into the Companies Act, 1948.[2] It is, however, necessary to bear in mind that such companies, though incomparably the most numerous and important, form only one of several classes of associations known to the law. Of these associations the principal are—(1) ordinary partnerships; (2) companies incorporated by Royal charter; (3) companies incorporated by special Act of Parliament; (4) unincorporated companies; (5) companies under the Act of 1844; (6) building societies; (7) industrial and provident societies; (8) friendly societies; (9) trade unions; and (10) limited partnerships. It is desirable, therefore, before dealing at large with companies now governed by the Companies Acts, to say a few words as to each of the other kinds of companies or associations above referred to; for it is by comparing and contrasting the principal features of these other forms of co-operative effort with those of companies under the Companies Acts, that the special characteristics of the latter can be best brought into clear relief.

(1) Ordinary Partnerships

In these associations the firm is not a person in law, distinct from the partners who compose the firm. The partners are themselves the firm. They are the joint owners of the partnership property, their shares in the partnership are not transferable, and each of the partners is an agent of the partnership to make contracts, undertake obligations and dispose of partnership property in the ordinary course of the partnership business. Upon all contracts and obligations so incurred the liability of the partners is unlimited. As between themselves, the partners may make what private arrangements they please; but 'as between the partners and the outside world (whatever may be their private arrangements between themselves) each partner is the unlimited agent of every other in every matter connected with the partnership business, or which he represents as partnership business, and not being in its nature beyond the scope of

[1] Generally referred to as 'the Act of 1947'. This Act came into effect partly before its repeal, but mainly on July 1, 1948, immediately before its repeal by the Act of 1948.

[2] Referred to in these pages as 'the Act of 1948', or sometimes as 'the Act'.

the partnership. A partner who may not have a farthing of capital left may take moneys or assets of this partnership to the value of millions, may bind the partnership by contracts to any amount, may give the partnership acceptances for any amount, and may even, as has been shown in many painful instances in this court, involve his innocent partners in unlimited amounts for frauds which he has craftily concealed from them '.[3] This very serious liability as regards an ordinary partnership strikingly differentiates such an association from a statutory partnership, like a limited company. Partnership law is to a large extent codified in the Partnership Act, 1890

As to ' limited partnerships ', see *post*, p. 7.

(2) Companies Incorporated by Royal Charter

A charter of incorporation can only be granted by the Crown; for the constitution of corporations is one of the prerogatives vested in the Crown by the common law. This power is now supplemented by the Chartered Companies Act, 1837; and see **s. 435 (3)** of the Act of 1948 Instances in which the Crown has exercised the power are: The Russia Company, incorporated by Queen Elizabeth, 1555; The East India Company, incorporated by the same Queen, December 31, 1600; The Bank of England, incorporated in 1674; The London Assurance Corporation, 1720; The British South Africa Company, 1889.

A charter of incorporation usually runs as follows.—

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

It is a peculiarity of a chartered corporation that its members are under no liability for the debts of the corporation, the Crown having no power at common law to attach liability to the individual members of the corporation. ' The debts of a corporation, either to or from it, are totally extinguished by its dissolution; so that the members thereof cannot recover, or be charged with them, in their natural capacities '.[4]

By the statute above mentioned, the Chartered Companies Act, 1837, power was conferred upon the Crown to confer privileges upon associations not incorporated by Royal charter and to provide that the individual members shall be liable to a specified extent in respect of their shares for the liabilities of the association. A considerable number of banks and other concerns have from time to time been formed under this Act

[3] *Per* Lord Justice James, *Baird's Case* (1870) L.R. 5 Ch.App. 725 at p. 733.
[4] 1 Blackst.Comm. 484.

with a liability attached to the shares in the capital, and sometimes with an additional liability of the like or double the amount in the event of a winding up. There is a difference of a fundamental character between a chartered company and a company formed under a special Act or registered under the Companies Acts, and it is this: at common law a corporation created by the king's charter has power, as was determined in the *Sutton's Hospital Case*,[5] to deal with its property, to bind itself by contracts, and to do all such acts as *an ordinary person* can do, and so complete is this corporate autonomy that it is unaffected even by a direction contained in the creating charter in limitation of the corporate powers. For the common law has always held that such a direction of the Crown—though it may give the Crown a right to annul the charter if the direction is disregarded—cannot derogate from that plenary capacity with which the common law endows the company, even though the limitation is an essential part of the so-called bargain between the Crown and the corporation.[6] This feature—the unrestricted corporate capacity of the chartered company—is in marked contrast to the strict delimitation by the Legislature and the courts of the statutory or registered company to its defined objects.

The power to incorporate by charter has always been sparingly exercised by the Crown, and the delay and expense in the proceedings for obtaining a charter—concurring with the reluctance of the Crown to grant—has, for many years past, made a charter a very exceptional mode of incorporation

(3) Companies incorporated by special Act of Parliament

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

It was very soon discovered that the best organisation for the construction of these large undertakings was a company incorporated by special Act of Parliament. One of the earliest of these Acts was the Trent Navigation Act, 1766 A considerable number of canal companies were so constituted, but it was not until the great movement set in for the construction of railways—inaugurated by the Stockton and Darlington Act of 1821—that companies constituted under special Acts began to multiply. Since then, great numbers of companies have been so constituted, and in particular in relation to railway, dock, water, gas, electric, and tramway undertakings. In the case of most of these companies, the scheme of constitution and management is the same or similar, and, therefore, to avoid repetition and save expense, the Legislature has embodied in certain Acts a code of general regulations or statutory provisions applicable to such companies and incorporated by reference into the

[5] (1612) 10 Co.Rep. 30 b.

[6] See judgment of Bowen L.J. in *Baroness Wenlock* v. *River Dee Co.* (1885) 36 Ch.D. 675 n., and of Blackburn J. in *Riche* v. *The Ashbury Ry.* (1874) L.R. 9 Ex. p. 224 at p. 255.

special Act creating the company. Among such general Acts embodying typical provisions are the Companies Clauses Consolidation Act, 1845; the Railways Clauses Act, 1845; the Lands Clauses Consolidation Act, 1845; the Gas Works Clauses Act, 1847; the Waterworks Clauses Act, 1847; the Harbours and Docks and Piers Act, 1847; the Electric Lighting (Clauses) Act, 1899.

Special peculiarity of them—compulsory powers.

A special peculiarity of these statutory undertakings, and one which distinguishes them from ordinary trading companies registered under the Companies Act, is that they are, in many cases, invested with compulsory powers: for instance, to take land or to commit what, but for these parliamentary powers, would amount to nuisances; otherwise their constitution is closely analogous; the liability of the members, for example, is limited to the amount of their shares, and the company in each case incorporated is restricted, as regards its powers, to the purposes of its creation and the terms of its parliamentary mandate.[7] In *Hawkes* v. *Eastern Counties Ry.*[8] Lord Cranworth L.C., after reviewing the authorities, said: 'It must, therefore, be now considered as a well-settled doctrine, that a company incorporated by Act of Parliament for a special purpose cannot devote any part of its funds to objects unauthorised by the terms of its incorporation, however desirable such application may appear to be'.

(4) Unincorporated Companies constituted by Contract

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

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

[7] See *Colman* v. *Eastern Counties Ry.* (1846) 10 Beav. 1; *Mann* v. *Edinburgh Northern Tramways Co.* [1893] A.C. 69.
[8] (1885) 5 H.L.C. 331 at p. 348

and gradually the number increased until the fraudulent promoter appeared on the scene.

To such an extent did this person take advantage of the opportunity by floating all sorts of fraudulent and objectionable concerns that the Legislature had, in 1719, to intervene and pass the Bubble Act with a view to putting down fraudulent companies. Unfortunately the Act was expressed in such ambiguous terms as to raise doubts whether it was not intended to stop generally the formation of companies with transferable shares, good and bad alike.[1] The difficulty was solved, however, in 1825 by the repeal of the Bubble Act, and thenceforth, for a time, the formation of companies was left to the common law, subject to the doubts which existed as to whether, under the common law, they were legal or not, doubts which were subsequently settled in favour of their legality.

Left to the freedom of the common law, the tide of company enterprise rose, and, as it did so, the policy of the Legislature changed. In lieu of the policy of repression the Legislature, in 1844, recognising the advantages of the joint stock company principle, and the desirability of facilitating the association of persons in commercial undertakings, provided means for regulating them by passing, in 1844, the Act 7 & 8 Vict. c. 110. This Act, with certain exceptions, required all companies subsequently formed to be registered under it. The formation of unregistered companies was thus, to a great extent, stopped, and though the Act was repealed in 1862, except as to then existing companies, the Acts of 1862 and 1908, as appears below, continued to prohibit the formation of unregistered companies for gain where the members exceeded twenty, or in the case of banking companies, ten. The Act of 1948 does the same.

Unincorporated company to be differentiated from ordinary partnership.

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

Deed of settlement.

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

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

[1] The leading case on this Act is *R.* v. *Webb* (1811) 14 East 406.

with transmissible and transferable stock, but without any individual right in any associate to bind the other associated members or to deal with the assets of the association. In many cases they obtained a private Act of Parliament enabling them to sue and be sued in the name of some specified officer.

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

(5) Companies incorporated under 7 & 8 Vict. c. 110 [1844] [10]

The Act of 1844 was the first general registration Act in regard to companies. Lord Cranworth has pointed out some of the circumstances which made the intervention of the Legislature necessary.[11]

The Act was of a somewhat anomalous character. It incorporated the companies registered under it, and thus endowed them with faculties, privileges and powers denied to an unincorporated company. In particular it facilitated legal proceedings and the holding of property, but it still withheld from them one of the most important incidents of an incorporated company—the immunity of the members from direct liability. Indeed, it expressly imposed on the members liability for the debts of the company just as if they were partners.

Notwithstanding this provision, an effort was in some cases made to obtain limited liability for a company registered under the Act. The Act provided that the deed of settlement should be filed with the Registrar of Joint Stock Companies and be open for public inspection, and it was thought that the insertion in the deed of settlement so filed of a clause limiting the liability of the members to the amount of their shares would or might be effective. Clauses to that effect were inserted in some cases, but it was ultimately held by the Court that this attempt to limit was, as regards outsiders, ineffectual.[12]

(6) Building Societies

The liability of the members of building societies formed under the Building Societies Acts, 1874, 1894 and 1939, is limited. The societies are incorporated. They are not companies, but they bear a great resemblance to companies.

(7) Industrial and Provident Societies

The Industrial and Provident Societies Act, 1893, amended 1894, 1895 and 1913 and 1948,[12a] incorporates such societies (s. 21), and limits the liability of the members. It also confers special rights and privileges. These societies are not companies, though, like building societies, they bear a considerable resemblance to them. They are intended for small capitalists, and accordingly the interest of a member is not to exceed £200

[10] See also s. 435 of the Act of 1948.
[11] *Oakes* v. *Turquand* (1867) L.R. 2 H.L. at p. 358.
[12] See *Greenwood's Case* (1854) 3 De G.M. & G. 459.
[12a] 11 & 12 Geo 6, c. 39.

(s. 4). Any rule endeavouring to increase the liability of members beyond the £200 or the amount subscribed on their shares is *ultra vires*.[13].

(8) Friendly Societies

Societies under the Friendly Societies Act, 1896 (see now the Industrial Assurance and Friendly Societies Act, 1948), are not incorporated, but they are, by the Acts, invested with various privileges, and the liability of the members is limited. A friendly society can convert itself into a company, and a company can convert itself into a friendly society.[14]

(9) Trade Unions

Trade unions, which at common law were illegal as in supposed restraint of trade, were legalised to some extent by the Trade Union Acts, 1871 and 1876. ' Parliament has legalised trade unions whether registered or not; if registered, they enjoy certain advantages ': per Lord Macnaghten in *Taff Vale Ry.* v. *Amalgamated Society of Railway Servants*, in which case it was decided that trade unions could be sued for wrongs committed by their agents. The rule established by the *Taff Vale Case* [15] was abolished by the Trades Disputes Act, 1906, and the Trades Disputes Act, 1927, which, however, was repealed by the Trades Disputes and Trade Unions Act, 1946. On the same principle it has been held that a trade union can sue for libel.[16] The Act of 1871, in legalising trade unions, contains an important qualification, for it expressly provides that it is not to enable the Court to entertain any legal proceedings for directly or indirectly enforcing or recovering damages for the breach of a large class of agreements, including almost all the material rules of these societies. For example, if it be desired to compel a member of the union to abstain from work during a strike, or to insist on standard wages or hours, or to pay his subscriptions or fines, or if a member desires to compel the union to give him the benefits in the way of sick pay and otherwise stipulated for, the Court will not assist.

The Companies Acts do not apply to any trade union, and registration of a trade union under them is void [17]

(10) Limited Partnerships

Limited partnerships are associations established under the Limited Partnerships Act, 1907. The name is somewhat of a misnomer, for in such an association there must be one or more partners with unlimited liability Those partners are called ' general partners '; the other partners are called ' limited partners ', the latter contributing to the partnership assets a specified amount in money or money's worth, and enjoying

[13] *Dibble* v. *Wilts & Somerset Farmers, Ltd.* [1923] 1 Ch. 342.
[14] Section 71 of the Act of 1896. See Fuller, *Friendly, etc., Societies.*
[15] [1901] A.C. 426, 437.
[16] *National Union of General and Municipal Workers* v. *Gillian* [1946] 1 K.B. 81.
[17] See Trade Union Act, 1871, s. 5, as extended by s. 382 (7) of the Act of 1929 and s. 459 of the Act of 1948. See further, *Company Precedents*, 15th ed., Part I, p. 99 *et seq.*

immunity from liability beyond the amount so contributed. But by s. 6 it is an essential condition of this immunity that a limited partner shall not take part in the management of the business, and he is to have no power to bind the firm. He may inspect the books and may advise, that is, consult with the other partners as to the state and prospects of the business, but he must not go beyond this. If he does, though it be in ignorance of the law, or inadvertently, or at the urgent request of the general partners, he forfeits his immunity from liability, and is plunged into the unknown depths of unlimited liability.

These limited partnerships are an importation from abroad. On the Continent something of the kind has been for upwards of half a century permitted in several countries, but the scheme offers little attraction to those who have, as in England, the alternative of forming or joining a private company, with all the advantages and immunities conferred by the law on such companies. The Act in effect merely limits the liability of a sleeping partner provided he strictly complies with the statutory requirements. The Act has been in force for more than thirty years, and instead of a rush to take advantage of its provisions, there has been great reluctance and hesitation; the rush has been to form private companies.

The provisions of s. 127 of the Bankruptcy Act, 1914, now apply to limited partnerships.

The Companies Acts, 1862 to 1948

The main object of the Act of 1862 (a masterpiece of legislation) was to throw open to all the coveted privilege of carrying on business with limited liability. The principle of the Act was to allow the greatest freedom both in the formation and working of a limited liability company, and at the same time to ensure that those who dealt with such concerns should be informed that the liability of the members was limited. Abandoning the old cumbersome system introduced by the Act of 1844 of provisional and complete registration, the Act made the formation of a company a perfectly simple and inexpensive process—all that it required for the formation of a company was seven signatures to a written or printed document called a memorandum of association. This, on payment of a fee, was to be registered and a certificate of incorporation to be given, and thereupon the company was at liberty at once to commence business. It was not bound before starting business to have any capital paid up or subscribed beyond the seven shares to be taken by the signatories of the memorandum; it might start on its commercial career without any further subscription, might at once enter into contracts, borrow money, if it could, and carry on business. And the great boon of limited liability was secured by the insertion in the memorandum, as part of the name of the company, of the magic word 'Limited', together with a clause stating that the liability of the members was to be limited.

The Act of 1862 was amended and extended by eighteen statutes, from 1864 to 1908.

The existence of these eighteen Acts rendered it a difficult task even for the trained lawyer to know how the law stood, and the whole was

brought together under one comprehensive enactment by the Companies (Consolidation) Act, 1908. This Act was amended by various Companies Acts from 1913 to 1928.

The Act of 1929 repealed all these and consolidated the law as to companies. The Act of 1929 was amended in many respects by the Act of 1947 and both Acts have now been repealed by the Companies Act, 1948, which came into effect on July 1, 1948, and consolidates the whole statutory law as to companies.

The interpretation of the Act.

One key to the understanding of the Act is to be found in the interpretation section (**s. 455**), attaching to certain words used in the Act special significations, ' unless the context otherwise requires '. A brief comment on some of these definitions may not be out of place. The section includes the following:—

455.—(1) In this Act, *unless the context otherwise requires*, the following expressions have the meanings hereby assigned to them (that is to say):—

' company ' means a company formed and registered under this Act or an existing company;

' existing company ' means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, but does not include a company registered under the said Acts, the said Act of 1862 or the said Act of 1908 in Northern Ireland or Eire;

It follows, then, that the various sections of the Act dealing with a ' company ' apply prima facie not only to companies formed under the Companies Act, 1948—*i.e.*, on or after July 1, 1948—but also to companies formed under the earlier Companies Acts from 1862 onwards.

But as regards existing companies, the application is subject to the words ' unless the context otherwise requires ', and further to the provisions of **Part VIII** and **s. 382** of the Act.[18]

Another important expression defined in **s. 455** is the following:—

' 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 to the various Companies Acts].

The following are some further defined expressions:—

' debenture ' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

' director ' includes any person occupying the position of director by whatever name called;

' document ' includes summons, notice, order, and other legal process, and registers;

*' issued generally ' means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

[18] Appendix 1, *post*.

'memorandum' means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

*'officer', in relation to a body corporate, includes a director, manager or secretary;

'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;

*'recognised stock exchange' is defined by reference to the Prevention of Fraud (Investment) Act, 1939,[19] as follows. The Stock Exchange, London, or any body of persons declared by an order of the Board of Trade for the time being in force to be a recognised stock exchange for the purposes of this Act.

'share' means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied.

* By **s. 455 (3)** a 'body corporate' is to be construed as not including a corporation sole but as including a company incorporated outside Great Britain.

The definitions marked * were added by the Acts of 1947 or 1948 and there are many other words defined by reference to definitions in other sections, such as 'contributory' which is said to have the meaning assigned to it by **s. 213.** This will no doubt be a great convenience; but it is not complete, as the section does not include 'default fine' and 'officer who is in default', which are defined in **s. 440.**

The repeals are dealt with in **s. 459**, which provides that without prejudice to s. 38 of the Interpretation Act, 1889, nothing in the repeal is to affect things done under any former enactment relating to companies, and any document referring to any former enactment relating to companies is to be construed as referring to the corresponding enactment of the Act of 1948.[20]

Section 38 of the Interpretation Act, 1889, runs as follows:—

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

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

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

[19] 2 & 3 Geo. 6, c. 16. The Stock Exchange, London, was prescribed by the Companies (Stock Exchange) Order, 1948, No. 1592.

[20] See Appendix 1, *post*.

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

How far the decisions on the Companies Acts, 1862 to 1929, may be resorted to for the purpose of interpreting the Companies Act, 1948

The Act of 1948 is a consolidation Act, but it includes various amendments of the law, many of which were first introduced by the Act of 1947. The Act of 1948 is not, therefore, in quite the same position as a codifying Act to which the rule applies, which was laid down by Lord Herschell in *Bank of England* v. *Vagliano*.[21] His Lordship in that case, speaking with reference to the Bills of Exchange Act, 1882 (which codified the law relating to bills of exchange), said:—

'I think the proper course is, in the first instance, to examine the language of the statute, and to ask, what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.'

The rule for the interpretation of a consolidating and amending Act is thus laid down by Chitty L.J. in *Thames Conservators* v. *Smeed, Dean & Co.*[22] In reference to the Thames Conservancy Act, 1894, he says:—

'The Act which we have to construe is a consolidating and amending Act: the general object of such Acts is to present the whole body of the statutory law on the subject in a complete form repealing the former statutes. The principle of interpretation of a codifying Act is laid down by Lord Herschell in *Bank of England* v. *Vagliano*[21]: a statute codifying the law is to be interpreted as it stands, and recourse is not to be had to the former law, except upon some special ground, such, for instance, as an ambiguous expression. The same principle applies to such an Act as that which is now before us, but in a less stringent degree. In this Act, clauses of the repealed Acts are found repeated, but often in altered form, and with amendments whereby the sense may be to a great measure changed. Speaking generally, I think that the enactments must be dealt with as they now stand, and that a minute critical examination of repealed clauses ought not to be entered upon for the purpose of interpretation except upon special grounds.'

In cases where the Act of 1948 has adopted the wording of the Act of 1929 or the earlier Acts, there is, however, ample scope for reference to the decisions on those Acts.

Thus in the *Mersey Dock Case*[23] Blackburn J., in delivering the opinion of the majority of the judges, said:—

'Where an Act of Parliament has received a judicial construction putting a certain meaning on its words, and the Legislature in a subsequent Act *in pari materia* uses the same words, there is a presumption that the Legislature uses these words intending to express the meaning which it knew has been put upon the same words before; and unless there is something to rebut that presumption, the Act should be so construed, even if the words were such that they might originally have been construed otherwise.'

[21] [1891] A.C. 107, 144.
[22] [1897] 2 Q.B. 334, 346 (C.A.).
[23] 11 H.L.C. 443 at p. 480.

Hence it may be taken that where the provisions of the Companies Acts, 1862 to 1929, have been re-enacted without alteration, the Legislature has not disturbed the decided cases, and that those decided cases are still to be treated as relevant and available for the interpretation of the new Act. But the Court is not entirely precluded from treating a decision on the earlier Acts as erroneous merely because the language of the earlier Acts has been repeated without alteration in the new Act. *Colonial Bank* v. *Whinney*[24] furnishes a good illustration. There the question arose whether shares in a company were or were not choses in action within s. 44 of the Bankruptcy Act, 1883 (dealing with reputed ownership). It appeared that in 1871 Vice-Chancellor Bacon, in *Ex p. Union Bank of Manchester*,[25] had decided that under a similar provision in a corresponding portion of the Bankruptcy Act, 1869, shares were not included as choses in action; and this decision was relied on by Cotton and Lindley L.JJ. But on appeal to the House of Lords[26] this decision was overruled, and it was held that the decision of the Vice-Chancellor was erroneous and that shares *were* choses in action within the meaning of s. 44 of the Bankruptcy Act of 1883. The application of a decision may, of course, be excluded by a change in the language of the new Act.[27]

In the Companies Act, 1948, we find gathered together the results of more than eighty years of company legislation, and we may venture to assert that the provisions of the Act, interpreted and supplemented by the many important decisions of the Courts, form together a comprehensive, and in most respects, admirable system of law for regulating the constitution, management, and winding up of companies throughout the United Kingdom—a system which contrasts very favourably with the complicated formalities and the hard-and-fast regulations and restrictions imposed by not a few foreign systems of law in regard to companies and co-operative enterprises. Unlike these systems, the policy of our law has been to accord the utmost liberty in regard to the formation, the carrying on, and the dissolution of companies; and although this freedom has at times been abused by unscrupulous persons for their own ends, necessitating the intervention of the Legislature, such abuses are but an insignificant item in comparison with the vast volume of honestly formed and honestly managed companies; while there can be no doubt that the facilities afforded by these Acts have largely stimulated and developed British trade and co-operative enterprise in all parts of the world.

[24] (1885) 30 Ch.D. 261.
[25] (1871) L.R 12 Eq. 354.
[26] (1886) 11 App.Cas. 426.
[27] *Thomas* v. *United Butter Cos. of France* [1909] 2 Ch. 484

CHAPTER 2

FORMATION AND REGISTRATION

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

Preliminaries

The first step is to prepare the Memorandum of Association (see **s. 2** of the Act of 1948) and the Articles of Association (if there are to be any) (see **s. 6**).

The Memorandum of Association

This is a document of extreme importance in relation to the proposed company, and it will be fully dealt with later.[1] It is required to state (1) the name of the company; (2) what part of the United Kingdom the registered office is to be situate in; (3) the objects of the company; (4) that the liability of the members is limited; and (5) the capital of the company.[2]

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

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

The signature of a subscriber cannot be attested by himself or by another subscriber. 'The word implies the presence of some person who stands by, but is not a party to the transaction.'[3]

The Articles of Association

These contain the regulations for the management of the affairs of the company and the conduct of its business (**s. 6**). In the case of a company limited by shares there is no obligation to register articles of association, but if it is registered without articles, the regulations in **Table A** in the **First Schedule** to the Act are to be deemed to be the articles of the company. By **s. 454 (2)**, re-enacting s. 120 (2) of the Act of 1947, the Board of Trade has power to alter the provisions of **Table A**; but this is not to affect any company registered before the alteration.

There is a third alternative, and that is to have a short set of articles of association, supplementing or modifying **Table A**, but otherwise

[1] Chapter 8, p. 18.
[2] See the specimen form, '**Table B**' in the **First Schedule** to the Act, Appendix 1, *post*.
[3] *Per* Lord Selborne L.C., *Seal* v. *Claridge* (1881) 7 Q.B.D. 516.

leaving **Table A** to operate. In such a case **Table A**, plus the supplementary or modifying provisions, will constitute the regulations of the company.

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

The articles of association (if there are to be any) must be printed (**s. 9**), and must be signed by the subscribers of the memorandum, and the subscribers' signatures must be attested as required by **s. 9 (d)** of the Act.[4]

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

Registration

In order to effect registration of the company, the documents, prepared as above described, must be taken to the Registrar of Companies (**s. 12**), with a statutory declaration by a solicitor of the High Court engaged in the formation of the company, or by a person named in the articles of association as a director or secretary of the company, of compliance with the requirements of the Act as to registration (**s. 15**), and also (except in the case of a private company) with certain other documents below mentioned.

These documents each require a 5s. registration stamp, and the registrar, on payment of the requisite registration fee and stamp duties, registers and retains the documents, and issues a certificate of incorporation (**s. 13**).[5]

Documents filed with the registrar can be produced in court as evidence, but no process can be issued to compel production of such documents in court without leave of the court (**s. 426**).

Fees on Registration

The fees on registration are proportioned to the amount of the capital. They consist of the fees set out in the **Twelfth Schedule** to the Act,[6] to which must be added the capital duty payable in respect of the statement as to capital which has to be filed with the Registrar of Companies under the Stamp Act, 1891, now fixed at 10s for every £100 or fraction of £100 by s. 41 of the Finance Act, 1933.

Form of Certificate of Incorporation

The certificate of incorporation is in the terms following:—

> I HEREBY CERTIFY that the —— Company, Limited, is this day incorporated under the Companies Act, 1948, and that the company is limited.
> Given under my hand this —— day of ——.
> [*Signature*] Registrar of Companies.

[4] See *Articles of Association*, Chap. 4, p. 25.
[5] See Chap. 5, p. 88.
[6] Appendix 1, *post*.

With the issue of the certificate of incorporation [7] the company comes into existence as a body corporate.[8]

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

The following is a summary of the position:—

1. *Private companies.*

In the case of private companies as defined in **s. 28** of the Act [9] the company can go to allotment immediately after the certificate of incorporation is obtained, and can commence business and exercise its borrowing powers forthwith, a private company being exempt from all restrictions as to allotment and commencement of business.

2. *Companies issuing prospectus.*

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

(a) The prospectus must contain the disclosures required by **s. 38,** and must provide for payment of at least five per cent. application money on the shares offered (**s. 47** (**3**)), and must be dated (**s. 37**) and signed by every director or proposed director named in it, or by his agent duly authorised in writing, and must be delivered to the registrar for registration before its issue (**s. 41**).

(b) If anyone is to be named in the articles or prospectus as a director or proposed director, he must by himself or his agent duly authorised in writing sign and deliver to the registrar a consent in writing to act as such director, and if the articles provide for a share qualification, must either subscribe the memorandum of association for his qualification or take from the company and pay for or agree to pay for his qualification or sign and deliver to the registrar for registration an undertaking to take and pay for such qualification or a statutory declaration that shares of that amount are registered in his name (**s. 181** (**1**) (**6**) (**iv**)).

(c) On the application to register there must be delivered to the registrar a list of the persons who have consented to be directors (**s. 181** (**4**)).

(d) Before going to allotment, care must be taken that, as required by **s. 47**, the minimum subscription has been subscribed, and the sum payable on application has been paid to and received by the company.

(e) No allotment must be made until the beginning of the third day after the date of the opening of the subscription list (**s. 50**).[10]

Before commencing business or exercising borrowing powers it must be seen that:—

[7] See Chap. 5, *post*, p. 38.
[8] See Chap. 6, *post*, p. 41.
[9] Chap. 35, *post*, p. 355.
[10] See *post*, p. 88.

(f) Shares held subject to payment in cash have been allotted to an amount not less than the minimum subscription (**s. 109 (1) (a)**).

(g) 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 (**s. 109 (1) (b)**).

(h) No money is or may become liable to be paid to applicants for any shares or debentures by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange (**s. 109 (1) (c)**).[11]

(i) There must be delivered to the registrar a statutory declaration by the secretary, or one of the directors, in the prescribed form (**s. 109 (1) (d)**).[12]

And thereupon the registrar will certify that the company is entitled to commence business (**s. 109 (3)**).

Items (e) and (h) were first required by the Companies Act, 1947.

3. *Companies not issuing prospectus.*

In the case of companies which do not fall within the first two categories:—

(a) A statement in lieu of prospectus (**s. 48**) must be delivered to the registrar, and the statement must be in the prescribed form (**Fifth Schedule**).[13]

(b) If anyone is named in the articles or in the statement in lieu of prospectus as a director, or proposed director, he must by himself, or by his agent duly authorised in writing, sign and deliver to the registrar a consent in writing to act as such director, and if the articles provide for a share qualification, must either subscribe the memorandum of association for his qualification or take from the company and pay for or agree to pay for his qualification or sign and deliver to the registrar an undertaking to take and pay for such qualification or a statutory declaration that shares to that amount are registered in his name (**s. 181 (1)**).

(c) On the application to register there must be delivered to the registrar a list of persons who have consented to be directors (**s. 181 (4)**).

(d) It must be seen that 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 payable in cash (**s. 109 (2) (b)**).

(e) There must be delivered to the registrar a statutory declaration by the secretary or one of the directors in the prescribed form (**s. 109 (2) (c)**).[14]

[11] See *post*, p. 88.
[12] *Company Precedents*, Part I, Form 227, 15th ed., p. 557.
[13] Appendix 1, *post*.
[14] And see *Company Precedents*, Part I, Form 227, 15th ed., p. 557.

And thereupon the registrar will certify that the company is entitled to commence business (**s. 109 (3)**).

Registration of Existing Companies

Part VII of the Act of 1862 (now **Part VIII**) authorised the registration of companies existing before registration. These provisions have been re-enacted in **s. 382** of the Act. Most of the companies which so registered were old companies formed by deed of settlement or charter, or letters patent obtained before the Act of 1862, but some companies formed since that Act have been registered. If the company is a joint stock company, it can register as a company limited by shares, otherwise it must register as a company limited by guarantee or an unlimited company. But in any case there must be at least seven members.

Mode.

In order to register, the assent must be obtained of a majority of its members, present in person or by proxy, at a meeting of the company, and application in writing must then be made to the registrar accompanied by a list of its members, a copy of the company's deed of settlement, charter or other instrument by which it was constituted, and particulars as to its share capital, etc., and in due course the registrar will certify that the company is incorporated and, if so, with limited liability. Thereupon the company is placed very much in the same position as if it had originally been formed under Part I of the Act. If the name of the company is in the opinion of the Board of Trade undesirable, it may change its name with the approval of the Board (**s. 388**).[15] The course of procedure is fully stated in **ss. 384** to **394** of the Act.[16]

Object of registration.

The objects of existing companies in registering under this part of the Act are various. In most cases registration is dictated by a desire to obtain the benefit of limited liability and the advantages of incorporation. Sometimes the registration is adopted with a view to the voluntary winding up of the company; for, after registration, that course is open to the members. Occasionally the object is to reconstruct the company,[17] when reconstruction cannot otherwise be effected without the consent of every member.

[15] Re-enacting s. 78 (3) of the Act of 1947.
[16] The necessary forms are given in *Company Precedents*, Part I, 15th ed., p. 574 *et seq.* And see **s. 435** and **Fourteenth Schedule**.
[17] Chap. 43, *post*, p. 436.

Chapter 3

MEMORANDUM OF ASSOCIATION

The specimen form of memorandum of association for a company limited by shares is set forth in the **First Schedule** to the Act of 1948 (Table B).[1] This form follows, it will be observed, the requirements of **s. 2,** and states:—

(1) The name of the company. (See Chapter 25, *post*, p. 237.)
(2) In what part of the United Kingdom the registered office is to be situate. (See Chapter 23, *post*, p. 231.)
(3) The objects of the company. (See *post*, pp. 20 to 21.)
(4) That the liability of the members is limited. (See *post*, p. 21.)
(5) The capital of the company and the shares into which such capital is divided. (See *post*, p 21.)

1. Name

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

1. The last word of the name must be the word 'Limited'.[2]
2. **Section 17** now provides as follows:—

> (1) No company shall be registered by a name which in the opinion of the Board of Trade is undesirable.

3. A name must not be selected too closely resembling the name used by any other company. **Section 18** now provides as follows:—

> (2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Board of Trade, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Board of Trade and, if they so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Board may think fit to allow.
>
> There are penalties for default.
>
> The registrar enters the new name on the register and issues an altered certificate of incorporation.

For the protection of registered companies, the registrar, in such cases, may refuse registration, and the court will not, in case of refusal, interfere with his discretion.[3]

Section 17 of the Act of 1948, takes the place of the more detailed provisions of s. 17 of the Act of 1929, which provided that no company

[1] Appendix 1, *post*, p. 684.
[2] As to dispensing with this word in the case of certain companies, see *post*, p. 239. As to the penalty for improper use of the word 'Limited', see **s. 439.**
[3] *R. v. Registrar of Companies* [1912] 3 K.B. 23.

should be registered by a name which 'is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except' as therein mentioned. Though this section is repealed, the rule should still be observed in the case of both a registered and an unregistered company, or firm. In neither case is registration any efficient protection against an action for an injunction at the suit of anyone prejudiced by the adoption of the name. The principle on which the court interferes in such cases is, that one person is not to be permitted to represent the business which is carried on by another as carried on by him.[4]

The inadvertent omission by a limited company to publish its corporate name will not disentitle it to have the use of its trade name protected by injunction.[5]

The prohibition against similarity of name in the Act of 1929 did not apply where an existing company was in course of being dissolved and testified its consent to the satisfaction of the registrar.[6] This provision is repealed; but where such a consent is obtained, the Board of Trade would not be likely to consider the name undesirable.

There is great inconvenience in having too long a name, and it is highly desirable, therefore, where practicable, to confine the name to three or four words.

As to change of name, see *post*, p. 239

2. Registered Office

Every memorandum of association is required to state whether the registered office will be situate in England or in Scotland. If the registered office is to be in Wales, the proper statement in the memorandum is, that it is to be situate in England; England, for this purpose, including Wales.[7] The statement as to the situation of the registered office is material for various reasons, and, in particular, because on the situation of the registered office depends the place where the company is to be registered. Thus, if the registered office is to be in England, the company must be registered in London, unless the memorandum states that the object is to work mines in the counties of Devon or Cornwall. In that case it must be registered at Truro If the registered office is to be in Scotland, the company must be registered in Edinburgh. The London office for registration is now at Bush House.

The principal object of requiring a company to have a registered office is to provide some definite place at which notices and other documents may be served on it. Accordingly, by **s. 107** it is enacted that 'A company shall . . . have a registered office to which all communications and notices may be addressed' By **s. 437**, a document may be

[4] *Tussaud* v. *Tussaud* (1890) 44 Ch D. 678; *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.* (1889) A.C. 83; *La Société Anonyme, etc. Panhard et Levassor* v. *Panhard Levassor, etc., Co.* [1901] 2 Ch. 513; *Ewing* v. *Buttercup Margarine Co.* [1917] 2 Ch. 1.

[5] *Randall, Limited* v. *British and American Shoe Co.* [1902] 2 Ch. 354.

[6] See s. 17 (1) of the Act of 1929.

[7] See the Wales and Berwick Act, 1746, s. 3.

served on a company by leaving it at or sending it by post to the registered office of the company.[8]

3. The Objects Clause

Every memorandum of association—this is the third requirement—must state the objects of the proposed company.

The statement of the objects is not a mere record of what is contemplated by the subscribers. It has a two-fold operation—

(1) It affirmatively determines what shall be the powers of the company; for the stated objects confer on the company all powers reasonably requisite to the attainment thereof;

(2) It limits and restricts the powers of the company to those thus conferred, save so far as other powers are given by statute.

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

As regards legality, the subscribers may be associated together for any lawful purpose (**s. 1**), and accordingly the following rules are applicable:—

(a) The objects must not include anything in contravention of the Act. For example, it is not a lawful object to provide for a limited company purchasing or lending money for the purchase of its own shares, for that is in contravention of the Act.

(b) The objects stated must not include anything in contravention of the general law. For example, it is not a legal object 'to keep a gambling house in the United Kingdom,' or 'to establish and work lotteries in England'—for these objects are contrary to the general law. Objects in restraint of trade are illegal[9]; so also are blasphemous objects, but objects involving a denial of Christianity are not necessarily blasphemous.[10]

(c) The objects must not include any which would render the company a trade union, for to register a trade union under the Companies Act, 1948, is illegal.[11] A trade combination to control prices may be a trade union within the meaning of the Acts.[12] An association to protect copyright is not a trade union.[13] The certificate of registration is not conclusive for this purpose.[14]

The Subscribers' Discretion.

Subject to these restrictions the subscribers of a company's memorandum of association have complete freedom to frame the objects as they choose.

[8] See, further, *post*, p. 222, and Chap. 23, *post*, p. 231.
[9] *Joseph Evans & Co.* v. *Heathcote* [1918] 1 K.B. 418; *McEllistrim* v. *Ballymacelligott, etc., Society* [1919] A.C. 548.
[10] *Bowman* v. *Secular Society* [1917] A.C. 406.
[11] Trade Union Acts, 1871 and 1876; **s. 489** of the Act of 1948.
[12] *Joseph Evans & Co.* v. *Heathcote*, *supra*.
[13] *Performing Right Society* v. *London Theatre of Varieties* [1922] 2 K.B. 433.
[14] *Ibid.*

If they deem it desirable to set out the objects in detail, there is nothing in the Act to prevent them, and there is much to be said from the common-sense point of view in favour of the practice. Take, for instance, borrowing powers of a company. It is unnecessary, it may be said, to include a borrowing power in the objects of a trading company, for such a power is, according to the decisions, implied; and so it is to the trained lawyer familiar with the authorities; but the persons to whom a memorandum of association is addressed are in the main men of business, not lawyers, and for these it is expedient that the powers of the company should as far as possible be made manifest by adequate objects, and should not be left to inference or implication.

Hence the somewhat elaborate statements of objects now so commonly found. These clauses may, and undoubtedly do in some cases, err by excess of detail and over-elaboration, and unnecessary repetitions sometimes defeat their own object by raising doubts as to any details not expressly referred to. There is no advantage in specifying at great length a power which can be as effectively conferred in a few words. Over-elaboration, however, is better than over-conciseness. Nothing is more annoying to those who have to manage a company than to find that the powers of the company are fettered or questioned and its business impeded or prejudiced, simply because the draftsman of the memorandum of association has framed it without sufficient foresight or judgment, and has, contrary to the fact, assumed that the ordinary business man is familiar with the legal and somewhat conflicting decisions as to the powers which may be implied by a concise specification of objects.

Limitation of Liability

The fourth clause of the memorandum states that the liability of the members is limited. This clause is to be read in conjunction with **s. 212** of the Act of 1948, which provides that in winding up, in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member. See Appendix 1, *post*.

Capital Clause

This clause must state the amount of the nominal capital, the number of shares into which it is divided, and the amount of each share. It need not state anything else, and it is usually better that it should not do so.

What is to be the amount of the capital is a matter left to the discretion of the promoters. It can be as small or as large as they choose. Companies have been registered with a capital of £7 or less, and others—numerous now—with a capital of £5,000,000 and upwards. The material consideration in fixing the amount of capital is, What funds will the company want, and how much in the shape of paid-up shares are the vendors, if any, to get? Suppose the company is to be formed to acquire a going concern, and that the price to be paid therefor is £50,000 in paid-up shares, and £50,000 in cash, and that the company besides will want a

working capital of £20,000. This makes a total of £120,000. Then, in addition to this, it may be desirable to have some shares in reserve, which can be issued as and when the company wants further capital, so that, in such case, the capital may properly be fixed at, say, £130,000 or £150,000. Or, to take another case: the purchase consideration may be £300,000, to be paid, as to £200,000, in cash, and as to £100,000 in paid-up ordinary shares, and the company may determine to raise the cash part of the consideration by the issue of £100,000 of debentures and £100,000 of preference shares. In such a case the capital will be, say, £200,000, or, with an addition for working capital, £250,000. In a case where the company is not proposing to buy any existing concern or property, but to start a fresh business, the question will simply be, What sum will it cost to start the new concern and to provide sufficient working capital ? and the nominal capital will be fixed accordingly.

Amount of shares.

As regards the amount of the shares, this is again for the promoters to determine. £1 shares are very common. Occasionally the shares are fixed as low as 1s. each. Shares have been fixed as high as £1,000, or even £5,000 each. When the original capital is divided into several classes of shares, the amount of the different classes often varies. Some may be £1 each and others 1s. each. All these are matters which have to be thought out, with reference to the special requirements of the company, by those who are interested in its formation and fortunes.

Classes of shares.

It is not unusual to divide the shares in the original capital into two or more classes, *e.g.*, preference shares and ordinary shares, or preference shares and *A* ordinary shares and *B* ordinary shares, or ordinary shares and deferred shares, or preference shares, ordinary shares, and founders' shares; and various special rights, privileges, and conditions are attached to such shares. As regards preference shares and founders' shares, it is very common to declare these rights, privileges, and conditions by express provision in the memorandum of association, for, by so doing, extra protection is secured to the holders of such shares against any alteration of their status.[15] It is not, however, essential in a memorandum of association to specify the rights attached to each class, or, indeed, to disclose the fact that it is intended to divide the capital into different classes of shares, for all this can be done—and more properly done—by the articles of association of the company. Thus the memorandum may state that the capital is £100,000 in £1 shares, and the articles may state that of the shares in the capital 50,000 shall be preference, with specified rights attached, and 50,000 shall be ordinary shares.

Other Provisions

These are the five leading provisions or conditions in the memorandum of association of a company limited by shares, and they are the only

[15] See further, as to classes of share capital, *post*, p. 70

provisions which the Act of Parliament requires to be stated therein, but occasionally additional provisions are inserted, clauses, for example, defining the rights attached, as above mentioned, to different classes of shares, rights as regards dividend, voting, and participation in assets on a winding up, and various other matters. There is nothing illegal in the insertion in the memorandum of such additional provisions, but it must be borne in mind that, if inserted without qualification, they become conditions contained in the company's memorandum within the meaning of **s. 4.** Before 1947 such a condition could not be altered, except under a scheme of arrangement sanctioned by the court.[16] But this rule was modified by s. 77 of the Act of 1947, now **s. 23** of the Act of 1948.[17]

If the memorandum qualifies the provisions, *e.g.*, by giving power to alter them, that power may be exercised in the manner provided.[18]

Association Clause

The memorandum of association of a company limited by shares concludes with what is commonly referred to as the association clause (see **Table B** in the **First Schedule** to the Act, Appendix 1, *post*), whereby the subscribers declare that they desire to be formed into a company, and agree to take shares, and the clause is followed by a tabular form in which the names, addresses, and descriptions of the subscribers, and the number of shares taken by each, appear.

Subscription of Memorandum

This is provided by **s. 3.** Anyone may be a subscriber. A married woman may be a subscriber: so may a bankrupt, an alien,[19] or an infant,[20] but not where the objects indicate that minors are not to be members.[21] An incorporated company with the requisite power may be a subscriber, and several persons may jointly be subscribers; but a firm is not a person, and the individual partners must subscribe.

A subscriber usually subscribes the memorandum with his own hand; but he can subscribe by the hand of an agent duly authorised by him,[22] and the registrar does not call for evidence of authority if seven subscribe with their own hands. The number of subscribers must be at least seven, except in the case of a 'private' company, but there may be as many more as the promoters think fit.

In the case of a 'private company'—as defined by **s. 28**—two subscribers are enough (**s. 1 (1)**).

Each subscriber must write opposite to his or her name the number of shares he or she takes, and must take one share at least. Usually the subscribers each subscribe for one share; but sometimes they subscribe for a larger number.[23]

[16] See *post*, pp. 55 and 56.
[17] See *post*, pp. 55 and 56.
[18] *Re Welsbach Incandescent Gas Light Co.* [1904] 1 Ch. 87.
[19] *Princess of Reuss* v. *Bos* (1871) L.R. 5 H.L. 176.
[20] *Re Laxon & Co.* (No. 2) [1892] 3 Ch. 555.
[21] *Seymour* v. *Royal Naval School* [1910] 1 Ch. 806, 811.
[22] *Re Whitley Partners* (1886) 32 Ch.D. 337.
[23] As to the liability to pay up the shares subscribed for, see *post*, pp. 95–96.

If the articles require a qualification, the directors (except in the case of a private company, **s. 181 (5)**) must sign the memorandum for their qualification shares or take them and pay for or agree to pay for them or sign and deliver to the registrar an undertaking in writing to take the shares from the company and pay for them, or make a statutory declaration that sufficient shares stand in their names (**s. 181 (1) (b)**).

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

Attention to such details as these is necessary, otherwise when the document comes before the Registrar of Companies he may refer it back, on the ground that he cannot read the signatures, or that some of the requisite particulars are not clearly expressed. It is his duty to see that the requirements of the Act of Parliament are complied with, and that the documents are in order.[24]

Witnesses.

As regards the witnesses to the signatures of the subscribers, one witness for all the signatures will suffice, and, in that case, the words ' Witness to the above signatures ' will be used; but sometimes the same witness cannot attest all the signatures, and in that case the attestation clause must be altered. It may run thus:—

Witness to the above signatures other than that of A, B,
, or,
Witness to the signatures of the above A, B and C,
Witness to the signatures of the above D, E, F and G,

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

A subscriber to the memorandum cannot, after the registration of the company, repudiate his subscription on the ground that he was induced to sign by misrepresentation.[25]

[24] *Peel's Case* (1867) L.R. 2 Ch.App. 674, 682.
[25] *Metal Constituents, Limited, Lord Lurgan's Case* [1902] 1 Ch. 707.

CHAPTER 4

ARTICLES OF ASSOCIATION OR REGULATIONS

As already mentioned, the memorandum of association, when taken in for registration, may be accompanied by articles of association, containing regulations [1] for the management of the affairs of the company, and in some cases articles must be so registered (**s. 6**).

Form and Subscription

The articles [2] are to be expressed in separate paragraphs numbered arithmetically, and they may adopt any of the provisions contained in **Table A.** If no articles are so registered, the articles contained in **Table A**, so far as the same are applicable, are to apply to the company (**s. 8**). In the case of companies registered before the commencement of the Act of 1948, Table A of the Act of 1862 or of 1908 or of 1929 still applies.[3]

In most cases a full set of articles is taken in for registration. In a good many cases a short set of articles only is registered making a few alterations in **Table A**, and supplementing it to some extent, and in a considerable number of cases **Table A** is left to operate without alteration. **Table A** has now been so altered and extended to conform to the forms of articles now usually adopted, that this last course will probably become more common. The Interpretation Act, 1889, applies to **Table A** and to articles which adopt **Table A** in part.[4]

Printing.

The articles, if any, must be printed, must bear the same stamp as a deed (10s.), and must be signed by the subscribers to the memorandum of association. Each subscriber must sign in the presence of a witness, who must attest the signature (**s. 9**). As in the case of the memorandum, the signature may be under the signatory's own hand or that of his duly authorised agent.[5] One of the subscribers cannot attest the signature of another.

Copies

Each member of the company is entitled to a copy of the memorandum and articles (**s. 24**) on payment of a shilling.

Where articles have been registered, a copy of every special resolution for the time being in force is to be annexed to or embodied in every

[1] The expression 'the regulations' was used in a similar sense in the Companies Acts, 1862 to 1929.
[2] Defined in **s. 455.** See *ante*, p. 9.
[3] See ss. 11 and 286 (1) (c) of Act of 1908, s. 382 of Act of 1929, **s. 439 (13) (a)** of Act of 1948.
[4] *Fell* v. *Derby Leather Co.* [1931] 2 Ch. 252.
[5] *Ante*, p. 23.

copy of the articles of association that may be issued after the passing of such special resolution; and where no articles have been registered, a copy of any such special resolution is to be forwarded in print to any member requesting the same on payment of 1s. or such less sum as the company may direct (**s. 143**). There is a penalty for default.

Relation of the Articles to the Memorandum

The articles of a company are subordinate to and controlled by the memorandum of association, which is the dominant instrument. The memorandum contains the conditions upon which alone the company is granted incorporation—conditions which are fundamental, but are alterable by the correct procedure. The articles are the internal regulations of the company, and over these the members have full control, and may alter them from time to time as they think fit by pursuing the course pointed out in **ss. 10** and **141** of the Act; subject only to this, that they keep within the limits marked out by the memorandum of association and the Acts.

'The memorandum is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit'.[6]

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

If, for instance, the articles purport to confer on the company a power to buy its own shares[7] or to pay dividends out of capital,[8] or to extend the objects by special resolution,[9] or to issue shares at a discount (otherwise than in the manner authorised by the Act),[10] or prohibit the members from exercising the statutory right of applying for a winding-up order,[11] or provide for the application of the profits in a manner which is inconsistent with some provision in the memorandum of association,[12] or purport to deprive shareholders who dissent from a scheme of reconstruction under **s. 287** of the Act of 1948[13] of their statutory right to be paid out in cash,[14] they are to that extent invalid and ineffectual.

But though the articles cannot alter or control the memorandum, yet, if there be an ambiguity in the memorandum, the articles registered at the same time may be used to explain it, but not so as to extend the objects. Thus, Jessel M.R. in *Anderson's Case*,[15] said: 'Where there are two contemporaneous documents executed and assented to by the

[6] *Ashbury Ry.* v. *Riche* (1875) L.R. 7 H.L. 653, 671.
[7] *Trevor* v. *Whitworth*, (1887) 12 App.Cas. 409.
[8] *Guinness* v. *Land Corporation of Ireland* (1882) 22 Ch.D. 349.
[9] *Ashbury* v. *Riche*, *supra*.
[10] *Welton* v. *Saffery* (1897) A.C. 299.
[11] *Re Peveril Gold Mines* (1898) 1 Ch. 122.
[12] *Ashbury* v. *Watson* (1885) 30 Ch.D. 376
[13] Substituted for s. 192 of the Act of 1908.
[14] *Baring Gould* v. *Sharpington, etc., Synd.* [1899] 2 Ch. 80; *Payne* v. *Cork Co.* [1900] 1 Ch. 308.
[15] 7 Ch.D. 75, at p. 99.

same persons at the same time . . . it appears to me that the ordinary rule applies, according to which contemporaneous documents are to be read together, so that if there is an ambiguity in one it may be explained by the other'. But these words must be read as qualified by the words which had just gone before: 'I am not now speaking', said the learned judge, 'of those portions of the memorandum of association which the Act of Parliament requires to be stated in the memorandum'. And this distinction was further emphasised by Bowen L.J. in *Guinness* v. *Land Corporation of Ireland* [16] where he pointed out that

'. . . the memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. They are conditions introduced for the benefit of the creditors and the outside public, as well as shareholders. The articles are the internal regulations of the company. How can it be said that in all cases the fundamental conditions of the charter of incorporation and the internal regulations of the company are to be construed together? . . . In any case it is, as it seems to me, certain that for anything which the Act of Parliament says shall be in the memorandum, you must look to the memorandum alone. If the Legislature has said one instrument is to be dominant you cannot turn to another instrument and read it in order to modify the provisions of the dominant instrument'.

Binding Force of Articles

Section 20 (1) enacts that:

Subject to the provisions of this Act, 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 to observe all the provisions of the memorandum and of the articles.

And, under **s. 8, Table A**, so far as applicable, and, under **s. 10**, any new regulations adopted by the company are made binding in like manner as if they had been inserted in the original articles.

Thus, whatever the articles may be, they are binding in the manner, and to the extent, mentioned in **s. 20**. With regard to that section, it is to be noted that it does not make them absolutely binding on the company and the members thereof, but binding *as if* each member had covenanted to conform to such regulations.

The Members bound to the Company by Implied Covenant

Section 20 does not say with whom the implied covenant by the members is to be taken to be made, but it is sufficiently obvious that it is with the company, and, therefore, that the members are all bound to the company. See *Bradford Banking Co.* v. *Briggs, Son & Co.* [17] In that case the articles gave the company a lien on the shares of a member, and it was held that Briggs, the plaintiff in the action, being a member, was to be treated as having covenanted with the company to give it such lien. Lord Blackburn said [18]: 'This property in the

[16] (1882) 22 Ch.D. 349, 381.
[17] (1886) 12 App.Cas. 29.
[18] *Ibid.* at p. 33

shares was, by virtue of the 16th section of the Act already quoted (the corresponding section of the old Act), bound to the company as much as if he had (at the time he became holder of these shares) executed a covenant *to the company* in the same terms as Article 103'. So, again, in *Welton* v. *Saffery*,[19] Lord Herschell said: 'It is quite true that the articles constitute a contract between each member *and the company*'. And in *Imperial Hydropathic, etc. Co., Blackpool* v. *Hampson*,[20] Bowen L.J. said: 'We are discussing the rights of directors of a statutory corporation created by the Act of 1862, and in such a case we must consider what are the rights of the directors and shareholders, for the articles of association by s. 16 are to bind all the company and all the shareholders as much as if they had all put their seals to them'. That this is the true construction follows from the many decisions in which it has been held that the company is entitled to sue its members for the enforcement, and to restrain the breach by them of its articles, and to treat as irregular anything which is done in contravention thereof.[21]

How far binding between Members

In *Eley* v. *Positive, etc. Co.*,[22] where the articles provided that the plaintiff should be solicitor to the company, Lord Cairns said: 'They [the articles] are an agreement *inter socios*, and in that view, when the introductory words are applied to Article 118, it becomes a covenant between the parties to it that they will employ the plaintiff'.[23] So in *Imperial Hydropathic Co., Blackpool* v. *Hampson*,[24] Cotton L.J. said that the articles 'under the Act are a contract between all the shareholders to comply with the regulations in them'. And Stirling J. in *Wood* v. *Odessa Waterworks Co.*[25] said: 'The articles of association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other'. See also *Pullbrook* v. *Richmond, etc. Co.*,[26] and *Bainbridge* v. *Smith*,[27] in which it was held that a director being a member was entitled to an injunction against his co-directors restraining them from improperly excluding him from board meetings. Nevertheless, there is some reason to doubt whether this is really the effect of the articles, and Lord Herschell in *Welton* v. *Saffery*,[28] stated the position in language somewhat different. 'It is quite true', he said, '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

[19] [1897] A.C. 299 at p. 135.
[20] (1882) 23 Ch.D. 1 at p. 13.
[21] *Macdougall* v. *Gardiner* (1875) 1 Ch.D. 13; *Pender* v. *Lushington* (1877) 6 Ch.D. 70; *Imperial Hydropathic Co., Blackpool* v. *Hampson* (1882) 23 Ch.D. 1; *Harben* v. *Phillips* (1883) 23 Ch.D. 14.
[22] (1876) 1 Ex.D. 88.
[23] See also *Browne* v. *La Trinidad* (1887) 37 Ch.D. 1.
[24] (1882) 23 Ch.D. 1.
[25] (1889) 42 Ch.D. 636, 642.
[26] (1878) 9 Ch.D. 610.
[27] (1889) 41 Ch.D. 462, 475.
[28] [1897] A.C. at p. 315.

company; but the articles do not any the less, in my opinion, regulate their rights *inter se* '. And this accords with the well-established principle that it is for the company, save in exceptional cases, to sue for a breach of the articles.[29]

How far binding on the Company

First, in relation to an outsider, do the articles bind the company ? The answer clearly is no. A provision in the articles in favour of an outsider, *e.g.*, a promoter, that the preliminary expenses shall be paid by the company, gives to the promoter no right of action against the company.[30] In this respect the articles of a company differ from an Act of Parliament. Such a provision in an Act of Parliament imposes on the company a statutory duty towards the promoter, and confers on the promoter a corresponding right of action.[31]

Secondly, in relation to members. Here the answer is yes. The articles do bind the company. **Section 20** says so: ' The . . . articles shall bind *the company* and the members thereof to the same extent as if, etc.', and these words must have effect given to them. It may possibly be urged that they are qualified, and that the company is only bound ' as if the members had covenanted ', not as if the members *and the company* had covenanted, and, therefore, that the company is not bound. But such a construction stultifies the section, and, in effect, strikes out of it the words, that ' the articles shall bind *the company* ', and, in corroboration of this view, there are numerous decisions showing that the company *is* bound. Thus, in *Johnson* v. *Lyttle's Iron Agency*,[32] an irregular forfeiture of shares was impeached by a member, and set aside by the Court of Appeal on the ground, as James L.J. said, that the notice prior to forfeiture ' did not comply strictly with the provisions of the contract between the company and the shareholders which is contained in the regulations '. So in *Oakbank Oil Co.* v. *Crum*,[33] it was held that the plaintiff, a member, was entitled, as against the company, to insist on the observance of the articles as to dividends so long as they stood unaltered. So also in *Wood* v. *Odessa Waterworks Co.*[34] Stirling J. granted an injunction, at the instance of a member, to restrain the defendant company from contravening the articles. Furthermore, in *Burdett* v. *Standard Exploration Co.*,[35] Cozens-Hardy J. held that a member was entitled to enforce compliance by the company with a clause in the articles giving him a right to a share certificate.

These decisions, however, all deal with cases in which members claimed and sought to enforce or protect rights given them as members

[29] *Foss* v. *Harbottle* (1843) 2 Hare 461; *Macdougall* v. *Gardiner* (1875) 1 Ch.D. 13; *Burland* v. *Earle* [1902] A.C. 83.
[30] *Re Rotherham Alum, etc., Co.* (1883) 25 Ch.D. 103; *Melhado* v. *Porto Alegre, etc., Co.* (1874) L.R. 9 C.P. 503.
[31] *Tilson* v. *Warwick Gas Light Co.* (1825) 4 B. & C. 962.
[32] (1887) 5 Ch.D. 687.
[33] (1882) 8 App.Cas. 65.
[34] (1889) 42 Ch.D. 636.
[35] (1899) 16 T.L.R. 112.

of the company. Where rights are by the articles given to members not as such, but in some other capacity (*e.g.*, as directors, policy-holders, or otherwise), a member claiming to enforce the same cannot, it seems, sue on the articles—treating them as a contract by the company with him—he must make out a contract outside the articles.

Cases where company not bound by articles.

Thus, in *Eley* v. *Positive, etc., Co.*,[36] the articles contained a clause providing that A should be employed for life as solicitor for the company, and should not be removed except for misconduct: he took office and was so employed for some time, and, whilst so employed, he became a shareholder; later on the company discontinued his employment; he, still being a shareholder, sued for breach of contract, and it was held that no action lay. The matter was disposed of rather summarily in the Court of Appeal; Lord Cairns L.C. delivered the judgment of the court, and refused the plaintiff relief. After saying that the articles

'are an agreement *inter socios*' (see p. 28, *ante*), he continued, 'Now, so far as that is concerned, this is *res inter alios acta*; the plaintiff is no party to it [*although he was a member*]. This article is either a stipulation which is binding on the members, or else a mandate to the directors: In either case it is a matter between the directors and shareholders, and not between them and the plaintiff'.

This case was followed in *Browne* v. *La Trinidad*,[37] where the articles contained a provision that a contract with the plaintiff, made before incorporation, should be adopted by the company, and that it was thereby confirmed, and that the provisions thereof, so far as applicable to the company, should be construed as part of the regulations. Yet it was held that the plaintiff, though a member of the company, had no cause of action against the company on this clause. Lindley L.J. said[38]:

'Having regard to the construction put upon s. 16 [of 1862] in *Eley* v. *Positive, etc., Co.*, and subsequent cases [*none to be found*], it must be taken as settled that the contract upon which he (the plaintiff) relies, is not a contract upon which he can maintain any action, either on the common law side or the equity side'; adding, 'there might have been some difficulty in arriving at that conclusion if it had not been for the authorities, because it happens that this gentleman has had shares allotted to him and is therefore a member'.

A provision in the articles providing for arbitration in case of disputes between the members and the company has been held not to be a written agreement for submission to arbitration of a dispute between the company and a director.[39]

It is not easy to reconcile the rule laid down in these decisions with s. 16 of the Act of 1862 (now supplanted by s. 20 of the Act of 1948), which expressly provided that the regulations 'shall bind *the company*

[36] (1876) 1 Ex.D. 20, 88.
[37] (1887) 37 Ch.D. 1.
[38] *Ibid.* at p. 14.
[39] *Beattie* v. *Beattie* [1938] Ch. 708; *Hickman* v. *Kent, etc., Assocn.* [1915] 1 Ch. 881.

and the members thereof', but they must be taken to have settled the law in this respect.

It has been suggested that the meaning of the enactment[40] is that the implied covenant is only to bind the members to observe such of the provisions of the articles as concern their rights, privileges, powers and obligations as members. But the section does not contain any such qualification: the implied covenant is to observe 'all the provisions . . . of the articles'.

Finding a difficulty in applying the above rule consistently with justice the courts have in some cases acted on the footing that a clause in the articles, not dealing with the rights of a member as such, but apparently intended to operate as a contract with him, is to be regarded as the basis of a contract, *i.e.*, as indicating the terms on which the company proposes to contract with him, and that, if the parties enter into the relations contemplated by the clause, they are to be treated as having made a contract in the terms of the clause and are bound accordingly. This is illustrated by *Swabey* v. *Port Darwin Gold Mining Co.*[41] In that case the articles provided for the payment to each director by way of remuneration of a specified sum per annum. By a special resolution, in July, the company reduced this as from the end of the preceding year. The plaintiff thereupon resigned, and sued the company for three months' remuneration for services prior to the date of his resignation; and the court held that he was entitled to recover on the footing of an implied contract in the terms of the clause. 'The articles', said Lord Esher, 'do not themselves form a contract, but from them you get the terms upon which the director is serving.' And this proposition was adopted by Stirling J. in *Re International Cable Co.*,[42] and by Wright J. in *Ex p. Beckwith.*[43] Moreover, the principle involved is not confined to members, it extends also to outsiders, *e.g.*, to persons who take office as directors.[44] The question whether an implied contract so entered into is capable of being varied by the company against the will of the other party has not been finally decided. According to *Swabey* v. *Port Darwin Gold Co.*, *supra*, it would seem that the contract, at any rate where it relates to service, can be varied by the company as to the future, and this accords with the views expressed in *Doman's Case*,[45] and in *Argus Life Assurance Co.*[46] But the contrary was decided in case of an express contract for service in *Nelson* v. *James Nelson & Sons, Ltd.*[47]

[40] *Ante*, p. 28.
[41] (1889) 1 Meg. 385.
[42] (1892) 66 L.T. 253.
[43] [1898] Ch. 324.
[44] *Isaacs' Case* [1892] 2 Ch. 158; *Salisbury Jones' and Dale's Case* [1894] 3 Ch. 356; *Pritchard's Case* (1873) L.R. 8 Ch.App. 956.
[45] (1876) 3 Ch.D. 21.
[46] (1888) 39 Ch.D. 571.
[47] [1914] 2 K.B. 770; and see *Punt* v. *Symons & Co.* [1903] 2 Ch. 506; *Baily* v. *British Equitable Assurance Co.* [1904] 1 Ch. 374 (reversed by the House of Lords [1906] A.C. 35, on the ground that there was in fact no contract); and *British Murac Rubber Syndicate, Ltd.* v. *Alperton Rubber Co.* [1915] 2 Ch. 186.

Constructive Notice of Memorandum and Articles

Under the Companies Acts the memorandum and articles of association or regulations of a company are registered in a public office and are open for public inspection on payment of a small fee (s. 426). They are public documents; and accordingly it is well settled that anyone, whether a shareholder or an outsider, who has dealings with a registered company, must be taken to have notice of the memorandum and articles or other regulations which form the constitution of the company. This principle was fully recognised in regard to registered companies prior to the Act of 1862,[48] and was adopted in regard to the companies under the Act of 1862.[49] 'Every joint stock company', said Lord Hatherley in *Mahony* v. *East Holyford Mining Co.*,[50] 'has its memorandum and articles of association . . . open to all who are minded to have any dealings whatsoever with the company, and those who so deal with them must be affected with notice of all that is contained in those two documents'. And what is more, they must be taken not only to have read those documents, but to have understood them according to their proper meaning.[51]

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

Thus if the articles provide that a bill of exchange to be effective must be signed by two directors, an outsider or anyone dealing with the company must see that it is so signed, otherwise he cannot claim under it. So, too, if the articles provide that the seal of the company is to be affixed in the presence of two directors. who are to sign their names, a person dealing with the company must see that this is done. The incidence of this obligation is to some extent lightened as to *deeds* by s. 74 of the Law of Property Act, 1925 (which provides that, in favour of a *purchaser*, the signature of one director and the secretary shall be sufficient), and as to other documents by what is known as the

Rule in Royal British Bank v. Turquand[52]

This rule is that where a company is regulated by an Act of Parliament, general or special, or by a deed of settlement or memorandum and articles registered in some public office, persons dealing with the company are bound to read the Act and registered documents, and to see that the proposed dealing is not inconsistent therewith; but they are not bound to do more; they need not inquire into the regularity of the internal

[48] *Ernest* v. *Nicholls* (1857) 6 H.L.C. 401.
[49] *Sewell's Case* (1868) L.R. 3 Ch.App. 131; *Campbell's Case* (1873) L.R. 9 Ch.App.
[50] (1875) L.R. 7 H.L. 869, at p. 893.
[51] *Griffith* v. *Paget* (No. 2) (1877) 6 Ch.D. 517; *Oakbank Oil Co.* v. *Crum* (1882) 8 App.Cas. 65, 71; *Marshall* v. *Glamorgan Iron and Coal Co.* (1868) L.R. 7 Eq. 137; *Re Barrow Hæmatite Steel Co.* (1888) 39 Ch.D. 582; *Re Argus Life Assurance Co.* (1888) 39 Ch.D. 571; *County of Gloster Bank* v. *Rudry, etc., Co.* [1895] 1 Ch. 629; *Owen and Ashworth's Claim* [1901] 1 Ch. 115.
[52] (1856) 6 E. & B. 327.

proceedings—what Lord Hatherley called 'the indoor management'. They are entitled to assume that all is being done regularly.[53] So a managing director, who draws a bill on behalf of a company without any authority, binds the company.[54] The rule does not apply in favour of a director of the company to whom shares have been invalidly issued, even though he became a director immediately before the shares were issued.[55]

This rule is based on the principle of convenience, for business could not be carried on if a person dealing with the apparent agents of a company was compelled to call for evidence that all internal regulations had been duly observed. Thus where the articles give power to borrow with the sanction of a general meeting, a lender who relies on this power need not inquire whether such sanction has in fact been obtained.[56] He may assume that it has, and if he is acting bona fide he will, even though the sanction has not been obtained, stand in as good a position as if it had been obtained.

Where, however, a servant of the company, such as a single director, secretary or branch manager, purports to make a contract on behalf of the company, which is not within the ordinary ambit of the powers of such a servant, nor within the powers which the company has held him out as possessing, the company does not incur liability merely because, under the articles, power to make such a contract might have been delegated to him by the board, more particularly if the other party to the contract had no knowledge of the power of delegation.[57]. In *Re South London Greyhound Raceccourses* v. *Wake*,[58] it was held that a shareholder could not rely upon a certificate signed by a director and the secretary, notwithstanding an article which made such a document binding on the company, on the ground that the shareholder had not read the article. It is submitted that this decision cannot be reconciled with the earlier decisions, especially *Mahony* v. *East Holyford Mining Co.*[59]

So, if there is a managing director, and authority in the articles for the directors to delegate their powers to him, a person dealing with him may assume that he has power to do what he purports to do, provided that it is within the ordinary duties of a managing director. All he has to do is to see that the managing director *might* have power to do what he purports to do.[60]

So, too, in the case of a mortgagee taking a mortgage from a company which, as far as he can tell, has been duly executed. *County of Gloster*

[53] See also *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869; *Bargate* v. *Shortridge* (1855) 5 H.L.C. 318; *Re Land Credit Co. of Ireland* (1869) L.R. 4 Ch.App. 469; *Re County Life Assurance Co.* (1870) L.R 5 Ch.App. 288; *Duck* v. *Tower Galvanizing Co.* [1901] 2 K.B. 314.

[54] *Dey* v. *Pullinger Engineering Co.* [1921] 1 K.B. 77.

[55] *Morris* v. *Kanssen* [1946] A.C. 459.

[56] *Royal British Bank* v. *Turquand*, *ubi supra*.

[57] *Houghton & Co.* v. *Nothard, Lowe & Wills* [1928] A.C. 1; [1927] 1 K.B. 246; *Kreditbank Cassel* v. *Schenkers, Ltd.* [1927] 1 K.B. 826; see the judgment of Atkin L.J. at p. 844, where the distinction between these cases and *Royal British Bank* v. *Turquand* is clearly explained.

[58] [1931] 1 Ch. 496.

[59] (1875) L.R. 7 H.L. 869. See also *British Thomson-Houston Co.* v. *Federated European Bank* [1932] 2 K.B. 176.

[60] *Biggerstaff* v. *Rowatt's Wharf* [1896] 2 Ch. 93.

Bank v. *Rudry, etc., Co.*[61] In that case a person dealing with a company in due course obtained from the company a mortgage under seal signed by two directors and the secretary. The articles contained no special provision as to the execution of such a document, but they provided that the directors should have power to fix a quorum, and that power they had exercised by fixing three as the quorum. In fact, the mortgage had been sealed at an irregular meeting, and no quorum was present. It was held, notwithstanding, that the mortgage was good, for the mortgagee had no means of knowing of this internal irregularity in the management. So, too, in a similar case, debentures issued under the seal of the company were held to be valid, though there had been no meetings or resolutions of the company or the board.[62]

On the same principle, a person dealing with a company is entitled to assume that the directors who carry on its business are directors *de jure*. It matters not to him that they have not been duly appointed—that is part of the indoor management.[63]

Notice of irregularity.

But a person dealing with a company who has notice of the irregularity cannot claim the benefit of this rule. Thus where directors had only power to borrow in excess of £1,000 with the assent of a general meeting, and without obtaining such assent had issued debentures for £2,500 to themselves in respect of money lent, it was held, that as they must be taken to have known that the internal regulations had not been complied with, the debentures could only stand good for £1,000.[64]

Nor does the rule apply where requisite signatures are forged.[65]

A person dealing with a company must take the articles to be such as appear at the office of the registrar to be in force. If the directors propose to do something in excess of their powers thereunder, he is not entitled to assume that their powers have been extended by a special resolution.[66]

Subject-Matter of Articles

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

[61] [1895] 1 Ch. 633.
[62] *Duck* v. *Tower Galvanizing Co.* [1901] 2 K.B. 314; *Re Fireproof Doors, Ltd.* [1916] 2 Ch. 142.
[63] *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869; *Re County Life Assurance Co.*, (1870) L.R. 5 Ch.App. 288.
[64] *Howard* v. *Patent Ivory Co.* (1888) 38 Ch.D. 156. And see *Tyne Mutual, etc., Association* v. *Brown* (1896) 74 L.T. 283, and *Underwood (A.L.) Ltd.* v. *Bank of Liverpool* [1924] 1 K.B. 775, at pp. 785—787.
[65] *Ruben* v. *Great Fingall Consolidated* [1906] A.C. 439.
[66] *Irvine* v. *Union Bank of Australia* (1877) 2 App.Cas. 366.

Alteration of Articles

Section 10 of the Act gives to a company under the Act power by special resolution, but 'subject to the provisions of this Act and to the conditions contained in its memorandum' to alter or add to its articles, and it expressly provides that 'any alteration or addition so made . . . shall . . . be *as valid as if originally contained therein*, and be subject in like manner to alteration by special resolution'. Nothing could be wider than the terms of this section. It does not say that the articles for the management or administration of the business may be altered, or that the articles, other than those which form part of the constitution of the company, may be altered; there is no limitation, except that the power is to be subject to the Act and the memorandum. Subject to this, therefore, all or any of the articles may be altered, and a company cannot by a clause in its articles exempt any article from liability to alteration under the section.[67] And this applies not only as between the company itself and its shareholders,[68] but as between the company and an outsider.[69]

At an early period, however, in the history of the Act of 1862, a construction was placed on the corresponding section in the Companies Act, 1856, which for many years had the effect of fettering to a large extent the freedom of companies under the Act of 1862. The case was *Hutton* v. *Scarborough Cliff, etc., Co.*[70] The company there was desirous of issuing some of the shares in the original capital as preference shares, but there being no power in its memorandum or articles to do so, the court held that[71] it could not be done. It was then proposed to alter the articles of association so as to enable *new* shares to be created and issued with a preference attached to them; but it was held that this again could not be done, as it amounted to an alteration of the constitution of the company and was, therefore, ultra vires and invalid.

This decision was for many years recognised as authoritative; but in *British and American Corporation* v. *Couper*,[72] Lord Macnaghten dissented from it; and it was finally overruled by the Court of Appeal in *Andrews* v. *Gas Meter Co.*[73] In that case the original articles contained no power to issue preference shares, but the company, by special resolution, had altered its articles so as to take power, and had issued preference shares accordingly. The court overruled *Hutton* v. *Scarborough Cliff Hotel Co.* (*No.* 2),[74] and held the alteration effective.

Retrospective alterations allowable.

In *Allen* v. *Gold Reefs of West Africa*[75] it was argued that the power to alter the articles conferred by s. 50 of the Act of 1862 (now replaced

[67] *Walker* v. *London Tramways Co.* (1879) 12 Ch.D. 705; *Malleson* v. *National Insurance, etc., Corporation* [1894] 1 Ch. 200
[68] *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[69] *Punt* v. *Symons & Co.* [1903] 2 Ch. 506.
[70] No. 2 (B) (1865) 2 Dr. & Sm. 521.
[71] 4 De G.J. & S. 672.
[72] [1894] A.C. 399, at p. 417.
[73] [1897] 1 Ch. 361 (C.A.).
[74] *Ubi supra.*

by **s. 10** of the Act of 1948) did not justify a retrospective alteration, *e.g.*, the insertion of a lien clause [76] intended to give the company a lien on the shares of members for debts incurred before as well as after the insertion of the clause. But the Court of Appeal held that the power of altering the articles was not thus to be limited and that the introduction of a lien clause was valid and effective, though in some senses it operated retrospectively.

In that case Lindley M.R said [77]:—

'The power thus conferred on corporations to alter the regulations is limited only by the provisions contained in the statute and the conditions contained in the company's memorandum of association.' . . . 'It must be exercised not only in the manner required by law, but also bona fide for the benefit of the company as a whole and it must not be exceeded. These conditions are always implied and are seldom, if ever, expressed. But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it.'

If the shareholders have acted honestly in what they believe to be the interests of the company, the Court will not be disposed to disallow the alteration, unless there are no grounds upon which reasonable men could have come to the same decision.

'The absence of any reasonable ground for deciding that a certain course of action is conducive to the benefit of the company may be a ground for finding lack of good faith or for finding that the shareholders, with the best motives, have not considered matters which they ought to have considered. On either of these findings their decision might be set aside.' [78]

The foregoing decisions are in accordance with the decision in *Pépé* v. *City and Suburban Permanent Building Society*.[79] In that case the plaintiff, a holder of fully paid-up shares, had under the rules given notice of withdrawal; afterwards, and before repayment, the society altered the rules by giving the directors power to pay off in priority members holding less than £50 in the society. It was held that the alteration was valid though in some sense it took away the vested right of the plaintiff.[80]

In *Re Argus, etc. Co.*[81] it was considered that a power in the deed of settlement of a company (not under the Act of 1862) to alter such deed of settlement was to have full effect, and included even power to insert, by alteration, a clause providing for the sale of the whole undertaking; and in *Re James Colmer, Ltd.*,[82] Romer J. held that there was no objection to an alteration of voting rights.

Limits to alteration.

Nevertheless, a limit must be placed on the general words contained in **s. 10**; and the limit is this, that the section cannot be used to oppress or defraud a minority of shareholders, or so as to violate any statutory

[76] *Post*, p. 134.
[77] [1900] 1 Ch. at p. 671.
[78] Scrutton L.J., *Shuttleworth* v. *Cox Bros. & Co.* [1927] 2 K.B. 9, at p. 23.
[79] [1893] 2 Ch. 311.
[80] See also *Doman's Case* (1876) 3 Ch.D. 21; *British Equitable Assurance Co.* v. *Baily* [1906] A.C. 35; *Rosenberg* v. *Northumberland Building Socy.* 22 Q.B. 373; *Re Barrow Hæmatite Steel Co.* 39 Ch.D. 582.
[81] (1868) 39 Ch.D. 571.
[82] [1897] 1 Ch. 524.

provision or principle of law.[83] The power, in other words, like other powers, must be exercised fairly and according to law. And it is clear from the authorities that any abuse of the statutory power will be restrained. A majority, for instance, will not be permitted by the court, under colour of the section, to commit a fraud on the minority.[84]

Breach of contract.

It was held by Sargant J. in *British Murac Rubber Syndicate* v. *Alperton Rubber Co.*[85] that a company will not be allowed to alter its articles in breach of contract with an outsider. But in *Punt* v. *Symons & Co.*[86] it was held that a company cannot by contract preclude itself from altering its articles. In *Baily* v. *British Equitable Assurance Co.*[87] it was held that certain by-laws fixing the rights of the policy-holders must not be altered so as to prejudice their contractual rights, but this case did not decide that the deed of settlement could not be altered; and it has now been held by the House of Lords that a company is not prevented from altering its articles by the fact that such an alteration would be a breach of contract, but that an action may lie for the breach. A director was by contract appointed to be a managing director for ten years, and the articles provided that, ' subject to the provisions of any contract ', the managing director should cease to be managing director if he ceased to be a director. The articles were altered in such a way as to authorise another company to remove any director, and it was held that there was an implied undertaking by the company not to remove the managing director and not to alter its articles so as to create a right to do so, and the managing director was held entitled to damages for breach of contract. In *Shirlaw* v. *Southern Foundries (1926), Ltd.*[88] Lord Porter said:—

> ' A company cannot be precluded from altering its articles of association thereby giving itself power to act upon the provisions of the altered articles, but so to act may nevertheless be a breach of contract, if it is contrary to a stipulation in a contract validly made before the alteration.'

It has also been held that a company cannot take power to expropriate individual shareholders[89]; unless clearly for the benefit of the company as a whole.[90]

Rectification by Court

The Court has no jurisdiction to rectify the articles of association on the ground of mistake, for they have statutory operation.[91]

[83] *Re Peveril Gold Mines* [1898] 1 Ch. 122; *Payne* v. *The Cork Co.* [1900] 1 Ch. 308.
[84] *Menier* v. *Hooper's Telegraph Co.* (1874) L.R. 9 Ch.App. 350; *Gray* v. *Lewis* (1873) L.R. 8 Ch.App. 1049; *Atwool* v. *Merryweather* (1868) L.R. 5 Eq. 464 n.; *Mason* v. *Harris* (1879) 11 Ch.D. 97; *Macdougall* v. *Gardiner* (No. 2) (1875) 1 Ch.D. 13; *Burland* v. *Earle* [1902] A.C. 83; *Normandy* v. *Ind, Coope & Co.* [1908] 1 Ch. 84.
[85] [1915] 2 Ch. 186.
[86] [1903] 2 Ch. 506.
[87] [1904] 1 Ch. 374.
[88] [1940] A.C. 701 at p. 740.
[89] *Brown* v. *British Abrasive Wheel Co.* [1919] 1 Ch. 290.
[90] *Sidebottom* v. *Kershaw, Leese & Co.* [1920] 1 Ch. 154. See also *Dafen Tinplate Co.* v. *Llanelly Steel Co.* [1920] 2 Ch. 124. Dicta of Peterson J. in this case disapproved in *Shuttleworth* v. *Cox Bros. & Co.* [1927] 2 K.B. 9. See *ante*, p. 36.
[91] *Evans* v. *Chapman* (1902) 86 L.T. 381; *Scott* v. *Frank F. Scott (London), Ltd.* [1940] Ch. 794.

CHAPTER 5

THE CERTIFICATE OF INCORPORATION

SECTION 18 of the Companies Act, 1862, provided that ' the certificate of incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with '. Soon after the passing of the Act it was held that the words ' the requisitions of this Act in respect of registration ' meant ' the requisitions and conditions precedent and incidental to registration ', and, accordingly, that once the certificate of incorporation was given, the company named therein as incorporated was to be taken to be duly and effectually incorporated, and all reference to prior matters was precluded

Thus, in *Peel's Case*,[1] the memorandum of association had, after signature and before registration, been altered without the privity of the signatories so materially that, in the words of Lord Cairns, ' the alteration entirely neutralised and annihilated the original execution and registration of the document '. The company was, however, registered, and the registrar gave his certificate of incorporation; subsequently the question arose whether this certificate was conclusive, seeing that according to [s. 1] of the Act the memorandum before registration has to be subscribed ' by seven or more persons associated for any lawful purpose ', whereas here the signature had been entirely annihilated. Nevertheless, it was held that the registrar's certificate of incorporation *was* conclusive ' The certificate of incorporation . . .' said Lord Cairns,[2] ' is not merely a prima facie answer, but a conclusive answer to any such objection . . . when once the certificate of incorporation is given, nothing is to be inquired into as to the regularity of the prior proceedings '.

Shortly afterwards, Lord Chelmsford L.C., dealing with the same point in *Oakes* v. *Turquand*,[3] said: ' I think that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisitions have been complied with '.

This view was, however, departed from in *Re National Debenture, etc., Corporation*,[4] where Kekewich J. refused to treat a certificate of incorporation as conclusive when he found as a fact that the memorandum of association had been subscribed by six persons only instead of seven. This decision was reversed on appeal on the ground that the evidence did not establish the fact so found; but the judges of the Court of Appeal let fall some dicta to the effect that if the judge below had been right as to

[1] (1867) L.R. 2 Ch.App. 674.
[2] *Ibid.*, at p. 681.
[3] (1867) L.R. 2 H.L. 325, at p. 354.
[4] [1891] 2 Ch. 505.

the facts, his decision would have been correct in point of law, and the existence of these dicta cast a shadow of uncertainty on the conclusiveness of the certificate. It was also doubtful, from the remarks of Turner L.J. in *Re Northumberland, etc., Banking Co.*,[5] whether the certificate was conclusive, if the company was one not authorised to be registered under the Act. To get rid of these doubts, s. 1 (1) of the Companies Act, 1900, was passed, and it dealt with both points, expressly providing that ' a certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts '. This section made it clear beyond all cavil that the certificate of incorporation is conclusive, even as Lord Cairns decided in 1867.

It is now repealed, but is re-enacted in **s. 15** of the Act of 1948.

Looking to the above decisions and to the words of **s. 15**, it is clear that there is no longer any possible ground for questioning the conclusiveness of certificates of incorporation. Thus, even if the seven signatories to a memorandum were all written by one person, or were all forged, the certificate would be conclusive that the company was duly incorporated. So, too, if the signatories were all infants, the certificate would still be conclusive, whether the decision in *Re Laxon & Co.*[6] that an infant is a ' person ' within [**s. 1**] can or cannot be supported.[7]

The certificate is also conclusive that the company came into existence on the date of the certificate, and it must be taken to have been in existence during the whole of that day.[8]

As a safeguard, however, and to secure care in the preparation of documents and in the matters preliminary to registration, the Legislature has taken the precaution to provide in **s. 15** (2) of the Act of 1948, that,

> a statutory declaration by a solicitor of the Supreme Court, and in Scotland 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 said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

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

As to impeaching incorporation.

The further question whether a company, once incorporated by registration under the Act of 1862, could be removed from the register and disincorporated, was considered by the House of Lords in *Princess of Reuss* v. *Bos.*[9] In that case the question arose as to the regularity of the constitution of a company—' The General Company for the Promotion of

[5] (1858) 2 De G. & J. 357.
[6] (No. 2) [1892] 3 Ch. 555, p. 23, *ante*.
[7] See also *Hammond* v. *Prentice Bros.* [1920] 1 Ch. 201, and *Bowman* v. *Secular Society, Ltd.* [1917] A.C. at p. 438.
[8] *Jubilee Cotton Mills* v. *Lewis* [1924] A.C. 958.
[9] (1871) L.R. 5 H.L. 176.

Land Credit, Limd.' All the subscribers to the memorandum of this company were foreigners, and there was no intention to carry on business in England. The company was ordered to be wound up. Neither of these circumstances affected its validity, but the articles of association contained provisions contrary to the Companies Act, and Lord Hatherley L.C. said [10]:—

'All we have to ask ourselves is this, my Lords. Has this company come into existence—has it been born? If it has been born, I think . . . it ought to be, as speedily as possible, extinguished. . . . The question is therefore simply whether it has been created. If created, there is no power given in this Act of Parliament, nor in any other Act of Parliament that I am aware of, by which, through any result of a formal application, like an application for *scire facias* to repeal a charter, the company can be got rid of, unless by winding up.'

But the statute does not bind the Crown, and, accordingly, where a company has been registered for an illegal object, proceedings could be instituted by the Attorney-General to have the registration cancelled.[11]

Striking off name.

The Registrar of Companies has jurisdiction under **s. 353** of the Act of 1948 to strike the names of companies believed to be defunct off the register, subject to the observance of certain formalities.

If companies so struck off are still carrying on business, the court has power to reinstate them on the register.[12]

Notice of the application to restore should be given to the Board of Trade.[13]

[10] *Ibid.*, at p. 193.
[11] *Bowman* v. *Secular Society* [1917] A.C. 406, at pp. 439, 440.
[12] *Re Outlay Assurance Society* (1887) 34 Ch.D. 479; *Re Langlaagte Proprietary Co.* (1912) 28 T.L.R. 529; *Company Precedents*, Part I, 15th ed., p. 1158 *et seq.*
[13] Practice Note [1931] W.N. 199.

CHAPTER 6

CORPORATE EXISTENCE AND POWERS

Company a Legal Persona

UPON the issue of the certificate of incorporation, a company registered under the Act of 1948 becomes a body corporate or, in other words, a corporation (**s. 13**). A corporation, it must be remembered, is not, like a partnership or a family, a mere collection or aggregation of individual units. It is, in contemplation of law, a *person* distinct from the members or shareholders who are interested in it—a metaphysical entity—a convenient fiction of law, but with no physical existence. As Lord Selborne said [1]: 'The company is a mere abstraction of law'. 'A corporation', said Cotton L.J., 'is not a mere aggregate of the shareholders'.[2] 'A corporation is a legal *persona* just as much as an individual.'[3] 'The company is at law a different person altogether from the subscribers to the memorandum of association'.[4] But the formation of a company will not protect individuals from liability for wrongful acts authorised by them.[5] A company cannot be committed for trial.[6] A company can, however, be charged with conspiracy to defraud [7]; and may be convicted of making use of a document false in a material particular with intent to deceive.[8] A company cannot be committed or attached for contempt of court; but an order against a company may be enforced by sequestration of its property or by attachment against the directors, if they have been guilty of contempt.[9] An order may be properly served if addressed to the directors and left at the registered office; but a writ of attachment cannot issue against the directors unless the memorandum indorsed on the order is addressed to the company.[10]

A company can sue for libel or slander affecting its business reputation without proof of special damage.[11]

A company cannot appear in person in court. It must appear by counsel, or, in the county courts, by a solicitor or other person specially authorised by the judge.[12]

[1] *G. E. Ry.* v. *Turner* (1872) L.R. 8 Ch.App. 152.
[2] *Flitcroft's Case* (1882) 21 Ch.D. 536.
[3] *Per* Cave J. in *Re Sheffield, etc., Society* (1889) 22 Q.B.D. 476.
[4] *Per* Lord Macnaghten, *Salomon* v. *Salomon & Co.* [1897] A.C. 22, 51.
[5] *Belvedere Fish Guano Co.* v. *Rainham Chemical Works* [1920] 2 K.B. 487; [1921] 2 A.C. 465.
[6] *R.* v. *Daily Mirror Newspapers, Ltd.* [1922] 2 K.B. 530. But see the Criminal Justice Act, 1925, s. 33 (1), which makes other procedure available.
[7] *R.* v. *I. C. R. Haulage, Ltd.* [1944] K.B. 551.
[8] *Director of Public Prosecutions* v. *Kent and Sussex Contractors, Ltd.* [1944] K.B. 146.
[9] R.S.C., Ord. XLII, r. 31.
[10] *Benabo* v. *Jay and Partners, Ltd.* [1941] 1 Ch. 52.
[11] *South Hutton Coal Co.* v. *North-Eastern News Association* [1894] 1 Q.B. 133; *D. & L. Caterers, Ltd.* v. *D'Ajou* [1945] K.B. 364.
[12] *Tritonia, Ltd.* v. *Equity and Law Life Assurance Society* [1943] A.C. 584.

Importance of the principle.

Salomon's Case [13] emphasises the all-important distinction between the company as a body corporate, and the members or shareholders of that body. This distinction lies at the root of many of the most perplexing questions that beset company law. It is a fundamental or cardinal distinction—a distinction which must be firmly grasped. The principle is thrown into very clear relief by contrasting a partnership with an incorporated company.

Company and Ordinary Partnership distinguished

1. In the case of a partnership the property of the firm belongs to the individual members. They are collectively entitled to it, whereas, in the case of a company, it belongs to the company, and not to the members.[14]

2. Creditors of a firm are creditors of the members of the firm, and on obtaining judgment against the firm can levy execution on the property of the partners in the firm; whereas, in the case of a company, ' The creditor has no debtor, but that impalpable thing the corporation ' [15]; and judgment against the company gives no right to levy execution against the members.

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

4. In the case of a partnership, restrictions on a member's authority contained in the partnership contract are of no avail as against outsiders; whereas, in the case of a company such restrictions are effective, because the public are bound to acquaint themselves with them.[16]

5. A partner cannot contract with the firm, whereas a member of the company can contract with the company.

Re-affirmation of the principle in Salomon v. *Salomon.*

This principle—of the independent corporate existence of a company —was elaborately explained and emphasised by the House of Lords in the case of *Salomon* v. *Salomon & Co., Ltd.*,[17] above referred to. The case was this: One Salomon, a leather merchant, was the owner of a profitable business, and in order to obtain the advantages of limited liability, he, being perfectly solvent at the time, determined to convert the business into a company. Of the shares in the capital he himself took 20,000, and his wife and sons and daughter took each one. No other shares were issued. Salomon received also mortgage debentures to the amount of £10,000 in part payment by the company for the business.

It was the validity of these debentures which was questioned in the action on the ground that the company was a ' one man company ' and a sham, and so Vaughan Williams J. held, being of opinion that A. Salomon & Co., Ltd., was a mere alias for Salomon, and, therefore, that Salomon

[13] [1897] A.C. 22.
[14] *R.* v. *Arnaud* (1849) 9 Q.B. 806; *Re George Newman & Co.* [1895] 1 Ch. 674, 685.
[15] Jessel M.R. in *Flitcroft's Case* (1882) 21 Ch.D. 533.
[16] *Ernest* v. *Nicholls* (1857) 6 H.L.Cas. 418, 419.
[17] [1897] A.C. 22.

was bound to pay the unsecured creditors of the company out of his own pocket notwithstanding that his shares had all been fully paid up.

This decision the Court of Appeal affirmed, but on a somewhat different ground, *viz.*, that the whole scheme was a fraud on the policy of the Act, and that it was never intended by the Legislature that a company should consist of one substantial person and six mere dummies devoid of any real interest. There must, the Court was of opinion, be seven bona fide traders associated. This decision was unanimously reversed by the House of Lords [18] on the ground that the only mode of ascertaining the intent and meaning of the Act was to examine its provisions and find what regulations it had imposed as a condition of trading with limited liability.

Judgments of the Law Lords on the case.

Lord Halsbury L.C. said [19]:—

'The statute enacts nothing as to the extent or degree of interest which may be held by each of the seven, or as to the proportion of interest, or influence, possessed by one or the majority of the shareholders over the others.'

Lord Macnaghten said [20]:—

'There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or that they or any of them should take a substantial interest in the undertaking, or that they should have a mind and will of their own, as one of the learned judges seemed to think, or that there should be anything like a balance of power in the constitution of the company.'

Further cases.

Farrar v. *Farrars, Ltd.*,[21] affords another illustration of the rule of independent corporate existence. In that case Lindley L.J. said [22]:—

'A sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself. To hold that it is, would be to ignore the principle which lies at the root of the legal idea of a corporate body, and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation itself is in every sense a sale, valid in equity as well as at law.'

So again in *North West Transportation Co.* v. *Beatty* [23] it was held that a sale of property of the company to one of its members, which had been sanctioned by a general meeting, could not be invalidated on the ground that it was carried by the votes of the purchaser.[24]

Number of Members necessary to preserve Limited Liability

It may be convenient here to refer to **s. 31** which provides:—

If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months 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

[18] *Salomon* v. *Salomon & Co.* [1897] A.C. p. 22.
[19] *Ibid.*, at p. 30.
[20] *Ibid.*, at p. 50.
[21] (1888) 40 Ch.D. 395.
[22] *Ibid.*, at p. 409.
[23] (1887) L.R. 12 App.Cas. 589.
[24] And see *Burland* v. *Earle* [1902] A.C. 83.

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 severally sued therefor.

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

Commencement of Business

Under the Companies Act, 1862, a company was entitled to commence business immediately upon its incorporation: it was, in the words of s. 18 of that Act, 'capable forthwith of exercising all the functions of an incorporated company'. And this plenary capacity of starting business at once is still permitted to private companies (**s. 13**). But as regards other companies, **s. 109** restricts their power to commence business unless and until certain conditions have been complied with.

The section embodying the restrictions is in the terms following:—

109.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the 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 [25]; 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; and

(*c*) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange [26]; and

(*d*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(*a*) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; 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 payable in cash; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the

[25] What is the minimum subscription depends on the provisions of **s. 47**. See *post*, pp. 84, 85.

[26] Clause (*c*) is new. It arises from the requirements of **s. 51** of the Act, re-enacting s. 60 of 1947. See Appendix 1, *post*.

prescribed form, that paragraph (*b*) of this sub-section has been complied with.

(3) The registrar of companies shall,[27] on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive[28] evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional[30] only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) 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.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible[31] 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.

(7) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of January, nineteen hundred and one; or

(*c*) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Powers of Registered Company

A company under the Act of 1948 has the following powers:—

(1) Power to do whatever it is necessary to do with a view to the attainment of the objects[32] stated in its memorandum.

(2) Power to do whatever else may fairly be regarded as incidental to and consequential on the stated objects.

(3) Power to do such other things as it is allowed to do by the Act of 1948 or by any other statute.

That the powers of a registered company were dependent on and governed by its stated objects was recognised in an early case decided on the Joint Stock Companies Act, 1856, the immediate forerunner of the Companies Act, 1862. The Act of 1856 contained provisions as to formation almost identical with those subsequently adopted in the Act of 1862. In particular the Act required that the memorandum should state the objects of the proposed company, and it prohibited any alteration of the conditions contained in the memorandum of association. It was in

[27] The duty of the registrar in granting the certificate is purely ministerial.

[28] See *Re Hadleigh Castle Gold Mines* [1900] 2 Ch. 419, *post*, p. 149.

[30] The word 'provisional' in **sub-s. (4)** means that the contracts made by a company before the date at which it is entitled to commence business are to be treated as if they contained a provision that they shall not be binding on the company unless and until the company becomes entitled to commence business. Hence, if the company never becomes entitled to commence business, a contract entered into by it never becomes binding on it, and no one can sue in respect of such contract. *Re 'Otto' Electrical Manufacturing Co. (1905), Ltd.* [1906] 2 Ch. 390; *Clinton's Claim* [1908] 2 Ch. 515.

[31] 'Every person responsible for the contravention' would include directors, managers, and other executive officers, possibly the secretary, having regard to **sub-s. (1) (d)**. *Burton* v. *Bevan* [1908] 2 Ch. 240.

[32] See *ante*, p. 20.

relation to a company formed under this Act that *Simpson* v. *Westminster Palace Hotel*[33] was decided in 1860. In that case the memorandum stated that ' the objects for which the company is established are the purchase of leasehold lands in the City of Westminster, the erection, furnishing and maintenance of an hotel thereon, and the carrying on the usual business of an hotel and tavern therein, and the doing all such things as are incidental or otherwise conducive to the attainment of these objects '. The directors, whilst the hotel was in course of being built, agreed to let off for a stipulated period—a few years—a large portion of the building to the head of a Government Department for the business of his office, and evidence was given that such a letting was calculated to be productive of advantage to the company in its intended business. The case went to the House of Lords, and it was decided that the letting was not ultra vires, on the ground that it was temporary and preliminary, and conducive to the ultimate object of the whole being devoted to the proper purpose of the hotel.

After the Act of 1862 came into operation, this decision was treated as applicable to companies registered under that Act. The true position of such a company was not, however, finally settled until 1875, when the celebrated case of *Ashbury Railway Carriage and Iron Co.* v. *Riche*[34] was decided by the House of Lords. In that case the objects of the company were ' to make and sell, or lend on hire, railway carriages and waggons and all kinds of railway plant, fittings, machinery and rolling stock, and to carry on the business of *mechanical engineers and general contractors*; to purchase, lease, work and sell mines, minerals, lands and buildings; to purchase and sell, as merchants, timber, coal, metals and other materials; to buy and sell any such materials on commission or as agents; to acquire purchase, hire, construct or erect works or buildings for the purposes o the company; and to do all such other things as are necessary, contingent incidental or conducive to all or any of such objects '.

The company, with this memorandum defining its objects, had entere into a contract with the plaintiff in relation to the construction of railway in Belgium, and the question raised in the action was, whether that contract was valid.

House of Lords' decision.

The House of Lords held that the contract was ultra vires the company and therefore altogether void.

Lord Chancellor Cairns,[35] after premising that the subscribers ' are to state the objects for which the proposed company is to be established, and that the existence, the coming into existence of the company, is to be an existence and to be a coming into existence for those objects, and for those objects only ', and after referring to the words at the end of s. 12 (re-enacted in an amended form in s. 4 of the Act of 1948) to the effect that ' no alteration shall be made by any company in the conditions contained in its memorandum of association ', proceeded as follows:—

[33] (1860) 8 H.L.C. 712.
[34] (1875) L.R. 7 H.L. 653.
[35] *Ibid*, at p. 669.

'If that is the purpose for which the corporation is established—it is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is necessary so to state, negatively that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified'.[36]

The House of Lords further held, as a corollary from the above, that the contract, being ultra vires, and therefore void in its inception, was incapable of ratification even by the unanimous consent of all the shareholders.

In a subsequent case[37] the principle laid down in *Ashbury* v. *Riche*[38] was again recognised in the House of Lords, but it was in some degree qualified by the rule laid down by Lord Selborne L.C. and the other Law Lords, to the effect that the principle was one to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental or consequential upon those things which the Legislature had authorised (that is, those things specified in the memorandum as objects) ought not, unless expressly prohibited, to be held by judicial construction to be ultra vires.

In *London County Council* v. *Att.-Gen.*,[39] Lord Halsbury L.C., referring to *Ashbury Ry.* v. *Riche*[38] and *Att.-Gen.* v. *G. E. Ry.*,[37] said: 'I think now it cannot be doubted that those two cases do constitute the law upon the subject'.

What powers implied.

To apply and illustrate these principles:—

If a company is formed, for example, 'to buy, sell and deal in coal', it may, *for the purpose of carrying out its objects*, not only buy, sell and deal in coal, but may—(1) purchase or take on lease stores; (2) open shops and agencies; (3) buy and hire lorries, trucks, carts and horses; (4) employ labour; (5) draw and accept bills of exchange; (6) borrow and give security; (7) incur debts; (8) make contracts for purchase of supply; (9) have a banking account; (10) bring actions and take proceedings; (11) compromise actions and disputes[40]; (12) employ agents; (13) pay bonuses and pensions[41] to employees: for these things are fairly incidental to and consequential on the object to 'buy, sell, and deal in coal'.

Such a company may also pay all expenses incurred in getting up and registering the company, and it may pay dividends out of profits, and may provide for payment, even out of capital, of interest on capital paid up in advance of calls, for **clause 21 of Table A** treats such outgoings and expenses as properly dealt with by the articles, and what Table A authorises is not to be treated as ultra vires.[42]

[36] *Ibid*, at p. 670.
[37] *Att.-Gen.* v. *Great Eastern Ry.* (1880) 5 App.Cas. 473.
[38] (1875) L.R. 7 H.L. 653.
[39] [1902] A.C. 165.
[40] *Bath's Case* (1878) 8 Ch.D. 334.
[41] See Chap. 44.
[42] *Lock* v. *Queensland, etc., Mortgage Co.* [1896] A.C. 461.

Necessity of amplifying objects clause.

Wide as the powers thus vested are, experience has shown that they are not wide enough to cover many of the transactions which are found necessary or convenient in the course of a company's business.[43]

Hence the objects clause of by far the greater number of existing companies is expressed in considerable detail,[44] and specifies, in most cases at any rate, some objects which might be—to a lawyer—implied.

Specimen clauses; why inserted.

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

1. A clause authorising the company to carry on the particular business which it is proposed to carry on, and also to carry on various other businesses which it may probably or possibly be desirable to carry on.

2. A clause empowering the company to acquire any other business similar to its own, for it is extremely difficult to imply such a power from the memorandum.[45]

3. A clause empowering the company to enter into any agreement for sharing profits, joint adventure, or other arrangement of a like nature with other persons or companies carrying on any similar business; for very clear powers are necessary to justify such transactions.[46]

4. A clause empowering the company to take shares in other companies having similar objects, etc. Such a power is commonly wanted, and not easily implied,[47] but may be implied, *e g.*, from a clause allowing amalgamation.[48]

5. A clause empowering the company to promote other companies for any purpose calculated to benefit the company. This power, though often required, cannot be implied.[49]

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

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

8. A power to borrow or raise money by the issue of debentures, debenture stock, or otherwise; for, although a *trading* company has an implied power to borrow and to give security to a reasonable amount,[50] it is found in practice highly desirable to have an explicit power in the memorandum.

[43] See *ante*, p. 20.
[44] See *ante*, pp. 20 and 21.
[45] *Ernest* v. *Nicholls* (1857) 6 H.L.C. 401.
[46] *Re European Society Arbitration Acts*; *Ex p. British Nation, etc., Association* (1878) 8 Ch.D. 679, 704.
[47] *Re Barned's Banking Co.* (1867) L.R. 3 Ch.App. 105; *Re Lands Allotment Co.* [1894] 1 Ch. 616, 630.
[48] *Re William Thomas & Co.* [1915] 1 Ch. 325
[49] *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 381.
[50] See Chap. 30.

9. A power to draw, make, accept, indorse, discount, and issue promissory notes, bills of exchange, debentures, and other negotiable or transferable instruments. This is very desirable; for, although a trading company has implied power to make and accept promissory notes and bills of exchange for the purpose of its business,[51] the fact that various kinds of companies have been held not to possess any such implied power clouds the implication with a most inconvenient uncertainty.

10. A power to sell and dispose of the undertaking of the company for shares, debentures or securities of any other company having objects altogether, or in part, similar to those of this company. This is effective.[52] In the absence of an express power like this, a company cannot sell or dispose of its whole business.[53] According, however, to *Bisgood* v. *Henderson's Transvaal Estates*,[54] if winding up and distribution among the shareholders of the proceeds of sale is in contemplation, a company cannot, under a power in its memorandum, sell its undertaking for shares or debentures and, as an essential part of the agreement for sale, provide for the distribution of the shares in a particular manner.[55]

11. A power to apply for an Act of Parliament for any purpose which may seem expedient. Without such an express power a company cannot apply its funds in promoting a Bill to effect any modification in its constitution or for any other purpose.[56]

12. A power to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account, or otherwise deal with, all or any part of the property and rights of the company. Although a trading company has an implied power to deal with its property for the purposes of its business,[57] it is in practice found highly desirable to have express and explicit powers on such matters, and so preclude all question and doubt.[58]

Intra Vires and Ultra Vires Proceedings

It is a corollary from the rule in *Ashbury* v. *Riche* [59] that a company's objects circumscribe its powers—that the funds of a company under the Act can only be applied in carrying out its authorised objects. Lord Herschell said in *Trevor* v. *Whitworth* [60]:—

'It cannot be questioned, since the case of *Ashbury, etc. Co.* v. *Riche*,[61] that a company cannot employ its funds for the purposes of any transactions which

[51] *Re Peruvian Rails. Co.* (1867) L.R. 2 Ch.App. 617, 623.
[52] *Cotton* v. *Imperial, etc., Corporation* [1892] 3 Ch. 454; *Grant* v. *United Kingdom Switchback Rails. Co.* (1888) 40 Ch.D. 135 (a sale of the undertaking or any part was one of the objects); *New Zealand, etc., Co.* v. *Peacock* [1894] 1 Q.B. 622 (a sale under the power in the memorandum valid); *Foster* v. *Borax Co.* [1901] 1 Ch. 326; *Re Vivian & Co.* [1900] 2 Ch. 654.
[53] *Simpson* v. *Westminster Palace Hotel Co.* (1860) 8 H.L.C. 712.
[54] [1908] 1 Ch. 743.
[55] See further, *post*, p. 104.
[56] *Munt* v. *Shrewsbury, etc., Ry.* (1850) 13 Beav. 1; *Simpson* v. *Denison* (1852) 10 Hare 51; *Vance* v. *East Lancashire Ry.* (1856) 8 K. & J. 50.
[57] *Re Patent File Co.* (1870) L.R. 6 Ch.App. 83.
[58] *Re Kingsbury Collieries and Moore's Contract* [1907] 2 Ch. 259.
[59] (1875) L.R. 7 H.L. 653.
[60] (1887) 12 App.Cas. 414, 415.
[61] (1875) L.R. 7 H.L. 653.

do not come within the objects specified in the memorandum. . . . The capital may, no doubt, be diminished by expenditure upon, and reasonably incidental to, the objects specified. A part of it may be lost in carrying on the business operations authorised. Of this all persons trusting the company are aware and take the risk. But I think that they have a right to rely on the capital remaining undiminished by any expenditure outside those limits, or by the return of any part of it to the shareholders'.

Examples of intra vires acts.

The following are some of the cases in which the expenditure of the company's funds, or the employment of its property, has been held a legitimate expenditure or employment on the objects of the company and therefore intra vires, though not expressly provided for: a company, formed to work a patent, expending its funds in purchasing such patent [62]; a company, formed to work mines of which it had acquired a lease, spending money in buying the freehold, including the surface [63]; a company, being second mortgagee of land in England, paying off the first mortgagee in order to prevent foreclosure [64]; a company, bound to supply boats for a ferry, employing the boats, when not wanted for the ferry, in excursions [65]; a hotel company letting off temporarily part of its premises not wanted for the purposes of its business [66]; a colliery company selling land from time to time when the sale is reasonably necessary [67]; a company formed to acquire and work a mine, paying fees to a mining expert for a report on the mine to its solicitors and brokers, and for advertisements and printing [68]; a company paying its workmen a gratuity,[69] or granting a pension to an ex-officer or his widow,[70] but the pensioner cannot prove for the pension if the company is wound up,[71] or compromising a bona fide dispute,[72] or paying to a broker a reasonable brokerage for issue of its capital,[73] or incurring expenses on printing, stamping and sending out proxy papers and circulars to secure the defeat of a resolution which the directors consider adverse to the company's interest,[74] or, with wide powers of lending, lending money to a servant of the company,[75] or expenditure on scientific research, where the main object of the company was the business of chemical manufacturers,[76] or guaranteeing debentures of another company under a power to 'subsidise or assist'[77]; or a gas company having power to convert and manufacture

[62] *Leifchild's Case* (1865) L.R. 1 Eq. 231.
[63] *Johns* v. *Balfour* (1889) 5 T.L.R. 389.
[64] *Sheffield, etc., Society* v. *Aizlewood* (1889) 44 Ch.D. 412.
[65] *Forrest* v. *Manchester, etc., Rail Co.* (1861) 30 Beav. 40.
[66] *Simpson* v. *Westminster Palace Hotel Co.* (1860) 8 H.L.C. 712.
[67] *Re Kingsbury Collieries, Ltd., and Moore's Contract* [1907] 2 Ch. 259.
[68] *Lydney, etc., Co.* v. *Bird* (1886) 33 Ch.D. 85.
[69] *Hampson* v. *Price's Patent Candle Co.* (1876) 24 W.R. 754.
[70] *Henderson* v. *Bank of Australasia* (1888) 40 Ch.D. 170; *Hutton* v. *West Cork Ry. Co.* (1883) 23 Ch.D. 654, 672; *Cyclists' Touring Club* v. *Hopkinson* [1910] 1 Ch. 179.
[71] *Re Birkbeck, etc., Building Society* [1913] 1 Ch. 400.
[72] *Faith's Case* (1878) 8 Ch.D. 334.
[73] *Metropolitan Coal, etc., Association* v. *Scrimgeour* [1895] 2 Q.B. 604.
[74] *Peel* v. *L. & N. W. Ry.* [1907] 1 Ch. 5; *Campbell* v. *Australian Mutual, etc., Society* (1908) 99 L.T. 3.
[75] *Rainford* v. *James Keith and Blackman Co.* [1905] 2 Ch. 147.
[76] *Evans* v. *Brunner, Mond & Co.* [1921] 1 Ch. 359.
[77] *Re Primary, Holroyd and Healey's Breweries* [1922] W.N. 293.

residual products manufacturing other substances for the purpose of dealing more effectively with its residual products.[78]

All these have been held intra vires. So it is intra vires for a trading company to borrow, raise money and give security on its property.[79]

Examples of ultra vires acts.

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

The application by a company of its funds towards promoting a Bill in Parliament to obtain powers for improving the navigation of a river was held ultra vires, though the prosperity of the company depended materially on the navigation of the river being improved.[80]

So a railway company (in the absence of a power for the purpose in its constitution) was held incompetent to secure the capital and guarantee the profits of another company about to run steamboats in connection with the line, however beneficial it might be to the railway company.[81] So, again, where a railway company proposed to subscribe to the Imperial Institute, this was held ultra vires.[82] As also was the grant by a railway company of an option for 999 years to rent refreshment rooms at a station.[83] It is prima facie ultra vires for a railway company to take to working coal mines and dealing in coal for profit.[84] It was held to be ultra vires for the London County Council to run omnibuses [85]

It is likewise ultra vires for a company, without special power in its constitution, to take over the undertaking of another company,[86] or to enter into a partnership or amalgamation arrangement,[87] or to promote another company.[88]

Purchase of own shares.

A company cannot apply its funds in purchasing its own shares, and even an express authority in the memorandum is unavailing to authorise it[89]; the reason being that such a purchase either amounts to a 'trafficking' in its own shares or operates as a reduction of capital and can only be effected with the sanction of the court.[90] Shares can, however, be held in trust for the company, provided the company's funds are not applied for the purpose of acquiring them.[91] Payment by the company to a holder of shares carrying special privileges in return for

[78] *Deuchar* v. *Gas Light and Coke Co.* [1925] A.C. 691.
[79] *General Auction, etc., Co.* v. *Smith* [1891] 3 Ch. 432, 436.
[80] *Munt* v. *Shrewsbury Ry.* (1850) 13 Beav. 1.
[81] *Colman* v. *Eastern Counties Ry.* (1846) 10 Beav. 1.
[82] *Tomkinson* v. *S. E. R.* (1887) 35 Ch.D. 675.
[83] *County Hotel, etc., Co.* v. *L. N. W. Ry.* [1918] 2 K.B. 251; but see *S. C.* [1919] 2 K.B. 29, where the Court of Appeal adopted a different construction of the contract.
[84] *Att.-Gen.* v. *Great Northern Rail Co.* (1860) 1 Dr. & Sm. 154.
[85] *L. C. C.* v. *Att.-Gen.* [1902] A.C. 165. See also *Att.-Gen.* v. *Manchester Corporation* [1906] 1 Ch. 643 (as to acting as carriers in relation to tramways), and *Att.-Gen.* v. *North Eastern Rail Co.* [1906] 2 Ch. 675.
[86] *Ernest* v. *Nicholls* (1857) 6 H.L.C. 401.
[87] *Ex. p. British Nation Life, etc., Association (Liquidators of)* (1878) 8 Ch.D. 704.
[88] *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 381.
[89] *Trevor* v. *Whitworth* (1887) 12 App.Cas. 409.
[90] *British, American, etc., Association* v. *Couper* [1894] A.C. 399.
[91] *Kirby* v. *Wilkins* [1929] 2 Ch. 444.

the cancellation of those privileges is not necessarily ultra vires, if the payment is for the benefit of the company.[92]

Loans for purchase of shares.

Loans by a company on the security of its own shares, and financial assistance by a company to a person to enable him to subscribe and pay for shares, were prohibited by s. 45 of 1929, and were of doubtful validity before the Act of 1929.[93] But this section did not apply to loans to persons to enable them to subscribe for shares.[94] This defect was remedied by s. 73 of the Act of 1947 and now **s. 54**, embodying this alteration, provides as follows:—

54.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:

Provided that nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(*c*) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

The penalty for infringing **s. 54** is a fine not exceeding £100. It has been held that a debenture issued as a security to assist a purchase of the company's shares is not void by reason of this section,[95] a decision which, if correct, seems to render the section of little value, having regard to the limit of the fine to £100. It is difficult to see why a security rendered 'unlawful' by the section should not be void.

Issue of shares at a discount.

It is also ultra vires for a company under the Companies Acts to make a present of bonus shares,[96] or to issue its shares at a discount, that is to say, on the footing that the holders shall have paid-up shares on payment of less than the nominal value of such shares, except where sanctioned by the court.[97] The issue of shares at a discount was for the first time permitted by the Act of 1929 (s. 47); but subject to the consent of the court and other conditions (see now **s. 57**). Such application to the court is rare; but an issue of shares at a discount was sanctioned in *Re Derham*

[92] *Investment Trust Corporation, Ltd.* v. *Singapore Traction Co., Ltd.* [1935] Ch. 15.
[93] Cf. *R.* v. *Lorang* (1930) 22 Cr.App.R. 167.
[94] *Re V. M. G. Holdings, Ltd.* [1942] Ch. 235.
[95] *Victor Battery Co., Ltd.* v. *Curry's, Ltd.* [1946] Ch. 242.
[96] *Re* [illegible], *etc., Co.* [1893] 3 Ch. 9.
[97] [illegible] *etc., Co. of India* v. *Roper* [1892] A.C. 125; *Welton* v. *Saffery* [1897]

& Allen, Ltd.,[98] where shares had been agreed to be issued at a discount as part of an arrangement for the purchase of other shares below par, and the shares had actually been issued, by mistake, before the application to the court.[99]

Ratification

An ultra vires act cannot be ratified by the consent of all the members; but an act which is not within the powers of the directors or is not done in a manner provided by the articles, but is within the powers of the company, can be ratified by all the members without a formal meeting being held [1]; and even if no meeting is held [2]

Construction or Interpretation of Objects

Whether any given transaction is or is not within the powers of a company is a question of law depending on the construction to be placed on the objects clause of the memorandum of association.[3] In *Ashbury Railway Carriage, etc., Co.* v *Riche*,[4] the whole case turned, as appears from the opinions of the Lords, on the construction to be placed on the objects clause of the memorandum of association. Accordingly, if a question arises as to whether a transaction is or is not within the powers of a company to be inferred from its objects, one must scrutinise the objects clause and ascertain its meaning, and in doing this the rules which are to be applied to its interpretation or construction must be borne in mind. To construe a document is, as Lord Chelmsford said in *Scott* v. *Corporation of Liverpool*,[5] nothing more than this: to arrive at the meaning of the parties For this purpose there are certain well-recognised rules which apply to a memorandum and articles of association, just as much as to any other document. Thus (i) the whole document must be read and considered. (ii) The expressed intention is to have effect; we are not to speculate as to what the parties intended, but to ascertain it from the words used, for the expressed meaning is to be taken to indicate the intention. (iii) The 'golden rule' must be observed, namely, that the grammatical and ordinary sense of the words is to be adhered to; unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity, repugnance or inconsistency, but no further.[6] Where the language is clear and unambiguous it must have effect, even though in the result it may operate in a capricious and unreasonable manner; if it is ambiguous, the more reasonable construction should be adopted. (iv) Popular words are to be taken prima facie to be used in their popular sense, and technical words in their technical sense; but in each case the prima facie sense

[98] [1946] Ch. 31.
[99] And see *post*, p. 305.
[1] *Re Express Engineering Works, Ltd.* [1920] 1 Ch. 466.
[2] *Parker and Cooper, Ltd.* v. *Reading* [1926] Ch. 975.
[3] *Simpson* v. *Westminster Palace Hotel Co.* (1860) 8 H.L.C. 712
[4] (1875) L.R. 7 H.L. 653.
[5] (1858) 3 De G. & J. 360.
[6] *Grey* v. *Pearson* (1857) 6 H.L.C. 61, 106.

may be displaced or qualified by the context. (v) The words used must be read with reference to the subject-matter. (vi) The *ejusdem generis* rule and the maxim *expressio unius est exclusio alterius* are also, at times, applicable.

A memorandum of association, like any other document, must be read fairly and its import derived from a reasonable interpretation of the language which it employs.[7]

Main object.

A special rule of construction has in some cases been applied where the objects of a company are expressed in a series of paragraphs, and one paragraph (commonly the first) appears to embody the main or dominant object of the company, and all the other paragraphs have been treated as merely ancillary to this main object, and as limited and controlled thereby.[8]

Sometimes the memorandum declares the intention to be that the objects specified in each paragraph of the clause shall, except where otherwise expressed in such paragraph, be in no wise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company. These words are obviously intended to exclude the application of any such rule of construction, and the court is bound to give effect to the intention thus indicated.[9] This applies whether the question is as to ultra vires acts, or as to the *substratum* having gone.[10] In *Stephens* v. *Mysore Reefs*,[11] general words in a later paragraph were held to be cut down by reference to the ' main object ' where the question was one of ultra vires, notwithstanding the presence of words intended to exclude any such rule. This decision, though not expressly overruled in *Cotman* v. *Brougham*[9] appears to be quite inconsistent with the principle there laid down, and, so far as it lays down any rule of construction, must be taken to be no longer law

It is, of course, to be borne in mind that every rule of construction may be excluded or modified by the contents of the document to be construed. Such words as ' in or out of the colony ',[12] or ' in Mysore *and elsewhere* '[13] have been held not to be restricted by the context, but to be world-wide.[14]

General Concluding Words

The objects clause commonly concludes with the words: ' To do all such other things as are incidental or conducive to the attainment of the

[7] ***Egyptian Salt and Soda Co.*** v. *Port Said Salt Association, Ltd.* [1931] A.C. at p. 682.
[8] *Re Haven Gold Mining Co.* (1882) 20 Ch.D. 151; *Re German Date Coffee Co.* (1882) 20 Ch.D. 169; *Re Crown Bank* (1890) 44 Ch.D. 634; *Re Amalgamated Syndicate* [1897] 2 Ch. 600.
[9] *Cotman* v. *Brougham* [1918] A.C. 514.
[10] *Re Kitson & Co. Ltd.* (1946) 175 L.T. 25. *Re Taldua Rubber Co. Ltd.* [1946] 2 All E.R. 768.
[11] [1902] 1 Ch. 745.
[12] *Campbell* v. *Australian Mutual, etc., Society* (1908) 99 L.T. 3.
[13] *Pedlar* v. *Road Block Gold Mines* [1905] 2 Ch. at p. 435.
[14] See, further, as to interpretation, *Company Precedents*, Part I, 15th ed., Chap. VII.

above objects or any of them'; sometimes the words are even wider, *e.g.*, 'all such other things as the company may think expedient'. The former words were used in *Evans* v. *Brunner, Mond & Co.*,[15] and were relied upon by Eve J. The latter words were used in *Peruvian Rail. Co.* v. *Thames, etc., Co.*,[16] and were relied on by Lord Cairns as enlarging the company's powers; but it seems very doubtful whether they can really add anything to what the law already implies as incidental to the specifically enumerated objects.[17]

The operation of such general words should, it seems, be considered to be limited to such things as are naturally conducive to the objects specified, *i.e.*, doing something bona fide connected with the objects to be attained and in the ordinary course of business adapted to their attainment.[18]

Indefinite Objects

Sometimes it is contended that when the objects are very widely stated in general terms there is no sufficient 'statement' of the objects within the requirements of the Act, but any objection of the kind is precluded by the certificate of incorporation, which the Act makes conclusive evidence of compliance with the preliminary conditions, one of which is a statement of the objects.[19] However, where the objects are ambiguous, that construction should be preferred which brings them within reasonable limits.

Alteration of other Conditions in the Memorandum

In *Ashbury Railway, etc., Co.* v. *Riche*,[20] the House of Lords was dealing primarily with the objects of a company, but the rule there established and **s. 4** of the Act apply equally to the other conditions contained in the memorandum of association. Thus the name of the company (clause 1 of the memorandum) cannot be changed except as provided by **s. 18** of the Act; the situation of the registered office (clause 2 of the memorandum) can only be altered by special Act of Parliament[21] and the capital of the company (clause 5 of the memorandum) can only be altered in the manner specified in **ss. 61 and 66.** The memorandum can now be altered by a special resolution subject to a right to petition for cancellation. Under the Act of 1929 rights attached in the memorandum to different classes of shares could be altered by reorganisation by a scheme of arrangement under s. 153 (now **s. 206**), and special rights fixed in the memorandum could be altered

[15] [1921] 1 Ch. 359.
[16] (1867) L.R. 2 Ch.App. 617.
[17] *Re Baglan Hall Colliery Co.* (1870) L.R. 5 Ch.App. 346; *Simpson* v. *Westminster Palace Hotel Co.* (1860) 8 H.L.C. 712; *Taunton* v. *Royal Insur. Co.* (1864) 2 H. & M. 135.
[18] *Joint Stock Discount Co.* v. *Brown* (1866) L.R. 3 Eq. at p. 150; same case, L.R. 8 Eq. at p. 395; *Ashbury Ry., etc., Co.* v. *Riche* (1875) L.R. 7 H.L. 653; *British and Foreign, etc., Co.* v. *Ashbury Carriage, etc., Co.* (1869) 20 L.T. 360; *Deuchar* v. *Gas Light and Coke Co.* [1925] A.C. 691.
[19] *Cotman* v. *Brougham* [1918] A.C. 514.
[20] (1875) L.R. 7 H.L. 653.
[21] But see *post*, p. 231.

if the memorandum itself provided a method of doing so[22]; but otherwise conditions contained in the memorandum, even if they could lawfully have been contained in the articles, could not be altered at all. **Section 23** of the Act[23] now, however, provides that such provisions may be altered by special resolution; but if application is made to the court to cancel the alteration, it does not take effect unless confirmed by the court. Special rights of any class of members cannot be varied in this way. The procedure set out in **s. 5** applies to this section.[24]

Company's Responsibility for Acts of its Agents

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

This is a fallacy. There is nothing in the rule of ultra vires which in any way protects a company acting within its legitimate sphere from liability, to the extent of its assets, for the consequences of the acts of its agents, done by them on behalf of the company and in the course of the company's business. This liability is derived from the ordinary law of principal and agent, and it makes no difference whether the agent's wrongful act or default takes the form of malice, negligence, nuisance or fraud. '. . . these objects [of the company],' as Lord Cranworth said, in *Ranger* v. *G. W. Rail. Co.*,[25] 'can only be accomplished by the agency of individuals; and there can be no doubt that if the agents employed conduct themselves fraudulently, so that if they had been acting for private employers, the persons for whom they were acting would have been affected by their fraud, the same principles must prevail when the principal under whom the agent acts is a corporation'. See also *Barwick* v. *English Joint Stock Bank*[26] and *Houldsworth* v. *City of Glasgow Bank*,[27] where Lord Selborne, quoting with approval the observations of Willes J. in *Barwick* v. *English Joint Stock Banking Co.*, said: 'With respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, no sensible distinction can be drawn between the case of fraud and the case of any other wrong'.

Other cases of liability.

Hence a corporation may be held liable for negligence[28]; for trespass[29]; for malicious prosecution[30]; for libel[31]; for assault and

[22] See *post*, p. 65.
[23] Re-enacting s. 77 of the Act of 1947.
[24] See s. 23, Appendix 1, *post*.
[25] (1854) 5 H.L.C. 86.
[26] (1867) L.R. 2 Ex. 259.
[27] (1880) 5 App.Cas. 326.
[28] *Mersey Dock and Harbour Board Trustees* v. *Gibbs* (1866) L.R. 1 H.L. 93.
[29] *Maund* v. *Monmouthshire Canal Co.* (1842) 4 Man. & Gr. 452.
[30] *Abrath* v. *N. E. Ry.* (1886) 11 App.Cas. 247; *Edwards* v. *Midland Ry.* (1880) 6 Q.B.D. 287; *Cornford* v. *Carlton Bank* [1900] 1 Q.B. 22.
[31] *Whitfield* v. *S. E. Ry.* (1858) E.B. & E. 115, 122.

battery [32]; for nuisance [33]; for fraud.[34] It may be indicted or fined for breach of duty imposed by the law.[35] It may be estopped by the acts of its agents.[36] And finally, it may be held guilty of laches, and bound by acquiescence.[37] For although it may not have eyes and see what is going on, it has agents who can see.[38]

The extent of the company's liability is not limited because its constitution limits the amount of its expenditure.[39]

A company can ratify an act which has been done on its behalf without authority, provided the act is not ultra vires.[40]

Statutory Powers Independent of Memorandum

Besides the powers given to a company by its memorandum of association, it has numerous other supplemental powers expressly given to it by the Companies Act, 1948. Of these the following may be mentioned:—

1. Power to change its name in manner specified (**s. 18**).
2. Power to alter its articles (**s. 10**).[41]
3. Power to have a common seal (**s. 13 (2)**); and see **s. 34** as to official seals for foreign purposes.
4. Power to hold lands notwithstanding the Mortmain Acts (**s. 14**).
5. Power to keep a register of members (**s. 110**).
6. Power to keep a dominion register (**s. 119**).
7. Power to issue share warrants to bearer (**s. 83**).
8. Power to increase its capital, consolidate its shares, convert shares into stock, and to re-convert stock into shares (**s. 61**).
9. Power to sub-divide its shares (**s. 61**).
10. Power to reduce its capital in various ways (**s. 66**).
11. Power to make part of its uncalled capital incapable of being called up, except in a winding up (**s. 60**).
12. Power to contract without seal (**s. 32**).
13. Power to appoint an attorney to execute deeds, etc., abroad (**s. 34**).
14. Power to pay, in certain cases, commissions for taking up, underwriting, or placing shares (**s. 53**).
15. Power to issue redeemable preference shares (**s. 58**).

[32] *Butler* v. *Manchester, etc., Ry.* (1888) 21 Q.B.D. 207.
[33] *Rapier* v. *London Tramways Co.* (1893) 69 L.T. 361.
[34] *Barwick* v. *English Joint Stock Bank* (1867) L.R. 2 Ex. 259; *Houldsworth* v. *City of Glasgow Bank* (1880) 5 App.Cas. 317.
[35] *R.* v. *Birmingham, etc., Ry.* (1842) 3 Q.B. 223; *R.* v. *Tyler and the International, etc., Co.* [1891] 2 Q.B. 588.
[36] *Burkinshaw* v. *Nicolls* (1878) 3 App.Cas. 1004; *Robinson* v. *Montgomeryshire Brewery Co.* [1896] 2 Ch. 841; *Bloomenthal* v. *Ford* [1897] A.C. 156. *See* Chap. 25.
[37] *Erlanger* v. *New Sombrero, etc., Co.* (1878) 3 App.Cas. 1218; *Nicol's Case* (1885) 29 Ch.D. 421, 429.
[38] *Crook* v. *Corporation of Seaford* (1871) L.R. 6 Ch.App. 551.
[39] *Gallsworthy* v. *Selby Dam Drainage Commissioners* [1892] 1 Q.B. 348; *Re United Service Co.* (1870–1) L.R. 6 Ch.App. 212.
[40] *Grant* v. *United Kingdom Switchback, etc.* (1888) 40 Ch.D. 135; *Wilson* v. *West Hartlepool Ry.* (1865) 2 De G. J. & S. 475.
[41] See *ante*, p. 35.

Statutory Duties

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

1. Supply to members on demand printed copies of its memorandum and articles, and of any special resolutions (**ss. 24** and **143**).
2. Keep a register of members at its office (**s. 110**) to be open for inspection (**s. 113**).
3. Make annual returns of its members, assets and liabilities, etc., to the registrar (**s. 124**).
4. Give to the registrar notices of increase of capital and consolidation of shares, etc. (**ss. 62** and **63**).
5. Have a registered office, and notify to registrar situation and change of situation (**s. 107**).
6. Put up the name of the company outside its office or place of business, and insert it in all its business publications, etc. (**s. 108**).
7. Hold its annual general meeting every year (**s. 131**).
8. Hold the statutory meeting not less than one month after and not more than three months after it becomes entitled to commence business (unless a private company) (**s. 130**).
9. Register special and extraordinary resolutions (**s. 143**).
10. Keep at its registered office a register of its directors or managers and its secretary, and send a copy to registrar and notify changes (**s. 200**).
11. Deliver its prospectus (if any) to the registrar for registration, or statement in lieu thereof (**ss. 41, 48**).
12. In issuing a prospectus, comply with **s. 38.**
13. Where **ss. 47** and **109** apply, refrain from allotting shares or commencing business until the requirements of those sections have been satisfied.
14. Make returns of allotments to the registrar within one month (**s. 52**).
15. Deliver for registration contracts and make returns where shares are allotted for a consideration other than cash (**s. 52**).
16. State in every balance sheet the amount paid by way of underwriting commission until written off, and all other matters now required to be stated in the balance sheets (**Sched. VIII 3 (c)**).
17. Have certificates of shares ready for delivery within two months (**s. 80**).
18. Register with the Registrar of Joint Stock Companies all mortgages and charges to which **s. 95** applies.
19. Keep a register of mortgages and charges open for inspection by shareholders, creditors, and the public (**ss. 104, 105**).
20. Comply with **ss. 159–162** as to audit.
21. Keep up the number of the members to seven, or in the case of a private company to two (**s. 31**).

Alteration of Objects

The Act of 1862 contained no provision for altering the objects of a company as defined in its memorandum of association. It was, however, always possible to alter the objects by special Act of Parliament, and in many cases this was done; but obtaining a private Act was an expensive and dilatory process. The only other alternative was to reconstruct—a course, again, involving inconvenience and dislocation. This hindrance to the legitimate expansion of a company's business the Legislature recognised in the Companies (Memorandum of Association) Act, 1890, which provided that a company might for certain purposes by special resolution, alter its memorandum with respect to its objects, but subject to confirmation by the court.

These purposes were extended from time to time, and the Act of 1947 dispensed with the necessity for confirmation by the court, but subject to a right to apply for cancellation. The present law is now stated in **s. 5** which commences as follows:—

5.—(1) 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; or

(*f*) to sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under this section may be made—

(*a*) by the holders of not less in the aggregate than fifteen per cent. in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen per cent. of the company's members; or

(*b*) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

The application must be made within twenty-one days after the resolution was passed and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing. The court may confirm the alteration in whole or in part on such terms and conditions as it thinks fit, or it may adjourn for a satisfactory arrangement to be made for purchasing the interests of dissentient members.

Debentures containing a floating charge entitle the holders to object, if issued before December 1, 1947. The holders are entitled to the same notice of the meeting as the members.

A company exempt from the use of the word 'limited' as part of its name must give the same notice to the Board of Trade.[42]

The provisions of these enactments designed for the protection of creditors, debenture holders and shareholders whose rights may be affected by the proposed alteration do not protect persons having an interest outside the company.[43]

Instances of companies availing themselves of the Act.

The legislative facilities thus offered to companies for enlarging the scope of their business objects have been largely made use of. Thus a considerable number of companies have obtained power to raise money by debentures and perpetual debenture stock.[44]

The area of a company's operations has been enlarged in several cases; several banks have largely extended their objects; other companies have been enabled to acquire other business concerns of a like nature, or enter into arrangements for joint working, or to take power to sell their undertaking; investment companies have been allowed to enlarge the scope of their investments; insurance companies to extend their objects so as to take in cognate businesses; guarantee companies to extend their business to indemnity, burglary, etc. In some cases objects have been so extended as to allow the promotion of foreign companies and holding shares in them. An unlimited company having neither shares nor capital has been allowed to alter its memorandum. These are only a few instances out of many alterations sanctioned by the court under the earlier Acts.

Not limited to similar business.

The power of alteration is not limited to authorising similar business to be carried on, but quite a different business may be authorised, if it can be conveniently or advantageously combined with the business of the company.[45]

If the alterations of the objects sanctioned are such as render the name of the company misleading, the court has been in the habit of requiring the company's name to be changed so as to express the alteration in its aims or sphere of operations.[46] The court may also add words to the resolution so as to limit the extended objects.[47]

Confirmation refused.

In *Re Jewish Colonial Trust* (*Juedischc* (1) *Colonialbank*),[48] the court refused to sanction an alteration involving the abandonment of objects of the company of a fundamental character, and confining them (from a world-wide) to a limited local area. In *Re Cyclists' Touring Co.*,[49] the court refused to sanction an alteration extending the objects of a

[42] For other provisions of this section see Appendix I, *post*.
[43] *Re Hearts of Oak Life, etc., Co., Ltd. and Reduced* [1920] 1 Ch. 544.
[44] *Re Reversionary Interest Society* [1892] 1 Ch. 615.
[45] *Re Parent Tyre Co.* [1923] 2 Ch. 222 (tyre company authorised to carry on financial operations).
[46] *Re Governments Stock Investment Co.* [1892] 1 Ch. 597; *Re Alliance Marine Assurance Co.* [1892] 1 Ch. 300; *Re National Boiler Insurance Co.* [1892] 1 Ch. 306.
[47] *Re Spiers and Pond* [1895] W.N. 135; *Re Fleetwood Estate Co.* [1897] W.N. 20.
[48] [1908] 2 Ch. 287.
[49] [1907] 1 Ch. 269.

company formed to cater for, protect and assist cyclists so as to include the catering for and assistance of motorists, the latter being one of the dangers against which cyclists needed protection. The court may refuse its confirmation where the alteration is unconnected with and opposed to the existing objects[50]; or where the change would alter the basis of the company.[51]

Conditions imposed.

The court may also impose some qualification or condition before sanctioning the proposed alteration. Thus, in one case where the company proposed to adopt new powers of unlimited extent the alteration was only permitted subject to modification.[52]

In other cases the power which the Act contains (**s. 398**), enabling a company regulated by deed of settlement to adopt a memorandum and articles, has been exercised.[53]

Re-writing in modern form.

In *Re Consett Iron Co.*,[54] Cozens-Hardy J. expressed doubts whether the court has jurisdiction under the Act to sanction an alteration which amounts to an improvement in the language of the memorandum by re-writing of the objects in modern form, and accordingly in that case the old objects were left, whilst clauses setting out new objects in modern form were added. The court has, however, frequently sanctioned alterations which introduce a series of new objects in modern form *instead* of the old objects, and Kekewich J. in 1901, in *Re Carlisle and Cumberland Banking Co., Ltd.*,[55] sanctioned an alteration which substituted a complete new set of objects in modern form for the old concise and imperfect objects. In some cases general powers expressed in wide terms have been adopted,[56] but the court usually requires evidence to show that these wide powers are really necessary to enable the company to carry on its business more economically or efficiently.

It is to be noted that the Act empowers the company by special resolution to ' alter ' its objects and not merely to ' extend ' or ' add to ' them.[57]

The alteration is not necessarily confined to the clause specifying the objects of the company[58]; but the court had no power under s. 5 of 1929 to confirm an alteration not relating to the company's objects, *e.g.*, removing unlimited liability in certain cases.[59]

[50] *Re Bolsom Bros. (1928) Ltd.* [1935] W.N. 9 (varied with consent [1935] W.N. 50); sanctioned on appeal on further evidence [1935] Ch. 413.
[51] *Re North of England, etc., Association* (1929) 45 T.L.R. 296; but see *Re Scientific Poultry Breeders' Association, Ltd.* [1933] Ch. 227.
[52] *Re John Brown, Ltd.* [1914] W.N. 434.
[53] See *post*, p. 62.
[54] [1901] 1 Ch. 236.
[55] Unreported.
[56] *Re New Westminster Brewery* [1911] W.N. 247; *Re Anglo-American Telegraph Co.* [1911] W.N. 248.
[57] See further, *Company Precedents*, Part I, 15th ed., p. 1124 *et seq.*
[58] *Incorporated Glasgow Dental Hospital* v. *The Lord Advocate* [1927] S.C. 400.
[59] *Re Society for Promoting Employment of Women* [1927] W.N. 145; but see now s. 23.

Companies to which Act applies.

The Act applies to a company formed under the Companies Act, 1856.[61]

Where a company formed not for purposes of gain, without the word 'limited', desires to alter its objects, it must give notice to the Board of Trade, and the Board may vary the licence (**s. 19 (6)**).[62]

By **s. 22** of the Act of 1948 no alteration in the memorandum or articles of a company can compel a member to take up more shares than the number he held at the date when the alteration was made or increase his liability to contribute money. This enactment was rendered necessary by the doubts caused by *McKewan's Case* (1877) 6 Ch.D. 447, and *Biddulph and District Society* v. *Agricultural Wholesale Society* [1927] A.C. 77. But see now *Hole* v. *Garnsey* [1930] A.C. 472, where it was held that the decision in the *Biddulph Case* depended on the assent of the objecting member, and that an alteration in the rules imposing additional liability was not binding.

By **s. 24** of the Act of 1948, every member is entitled to a copy of the memorandum on payment of 1s., and (by **s. 25**) where it has been altered, every copy issued must be in accordance with the alteration, and there are penalties in case of default.

Petition to obtain Sanction of Court

The procedure to obtain the sanction of the court was as follows:— A petition was presented, and, upon summons in chambers, directions were given as to advertising the petition and as to notice to debenture holders (if any) and any creditors or other persons who, in the opinion of the court, would be affected by the alteration, and in the course of a short time, the petition came on for hearing, and the order, if the court approved, was made. The procedure to obtain cancellation of the alteration will be by petition.[63]

The jurisdiction under the Act of 1929 was, by s. 164, vested in the judges of the Chancery Division, including the judge to whom winding up is assigned. Section 96 of 1947 repealed s. 164 of 1929 and substituted the provisions of the Judicature Act, 1925, which makes the distribution of business subject to Rules of Court. Having regard to R.S.C. LIIIB, r. 1, the alteration appears to have no immediate effect.[64]

Adoption of Memorandum of Association in place of a Deed of Settlement

By s. 334 of the Act of 1929 it was provided that a company registered in pursuance of Part IX of that Act might by special resolution alter the form of its constitution by substituting a memorandum and

[61] *Re Copiapo Mining Co.* [1899] W.N. 25; 6 Manson 320; *Re Euphrates and Tigris Steam Navigation Co.* [1904] 1 Ch. 360.
[62] *Re St. Hilda's Incorporated College, Cheltenham* [1901] 1 Ch. 556.
[63] R.S.C. (1948) O. LIIIB, r. 5 (a).
[64] See Judicature Act, 1925, s. 55; *Re Mining Shares, etc., Co.* [1893] 2 Ch. 660; R.S.C. (1948) O. LIIIB, r. 1.

articles for a deed of settlement subject to confirmation by the court following the procedure under s. 5. But now by s. 395 of the Act [65] such a substitution may be made by special resolution either with or without any alteration of the objects of the company and the provisions of s. 5 as to applications to the court for cancellation apply with some modifications as to procedure.[66]

[65] Re-enacting s. 107 (2) of the Act of 1947.
[66] See s. 395 (2) and *Re Braintree and Bocking Gas Co., Ltd.* [1920] 2 Ch. 12.

CHAPTER 7

CAPITAL

Capital and division into shares of fixed amounts.

Every company limited by shares has a capital. This capital—as one of the essential features in the company's constitution—is to be mentioned in the memorandum of association, and the capital so mentioned is to be divided 'into shares of a fixed amount' (**s. 2 (4)**). What the amount shall be, and into what shares it shall be divided is left to the subscribers to the memorandum of association to determine; but, when determined, it constitutes one of the fundamental conditions of the company's constitution, and, accordingly, can only be altered in the manner provided for in the Act. (See **ss. 61** and **66.**)

The capital is usually fixed at some round figure, proportioned to the requirements of the company in the early stages of its existence. Thus, suppose the company to be formed to acquire a property for £100,000, to be satisfied as to £50,000 by paid-up shares, and as to the balance by cash, and that it will want £50,000 for working capital: the initial capital will, in such cases, be fixed at—say £150,000

As to the amount of the shares, it is usually fixed at £1, or £5 or £10. Sometimes the amount is less—10s., 5s., 2s., or even as low as 1s.

Nature of a Share

A share is a right to receive a proportion of the profits of the company and its assets on a winding up and all other benefits of membership, combined with an obligation to contribute to its liabilities, all measured by a certain sum of money, which is the nominal value of the share, and all subject to and controlled by the regulations of the company.[1]

Shares are personal estate (**s. 73**) and must be numbered except in some cases of fully paid shares (**s. 74**).[2]

Preference and other special Classes of Shares

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

The object of so defining the rights of shareholders in the memorandum is to fortify the position of the class, for rights once *unalterably* attached

[1] See *Re Paulin* [1935] 1 K.B. at p. 57, *per* Romer L.J.
[2] Appendix 1, *post.*

by the memorandum to a particular class of shares cannot be altered without the sanction of the court. In *Ashbury* v. *Watson*,[3] it was decided that the specification in the memorandum of the rights attached to a class of shares was to be regarded, prima facie, as one of the 'conditions' referred to in s. 12 of the Act of 1862, and, therefore, by that Act made unalterable. But if the rights are attached by the memorandum of association, accompanied by a clause in the memorandum providing for alteration, the power to alter contained in the same document is effective. This is now recognised in **s. 23 (2)** of the Act.[4]

General clause in memorandum as to division in classes.

In many cases the form of the clause in the memorandum is to the effect that 'the shares in the capital for the time being, whether original or increased, may be divided into several classes with any preferential, special, qualified, or deferred rights, privileges, or conditions attached thereto'; but these words appear now to be unnecessary, for, since the decision of the Court of Appeal in *Andrews* v. *Gas Meter Co.*,[5] it has been settled law that a company can under its articles, as originally framed, or as altered by special resolution, issue any of its shares, whether forming part of its original capital or newly created, as preference shares.

Cumulative and Non-Cumulative Dividends

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

Prima facie where the clause defining the preferential rights declares that the preference shares are to be entitled to a preferential dividend at a specified rate per cent., the dividend is cumulative[6]; but for clearness the word 'cumulative' is sometimes inserted in the definition of rights, *e.g.*, a fixed cumulative preferential dividend, etc. This prevents any mistake.

If the dividend is to be non-cumulative, the clause must be carefully framed, *e.g.*, it should say that 'the preference shares are to confer the right to receive out of the profits of each year a preferential dividend for such year' at the specified rate per cent.; or the definition may declare that the profits of each year available for dividend are to be applied first to the payment of a dividend for such year on the preference shares at the specified rate, and that the surplus shall be applicable to dividend on the other shares. All that is necessary is that it should appear with

[3] (1885) 30 Ch.D. 376.
[4] See **s. 23** (2), Appendix 1, *post*, and *Re Welsbach Incandescent Gas Light Co.* [1904] 1 Ch. 87; *Underwood* v. *London Music Hall, Ltd.* [1901] 2 Ch. 309.
[5] [1897] 1 Ch. 361.
[6] *Henry* v. *Great Northern Ry.* (1857) 1 De G. & J. 606; *Webb* v. *Earle* (1875) L.R. 20 Eq. 556; *Foster* v. *Coles* (1906) 22 T.L.R. 555.

sufficient clearness that the preferential dividend for each year is to come only out of the profits of that particular year. If this intention is plain, the court will give effect to it even though imperfectly expressed.[7] In addition to a fixed preferential dividend, preference shares are sometimes given the right to participate in surplus profits But they have no such right unless it is expressly given to them by the articles.[8]

Arrears on winding up.

The question whether the holders of preference shares are entitled to arrears of dividend in the winding up, depends upon the construction of the memorandum or articles, or terms of issue, in each case. In *Re Walter Symons, Ltd*,[9] the memorandum provided that the preference shares should confer a right to a fixed cumulative preferential dividend and should rank both as regards dividends and capital in priority to the ordinary shares, and it was held that the preference shares were entitled to be paid arrears of dividend in priority to any payment to the ordinary shares. In other cases, however, it has been held that preference shareholders are not entitled to payment of arrears of preference dividend in the winding up[10]; unless such dividends are declared or arrears are expressly given by the articles of association[11] If by the articles arrears are to be paid, they may be payable although no profits have been made,[12] but not if they are only entitled to arrears 'due' at the commencement of the winding up[13] Income tax should not be deducted[14] There can be no arrears of non-cumulative dividends if no profits have been made.[15] As to the rights of preference shareholders in the winding up in the case of a statutory company under the Companies Clauses Act, 1863, see *Windermere District Gas and Water Co* v. *Whitehead*[16]

Preference as to Capital

The preferential right of a preference shareholder is prima facie confined to a preferential dividend. Apart from special provisions in the articles, he is not entitled on a winding up to have his capital paid off in priority to the other shareholders[17]; but he is entitled, after repayment of all the paid up capital, to participate in the surplus assets in proportion to the nominal amount of the shares.[18]

[7] *Staples* v *Eastman Photographic Materials Co.* [1896] 2 Ch. 303, *Thornycroft & Co.* v. *Thornycroft* (1927) 44 T.L.R. 9.
[8] *Will* v. *United Lankat Plantations Co.* [1914] A.C. 11.
[9] [1934] 1 Ch. 308.
[10] *Re Crichton's Oil Co* [1902] 2 Ch. 86; *Re Hall (W. J.) & Co.* [1909] 1 Ch. 521; *Re Wood, Skinner & Co.* [1944] Ch. 323; *Re F. de Jong & Co., Ltd.* [1946] Ch. 211
[11] *Re New Chinese Antimony Co., Ltd.* [1916] 2 Ch. 115; *Re W. Foster & Son, Ltd.* [1942] 1 All E.R. 314; *Re Catalinas Warehouses, etc., Ltd.* [1947] 1 All E.R. 51.
[12] *Re Springbok Agricultural Estates, Ltd.* [1920] 1 Ch. 563.
[13] *Re Roberts and Cooper, Ltd.* [1929] 2 Ch. 383.
[14] *Re Dominion Tar Co.* [1929] 2 Ch. 387.
[15] *Coulson* v. *Austin Motor Co.* (1927) 43 T.L.R. 493; and see *Re W. J. Hall & Co* [1909] 1 Ch. 521; and *Company Precedents*, 15th ed., Part I, p. 774.
[16] [1931] 1 Ch. 558.
[17] *Re London India Rubber Co.* (1867-8) L.R. 5 Eq. 519; *Re Madame Tussaud & Sons, Ltd.* [1927] 1 Ch. 657.
[18] *Re Bridgwater Navigation Co.* (1889) 14 App.Cas. 525.

Preferential rights as to capital may be and often are attached. Then the clause runs that the preference shareholders are to be entitled not only to a preferential dividend but to priority as regards capital in the winding up. If so, the capital paid up on the preference shares in accordance with the clause must, in a winding up, be paid off out of the surplus assets before the ordinary shareholder can get anything.[19] The question whether the holders of preference shares are entitled to participate in any surplus capital, is a question of construction of the articles and terms of issue. In *Re National Telephone Co.*[20] Sargant J. held that the preference shares were not entitled to any share of the surplus. Sargant J. there said:—

'It appears to me that the weight of authority is in favour of the view that either with regard to dividend or with regard to the rights in a winding up the express gift or attachment of preferential rights to preference shares on their creation is prima facie a definition of the whole of their rights in that respect.'

In *Collaroy Co., Ltd.* v. *Giffard*,[21] where it was provided that the preference shares should confer 'the right to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum and the right in a winding up to repayment of capital in priority to the ordinary shares', Astbury J. held that these words defined the whole of their rights, citing with approval the passage cited above from the judgment of Sargant J; but the same judge, in *Re Fraser and Chalmers, Ltd.*,[22] and Eve J. in *Re Anglo-French Music Co.* v. *Nicholl*,[23] and *Re John Dry Steam Tugs*,[24] held upon the construction of the documents in those cases that the preference shareholders were entitled to share in surplus profits. The Court of Appeal came to the same conclusion in *Re Wm Metcalfe, Ltd.*,[25] and thus decided this conflict of judicial opinion in favour of the preference shareholders. It appears to be doubtful, however, whether this decision which must be taken to be legally correct, gives effect to the intentions of the parties to the contract. A subscriber who takes 'preference' shares, with a fixed preferential dividend and a first right to his capital on a winding up, does not, it is submitted, expect to get anything else This was the *ratio decidendi* in *Will* v. *United Lankat Plantations Co.*,[26] and it is difficult to see why this reasoning should not apply to a preferential right to capital as much as to preferential dividends. As Lord Loreburn said of the preference shareholders in that case[27]: 'I think they would have been rather surprised, although no doubt they would have been gratified, if they had been told that they were about to receive the almost boundless additional advantages which have been held out to them in the arguments we have been hearing'.

[19] *Re Bangor, etc., Co.* (1875) L.R. 20 Eq. 59.
[20] [1914] 1 Ch. 755 (not following *Re Espuela Land and Cattle Co. (No. 2)* [1909] 2 Ch. 187, having regard to the decision of the House of Lords in *Will* v. *United Lankat Plantations Co.* [1914] A.C. 11.
[21] [1928] 1 Ch. 144.
[22] [1919] 2 Ch. 114.
[23] [1921] 1 Ch. 386.
[24] [1932] 1 Ch. 594.
[25] [1933] 1 Ch. 142.
[26] [1914] A.C. 11.
[27] *Ibid.*, at p. 19.

Redeemable Preference Shares

By s. 46 of the Act of 1929 a company, if authorised by its articles, was enabled to issue preference shares redeemable out of profits or out of the proceeds of a fresh issue of shares. They must be fully paid, and if they were redeemed out of profits, the amount applied must be carried to a ' capital redemption reserve fund ' and the rules as to reduction of capital were to apply to this fund as if it were paid up share capital. The section further provided that where a company redeemed any redeemable preference shares otherwise than out of the proceeds of a fresh issue, there must be transferred to the capital redemption reserve fund out of profits otherwise available for dividend a sum equal to *the amount applied in redeeming the shares*, and, where they were redeemed out of the proceeds of a fresh issue, any premium payable on redemption must come out of profits. Every balance sheet had to state what part of the capital consisted of redeemable preference shares and the date ' on or before which those shares are, or are liable to be, redeemed '. Subsection (4) provided that new capital issued for the purpose of redemption of redeemable preference shares should be free of stamp duty if they were redeemed within one month and (subs. (5)) where new shares *had been issued in that way* the redemption reserve fund might be used in paying up bonus shares. Section 46 was badly drafted and was extremely difficult to understand. Where shares were redeemed out of profits there appeared to be no provision that any premium had to be provided out of profits. The statement which had to be put in the balance sheet was inconsistent with the usual provisions as to redemption, as there was seldom a date fixed on or before which they must be redeemed. Subsection (5) was unintelligible, as the provisions as to a capital redemption reserve fund did not apply where the redeemable preference shares were redeemed out of the proceeds of a new issue. Besides this it was held that redeemable preference shares when redeemed ceased to be part of the nominal capital of the company.[28] To remedy these defects, s. 71 of the Act of 1947 provided that the amount to be transferred to the capital redemption reserve fund should be ' the nominal amount of the shares redeemed ' and that the sum needed to provide any premium must come out of profits in every case.

The statement in the balance sheet was to be a statement of ' the earliest date on which the company has power to redeem the shares ', and the power to apply the redemption reserve fund in paying up bonus shares was to apply to all cases and not merely to that specified in subs. (4). Further, the redemption of redeemable preference shares was not to be taken as reducing the amount of the company's authorised share capital. Section 46 of the Act of 1929 is now re-enacted with these amendments in **s. 58** of the Act of 1948.[29]

Notice of redemption must be sent to the registrar (**s. 62 (1) (e)**).

[28] *Re Serpell & Co., Ltd.* [1944] Ch. 233.
[29] See Appendix 1, *post*.

Shares already issued cannot be converted into redeemable preference shares as part of a scheme of arrangement.[30]

Where a company has issued redeemable preference shares on the terms that the company is to be bound to redeem them by a particular date, it is doubtful what remedy the shareholders have if the company fails to carry out this obligation. Possibly the holders of redeemable preference shares could get the company wound up by the Court.[30a]

Founders' or Deferred Shares

Besides preference and ordinary shares, it is not at all uncommon to issue what are called founders' or deferred shares. These shares are usually mentioned in the memorandum of association as part of the capital, *e.g.*, capital £110,000 divided into 100,000 shares of £1 each, and 200,000 deferred shares of 1s. each. When this is the case, the memorandum generally defines the rights attaching to such deferred shares, *e.g.*, that they shall confer on the holders the right to 10 per cent. of the surplus profits of the company for each year, which remain after paying a cumulative dividend at the rate of 10 per cent. on the capital paid up on all the other shares for the time being issued. This is one very common clause, but the rights attached to deferred shares vary considerably. Founders' shares are mostly subscribed for by the vendors and promoters. Deferred shares are mostly used to attract subscribers for the ordinary or other shares.

A prospectus must, under **s. 38** (except in the cases specified in **subs. (5)**), state the number of founders' or management or deferred shares, if any, and their rights and interests in the property and profits and their voting rights.

Increase of Capital

To increase the capital of a company limited by shares is to alter one of the conditions of its memorandum, but **s. 61** of the Act of 1948 empowers a company limited by shares 'if so authorised by its articles', to alter the conditions of its memorandum so as (a) to 'increase its share capital by new shares of such amount as it thinks expedient'. The power to increase can be exercised from time to time.[31] The Act of 1908 did not say how the company might exercise the authority. The Act of 1929 provided (s. 50 (2)) and **s. 61 (2)** of the Act of 1948 now provides, that the power to increase the capital must be exercised by the company in general meeting. Subject to this, the power must be exercised in the manner indicated in its articles, either 'by special resolution', or 'by extraordinary resolution', or 'by resolution of a general meeting', *i.e.*, by ordinary resolution.

In this respect the authority to increase is now placed on the same footing as the authority to convert shares into stock, or to consolidate shares, or to sub-divide or cancel shares.

[30] *Re St. James' Court Estates* [1944] Ch. 6.
[30a] See *Company Precedents*, Part I, 15th ed., p. 595.
[31] Section 32 of the Interpretation Act, 1889.

Section 61 extends this power to companies limited by guarantee and having a share capital.

Where the articles do not contain the requisite authority to increase, they should be amended by special resolution inserting the requisite authority. But if the company passes a special resolution authorising the creation and issue of the desired new shares, that will in effect not only give the authority to increase required by **s. 61**, but *uno flatu* enable the directors to exercise that authority.[32]

The notice convening the meeting should specify the amount of the proposed increase.[33]

What Classes of New Shares may be created

Before answering this question it is necessary to make sure that there is nothing in the memorandum to restrict or limit the company's choice, *e.g.*, that the memorandum does not provide that no preference shares shall be issued, or that specified first preferential rights shall be irrevocably attached to a particular class of shares in the original capital. Any such condition or provision, if contained in the company's memorandum and made unalterable, must not be contravened[34]; but, subject as aforesaid, it is now settled, by the decision in *Andrews* v. *Gas Meter Co.*,[35] that it is open to the company when the memorandum of association contains nothing to the contrary, to create and issue new shares with preferential or other special rights attached.[36]

Thus, where the memorandum of association of a company contained a statement that the original preference shares therein mentioned should confer a right to a fixed cumulative preferential dividend, but also contained a power for the company to issue new shares on such special conditions as to priority or postponement, either for dividends or repayment of principal, as the company might determine, the company was held to have power to issue new preference shares to rank *pari passu* with the original preference shares.[37]

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

Notice of Increase to Registrar

Where the capital is increased, notice thereof must be given to the registrar, together with particulars of the conditions on which the new shares are issued and a copy of the resolution, within fifteen days after

[32] *Campbell's Case* (1873) L.R. 9 Ch.App. 1, at p. 21.
[33] *MacConnell* v. *E. Prill & Co., Ltd.* [1916] 2 Ch. 57.
[34] See *ante*, p. 69.
[35] [1897] 1 Ch. 361.
[36] *Re Schweppes, Ltd.* [1914] 1 Ch. 322, and *Campbell* v. *Rofe* [1933] A.C. 91.
[37] *Underwood* v. *London Music Hall, Limited* [1901] 2 Ch. 309.

the passing of the resolution authorising the increase; in default the company and every director and manager, secretary or other officer knowingly permitting the default will be liable to a penalty of £5 per day (**ss. 63** and **440**). Upon an increase of capital, duty has to be paid as provided for in the **Twelfth Schedule** to the Act, and also 10s. per £100 as provided for by s. 112 of the Stamp Act, 1891, as amended by s. 41 of the Finance Act, 1933.

Consolidation of Shares

Section 61 of the Act of 1948 also gives power to consolidate shares. This power can, like the power to increase the capital, be made exercisable by ordinary, extraordinary, special, or other resolution of a general meeting.[38] And even where there is no power in the articles, it appears, on the principles of *Campbell's Case*,[39] that the power may be exercised by a special resolution without first altering the articles.

See also *post*, p. 80, as to consolidation of classes of shares

Stock

The conversion of paid-up shares into stock, also authorised by **s. 61** of the Act of 1948, may be effected by resolution of the company in general meeting. Such a conversion can only be made where the shares are paid-up shares. Notice of conversion must, as in the case of an increase in capital, be given to the registrar (**s. 62**). A considerable number of companies have availed themselves of this power, and have converted their shares into stock. One of the conveniences of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the numbers of the various shares comprised in the transfer. A transfer is merely of so much stock. Under **s. 61** stock can be re-converted into shares in the same way. Stock cannot be issued direct by the company; but, if it is so issued, this irregularity can be waived. Where, however, a company purported to issue bonus stock and partly paid stock, these two issues were held to be entirely void, the holders had no rights, and calls could not be made on them.[40]

A company can issue stock warrants to bearer.[41]

Sub-division of Shares

Sub-division of shares is provided for in **s. 61** of the Act of 1948. A power to sub-divide must be contained in the articles and must be exercised by a resolution of the company in general meeting. Before the Act of 1929 a special resolution was necessary. Notice of a resolution to sub-divide shares must be given to the registrar (**s. 62**). The articles sometimes contain power on sub-division to attach a preference to some of the shares resulting from the sub-division as against the other shares; and, having regard to the decision in *Andrews* v. *Gas Meter Co.*,[42] it

[38] See *ante*, p. 69.
[39] (1873) L.R. 9 Ch.App. 1.
[40] *Re Home and Foreign Investment, etc., Co.* [1912] 1 Ch. 72.
[41] *Pilkington* v. *United Rlys., etc.* [1930] 2 Ch. 108.
[42] [1897] 1 Ch. 361.

would seem that such a power can be inserted in the articles, even though not appearing in the articles as originally framed.

The proportion between the amount paid and the amount unpaid on each reduced share, must be the same as it was before sub-division (**s. 61 (1) (d)**).

See also *post*, p. 80, as to sub-division of classes of shares.

Alterations of Preferential and Special Rights

Where preferential or other special rights are by the memorandum of association unalterably attached to a class of shares, such rights can only be altered by virtue of a scheme sanctioned by the court under **s. 206** of the Act.[43] If the memorandum provides a method of alteration, that method must be used (**s. 23 (2)**).[44]

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

It was formerly considered that such alterations could only be made where the articles in force when the shares were issued gave the requisite power. But, having regard to *Andrews* v. *Gas Meter Co.*,[45] this view could not now be supported.[46]

There is, of course, no question that a clause in the articles, in force at the time when the shares were being issued, authorising a modification of the rights attached thereto, *e.g.*, with the sanction of a three-fourths majority in value of the holders of the shares of the class, is effective; but the question whether a company, which has issued preference shares with rights only attached by the articles, can, in the absence of any such clause in its articles and without the concurrence of the holders of preference shares, alter by special resolution the rights so attached is a much more difficult question; thus, if the company has issued 10,000 preference shares and 100,000 ordinary shares, would a special resolution reducing the dividend on the preference shares and carried by the votes of the holders of the ordinary shares be effective? Probably such interference with the rights of a class by a majority proposing to benefit themselves at the expense of the class so dealt with would be restrained as unfair and oppressive, and an abuse of the power to alter articles.[47] A subdivision of a class of ordinary shares of 10s. each into shares of 2s. each was held not to be a variation of the rights of a holder of another class of ordinary shares of 2s. each, though the value of his voting power was affected.[48]

[43] See *ante*, p. 55.
[44] *Re Welsbach Incandescent Gas Light Co.* [1904] 1 Ch. 87.
[45] [1897] 1 Ch. 361.
[46] *Underwood* v. *London Music Hall, Ltd.* [1901] 2 Ch. 309.
[47] *Menier* v. *Hooper's Telegraph Works* (1874) L.R. 9 Ch.App. 350; *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[48] *Greenhalgh* v. *Arderne Cinemas, Ltd.* [1945] 2 All E.R. 719.

Clause in articles.

The articles frequently contain a clause providing for alteration of rights by an extraordinary resolution passed at a separate meeting of the class. Such a clause does not necessarily prevent the rights of classes of shares so far as they depend on the articles from being altered by special resolution, but might make it more difficult to justify such a course if the alteration was attacked as unfair. In any case such a clause does not apparently prevent the issue of preference shares ranking *pari passu* with, or even in priority to, existing preference shares, if otherwise authorised by the memorandum or articles. This power to alter the rights of the holders of a class of shares has sometimes been used unfairly. Where a large number of the holders of shares of a class also hold shares of other classes, they may make it very difficult for those who hold only shares of the class affected to obtain a sufficient number of votes at a meeting to prevent alterations which are really in the interest of other classes of shareholders. To meet this difficulty s. 61 of the Act of 1929, re-enacted by **s. 72** of the Act of 1948, provided that the holders of 15 per cent. of the shares of the class affected may apply to the court within twenty-one days to have the variation cancelled, and it will not then become effective unless sanctioned by the court. This sanction may be refused if the court is satisfied that the variation would unfairly prejudice the holders of shares of that class.

The application may be made by one or more of the dissentients on behalf of all of them; but the holders of at least 15 per cent. of the shares of the class affected must have dissented and notice of their support must have reached the petitioner before the petition is presented.[49] The application must be made within twenty-one days after the consent was given or the resolution passed (**s. 72 (2)**).[50]

A very strong case must be made out before the court will restrain the holding of a meeting to consider a proposed modification of rights, there being power in the articles to hold such meeting.[51]

Reduction of Capital

The Companies Act, 1862, made no provision for reduction of capital. The theory of that Act was that the limited capital, the creditors' only fund, was not to be capable of reduction otherwise than in the prosecution of the company's objects; but the working of the Act showed that there were many cases where capital could be reduced without any injustice to creditors, and where commercial convenience required that it should be reduced. In these cases the Companies Acts of 1867 and 1877 relaxed the severity of the rule against reduction, but they by no means abolished it. On the contrary, the Legislature has, throughout these Acts, in granting a qualified right of reduction, studiously safeguarded the rights of creditors by stringent conditions and every precaution in its power. The Act of 1948, **s. 66,** re-enacts the provisions for reduction.

[49] *Re Suburban and Provincial Stores* [1943] Ch. 156; *Re Sound City (Films), Ltd.* [1947] Ch. 169.

[50] Re-enacting s. 10 of the Act of 1947. The time fixed by the Act of 1929 was seven days.

[51] *Last* v. *Buller & Co.* (1919) 36 T.L.R. 35.

Power to Reduce

In order to effect a reduction of capital, the articles of the company must contain power to reduce (**s. 66**). Power in the memorandum is not effective.[52]

If there is no such empowering clause in the articles, they must be altered by special resolution, and subsequently a further special resolution must be passed to reduce the capital in the manner proposed.[53] The resolution for reduction must state with sufficient clearness what is to be done in the way of reduction. It need not purport in terms to alter the memorandum of association,[54] but it must show what is proposed to be done, *e.g.*, ' that the present capital of £10,000, divided into 1,000 shares of £10 each, be reduced to £5,000, divided into 1,000 shares of £5 each, and that such reduction be effected by cancelling the present liability of £5 per share, and reducing the nominal amount of each share to £5 ', or, ' that the capital of the company be reduced from £10,000, divided into 1,000 shares of £10 each, to £5,000, divided into 1,000 shares of £5 each, and that such reduction be effected by cancelling paid-up capital which has been lost or is unrepresented by available assets to the extent of £——, and by reducing the amount of the shares from £10 to £5 '.

Modes of Reduction

There are several modes of reducing capital. Some of these can be carried out without the sanction of the court; for others the sanction of the court is required.

The general rule or principle of the Act is, that the capital of a company is not to be reduced without the sanction of the court in any case where the rights of creditors are affected, and for this reason: the creditors of a company are invited to deal with the company on the footing of its registered capital being a reality, of the registered shareholders being liable for the unpaid portions of their shares, and of the company having received the paid-up capital which appears in its register and in the returns to the Registrar of Joint Stock Companies, and if this liability to pay up were released or the paid-up capital returned to shareholders, or the creditors' security in any other manner given away or tampered with, it would seriously alter their position.[55] See the passage from the judgment of Lord Herschell in that case, cited *ante*, pp. 49, 50.

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

1. Reduction not requiring sanction of court.
2. Reduction requiring sanction of court.

Where sanction of court not required.

1. Reduction of capital without the sanction of the court is allowable in the following cases:—

(a) A company may forfeit shares for non-payment of calls or

[52] *Re Dexine Patent Packing and Rubber Co.* (1903) 88 L.T. 791.
[53] *Re Patent Invert Sugar Co.* (1885) 31 Ch.D. 166; *Re Oregon Mortgage Co.* [1910] S.C. 964.
[54] *Campbell's Case* (1873) L.R. 9 Ch.App. 1.
[55] *Trevor* v. *Whitworth* (1887) 12 App.Cas. 409.

instalments pursuant to its articles. Such a proceeding amounts to a reduction of capital, but the Act clearly contemplates such a reduction as an allowable proceeding (**Clauses 33 to 39 of Table A**).

(b) A company may, by resolution of a general meeting under **s. 61 (1) (e)** of the Act of 1948, without asking for or obtaining the sanction of the court, cancel shares which have not been taken or agreed to be taken. This is not technically reduction (**s. 61 (3)**). Notice of cancellation must be sent to the registrar (**s. 62**).

(c) A company may in certain cases accept a surrender of shares, *e.g.*, as a short cut to forfeiture; but if a company proposes to take back shares which are repudiated on the ground of misrepresentation, it seems doubtful whether the power to accept surrender can safely be exercised, unless it is sanctioned by the court, or unless the company is in a position to forfeit the shares and bona fide arranges a surrender as a short cut to the same end. The validity of each case of surrender of shares must be decided upon its own merits. 'A surrender of shares in return for money paid by the company is a sale and open to the same objection as a sale.'[56]

In *Bellerby* v. *Rowland and Marwood's S.S. Co.*[57] a surrender of partly paid shares, though made in good faith, was held to be invalid. Cozens-Hardy L.J. said[58]: 'Every surrender of shares, whether fully paid up or not, involves a reduction of capital which is unlawful except where sanctioned by the court under the Companies Acts. . . . Forfeiture is a statutory exception and is the only exception'.

It has, however, been held that a surrender of fully paid shares in exchange for other shares may in some cases be effected without the sanction of the court.[59] The same decision has been given in relation to a surrender of partly-paid shares. See *Teasdale's Case*,[60] the authority of which was, however, severely shaken by *Trevor* v. *Whitworth*.[61] On the appeal in *Bellerby* v. *Rowland and Marwood's S.S. Co.*[62] Stirling L.J. expressed an opinion that in deciding *Eichbaum* v. *City of Chicago Grain Elevators*[63] he should *not* have followed *Teasdale's Case*[60]; but this dictum was explained and distinguished by Warrington J. when deciding *Rowell* v. *John Rowell & Sons, Ltd.*[64]

Where sanction of court required.

2. Reduction requiring the sanction of the court. The following are some of the modes of reduction which require the sanction of the court:—

[56] *Per* Lord Macnaghten, *Trevor* v. *Whitworth* (1887) 12 App.Cas. at p. 438; *British and American Corporation* v. *Couper* [1894] A.C. 399; *Bellerby* v. *Rowland and Marwood's S.S. Co.* [1902] 2 Ch. 14.
[57] [1902] 2 Ch. 14.
[58] *Ibid.*, at p. 32.
[59] *Eichbaum* v. *City of Chicago Grain Elevators* [1891] 3 Ch. 459; *Rowell* v. *John Rowell & Sons, Ltd.* [1912] 2 Ch. 609.
[60] (1873) 9 Ch.App. 54.
[61] (1887) 12 App.Cas. 409.
[62] [1902] 2 Ch. 14.
[63] [1891] 3 Ch. 459.
[64] [1912] 2 Ch. 609.

(a) Reducing the liability of shareholders in respect of uncalled or unpaid capital, *e.g.*, where the shares are £10 each with £5 paid up, reducing them to £5 fully paid-up shares, and thus relieving the shareholders from liability on the uncalled capital. This is the kind of reduction more especially contemplated by the Act of 1867, and is now provided for in **ss. 66 (1) (a)** and **67 (2)** of the Act of 1948.

(b) Paying off or returning paid-up capital not wanted for the purposes of the company, *e.g.*, where the shares are £10 fully paid up, reducing them to £5, and paying back £5 per share. **Section 67** of the Act expressly provides that this kind of reduction is to be allowable.[65]

(c) Paying off paid-up capital on the footing that it may be called up again. Thus, if the shares are £10 fully paid up, paying off £2 per share on the footing that when desired the company may call it up again.[66]

(d) Cancelling shares which have been surrendered, or the holders of which consent to cancellation.[67]

(e) Lost capital. Cancelling capital which has been lost or is unrepresented by available assets. This is one of the commonest modes of reduction. A company, whose capital amounts to £100,000 in £10 shares, has lost, say, £50,000 by some business disaster. Nothing, as Sir George Jessel said, can be more beneficial to the company than to admit the loss, and to write it off,[68] *e.g.*, to reduce its £10 shares to £5, and thus place itself in a position to resume payment of dividends.

The provisions empowering a company to cancel ' any lost capital, or any capital unrepresented by available assets ', are alternative provisions, and the latter is not explanatory of the former.[69]

(f) Any other kind of reduction (except those mentioned on pp. 74 and 75 *ante*) (**s. 66 (1)**).[70]

All Round Reduction

Prima facie a reduction of capital should be an all round one; that is to say, where capital is to be paid off or to be cancelled as lost or unrepresented by available assets, or where the liability for uncalled capital is to be reduced, the same percentage should be paid off or cancelled or reduced

[65] *Re Lees Brook Spinning Co.* [1906] 2 Ch. 394; *Re Artizans' Land and Mortgage Corp.* [1904] 1 Ch. 796; *Re Piercy* [1907] 1 Ch. 289.

[66] *Re Fore Street, etc., Co.* (1888) 59 L.T. 214.

[67] *Re Llynvi, etc., Iron Co.* (1877) 26 W.R. 55; *Re West African Co., Vivian & Co.* (1886) 54 L.T. 384; *Poole* v. *National Bank of China* [1907] A.C. 229.

[68] *Re Ebbw Vale, etc., Co.* (1877) 4 Ch.D. 827.

[69] *Re Hoare & Co., Ltd.* [1904] 2 Ch. 208.

[70] *British and American, etc., Corporation* v. *Couper* [1894] A.C. 399; *Poole* v. *National Bank of China* [1907] A.C. 229; *Re Louisiana, etc., Co.* [1909] 2 Ch. 552; see also *Re Doloswella Rubber, etc., Estates* [1917] 1 Ch. 213, where partly paid shares were subdivided into shares partly paid and unpaid, and the unpaid shares thus created were surrendered to the company for re-issue.

in respect of each share; and this *pari passu* mode of reduction has been held to be the proper mode where there are several classes of shares, *e.g.*, ordinary and preference shares.[71] Where, however, the preference shares have priority as regards capital in winding up,[72] the loss should be thrown first on the ordinary shares.[73] An all round reduction is not necessarily a modification of the rights of the preference shareholders so as to require their sanction under an ordinary modification of rights clause [74]

Other modes of reduction.

But it is open to a company to pass a special resolution reducing the capital otherwise than in accordance with the legal rights of the shareholders, *e.g.*, by paying off wholly or in part *some* of the shareholders, although all are entitled to rank *pari passu*; or by cancelling part of the capital paid up on one class, although both classes rank evenly as regards capital. And it is now settled that the court has jurisdiction to confirm any kind of reduction, notwithstanding that it involves a departure from the legal rights of the classes.[75] For the power to confirm a reduction conferred by the Act (**s. 66**) is perfectly general.

In *British and American Corporation* v. *Couper* [76] Lord Herschell L.C. said:—

'It will be observed that neither of these statutes [1867 and 1877, for which **ss. 66–71** are now substituted] prescribes the manner in which the reduction of capital is to be effected. Nor is there any limitation of the power of the court to confirm the reduction, except that it must first be satisfied that the creditors entitled to object to the reduction have either consented or been paid or secured . . (At p. 405) I think it was the policy of the Legislature to entrust the prescribed majority of the shareholders with the decision whether there should be a reduction of capital, and if so, how it should be carried into effect. The interests of the dissenting minority of the shareholders (if there be such) are properly safeguarded by this: that the decision of the majority can only prevail if it be confirmed by the court.'

In *Re Anglo-French Exploration Co.*[77] Buckley J. held that inasmuch as the Act of 1877 gave specific power to cancel capital lost or unrepresented by available assets, it impliedly denied jurisdiction to sanction the cancellation of capital not lost or unrepresented by available assets, *e.g.*, to sanction a cancellation of paid-up shares which the holder was willing to have cancelled for the company's benefit; but subsequently the House of Lords, in *Poole* v. *National Bank of China* [78] reaffirmed the principle laid down in *British and American, etc. Corporation* v. *Couper.*[79]

[71] *Bannatyne* v. *Direct Spanish Telegraph Co.* (1886) 34 Ch.D. 287; *Re Direct Spanish Telegraph Co.* (1886) 34 Ch.D. 307; *Re Barrow Hæmatite Steel Co.* (1888) 39 Ch.D 582; *Re Credit Assurance and Guarantee Corporation* [1902] 2 Ch. 601.
[72] *Re American Pastoral Co.* (1890) 62 L.T. 625.
[73] *Re Floating Dock Co. of St. Thomas* [1895] 1 Ch. 691; *Re London and New York, etc., Co.* [1909] 2 Ch. 552; *Re Thomas de la Rue & Co.* [1911] 2 Ch. 361.
[74] *Re Mackenzie & Co.* [1916] 2 Ch. 450.
[75] *British and American, etc., Corpn.* v. *Couper* [1894] A.C. 399; *Re Credit Assurance and Guarantee Corporation* [1902] 2 Ch. 601; *Re Allsopp & Sons* (1903) 51 W.R. 644; *Re Welsbach Incandescent Gas Light Co.* [1904] 1 Ch. 87; *Re National Dwellings Society* (1898) 78 L.T. 144; *Re Louisiana and Southern States Real Estate, etc., Co.* [1909] 2 Ch. 552; *Re Thomas de la Rue & Co.* [1911] 2 Ch. 361.
[76] [1894] A.C. at p. 403.
[77] [1902] 2 Ch. 845.
[78] [1907] A.C. 229.
[79] [1894] A.C. 399.

Lord Macnaghten in *Poole* v. *Nat. Bank of China* said [80]:—

'The decision of Buckley J. in *Anglo-French, etc.*, goes even further. His language, if correctly reported, seems to imply that because the Act of 1877 specifies certain cases and declares that the power conferred by the Act of 1867 "includes" those specified, it is to be inferred that in all other cases the jurisdiction of the court is excluded. If that is the meaning of what the learned judge said, with all respect I am unable to agree with his view. The condition that gives jurisdiction is not proof of loss of capital or proof that capital is unrepresented by available assets, or that capital is in excess of the wants of the company. The jurisdiction arises whenever the company seeking reduction has duly passed a special resolution to that effect.'

If the company reducing its capital has a reserve fund, there is no obligation to apply in the first instance the whole of such reserve fund to replace the capital account. If the reserve fund has been employed in the business and is therefore mixed up with the general assets, the loss may be thrown on the reserve and on the paid-up capital rateably,[81] or the company may throw on reserve a larger proportion than its rateable proportion.

Modes of reduction not sanctioned.

The court will not sanction the cancellation of a class of shares on the footing that in lieu thereof the company is to issue to the holders a much larger amount of paid-up shares of another class.[82]

Proceedings to obtain Sanction of Court

The first step is to pass the requisite special resolution reducing the capital. The next is to apply to the court to confirm the resolution. Before 1947 the application had to be made by petition. Section 106 of the Act of 1947 repealed the words in s. 56 of the Act of 1929 which require an application by petition.[83] The application must, however, still be made by petition: see R.S.C. (1948) Order LIIIB, r. 5 (a). The petition states the incorporation and nature of the company, its subsequent history, the passing of the special resolution for reduction, and the facts requisite to show that it is a proper case for reduction, and prays for a confirmation order.[84] Where there is more than one class of shares the petition should state specifically whether there is or is not any priority as to capital.[85]

A cases.

Where the reduction does not involve either the diminution of liabliity or the payment off of any paid-up capital (A cases) the procedure is short and simple. A summons in chambers is taken out, and on it directions are given fixing a day for hearing the petition and ordering meanwhile advertisements to be inserted in the *Gazette* and other newspapers. The

[80] [1907] A.C. at p. 238.
[81] *Re Hoare & Co.* [1904] 2 Ch. 208; *Poole* v. *National Bank of China* [1907] A.C. 229.
[82] *Re Development Co. of Central and West Africa* [1902] 1 Ch. 547.
[83] See now s. 67 which leaves out the words 'by petition'.
[84] See *Company Precedents*, Part I, 15th ed., p. 1088.
[85] *Re Mackenzie & Co.* [1916] 2 Ch. 450.

petition then comes on—usually in about a fortnight—and the order can be made at once without setting in motion any of the complicated machinery provided by the Legislature where the rights of creditors are involved. Creditors have no right to object in these cases except in very special circumstances.[86] But, where the reduction is based upon an alleged loss of capital, the court requires prima facie proof that the capital alleged to have been lost has in fact been lost.[87]

B cases.

In cases (B) which do involve a diminution of liability or a return of paid-up capital, the procedure is more elaborate. It is provided for in detail in Order LIIIB of the Rules of the Supreme Court, 1948, rules 10 and 11. An inquiry has to be made as to the debts and liabilities, advertisements have to be issued, the consent of creditors has to be obtained. Such as do not consent must be paid off, or provisions be made for paying their debts into court. The court may dispense with these requirements (**s. 67 (3)**); but this jurisdiction is not exercised unless there are special circumstances (Practice Note [1930] W.N. 78), and the company may be put on terms.[88] Ultimately, at the end of a month or two, the petition comes on and an order may or may not be made. If made, the order must be advertised.[89]

Words 'and Reduced'.

In either case, (A) or (B), the court may, if for any special reason it thinks fit to do so, order that the words 'and Reduced' be added to the company's name and used for a longer or shorter period. See **s. 68 (2)** of 1948, replacing s. 48 of 1908, under which these words had to be used, subject to the power of the court in (A) cases to dispense with them altogether.

Minute.

In making the order the court approves a minute expressing the new condition of the capital, as to the form of which see *Company Precedents*, Part I, 15th ed., pp. 1101 *et seq.* and 1120; and this minute, together with a copy of the order, has to be delivered to the registrar, who gives a certificate, which completes the reduction (**s. 69**).

Certificate.

This certificate is conclusive of the reduction, even though it is shown afterwards that the company had not by its articles any power to reduce,[90] or that the special resolution for reduction was invalid.[91]

Occasionally the court directs publication of the reasons for reduction.[92]

[86] *Re Meux's Brewery, Ltd.* [1919] 1 Ch. 28.
[87] *Re Barrow Hæmatite Steel Co.* [1901] 2 Ch. 746; *Caldwell* v. *Caldwell & Co.* [1916] W.N. 70.
[88] *Re Antwerp Waterworks Co.* [1931] W.N. 186.
[89] *Re London Steamboat Co.* (1883) 31 W.R. 781; *Re Canada N. W. Land Co.* [1885] W.N. 61.
[90] *Re Walker and Smith, Ltd.* (1903) 72 L.J.Ch. 572.
[91] *Ladies' Dress Association* v. *Pulbrook* [1900] 2 Q.B. 376.
[92] *Re Truman, Hanbury & Co.* [1910] 2 Ch. 498; Form 621, *Company Precedents*, Part I, 15th ed., p. 1101.

Re-organisation of Capital

Re-organisation which involves no alteration of the memorandum of association may be effected by the appropriate resolutions without the sanction of the court.[93]

Where the re-organisation involves an alteration of the memorandum of association and also either consolidation of shares of different classes or division of shares into shares of different classes, it was necessary under the Act of 1908 to comply with the provisions of s. 45 of that Act, which involved a special resolution confirmed by the court and a resolution passed by a majority in number of the shareholders of each class holding at least three-quarters of the issued share capital of such class, and confirmed as a special resolution.

Where an alteration of the memorandum was necessary, not involving consolidation or division of classes of shares, the memorandum could be altered by a scheme of arrangement under s. 120 of 1908.[94]

Section 45 was repealed by the Act of 1929, and re-organisation was to be carried out under s. 153 of that Act, now **s. 206** of the Act of 1948.[95]

Rights accorded to preference shareholders do not necessarily interfere with the ordinary shareholders so as to require a meeting of the latter.[96]

Consolidation and subdivision may be carried out by one resolution.[97]

Re-organisation may be effected after resolutions for winding up the company, all further proceedings in the winding up being stayed.[98]

As to the form of proceedings, see *post*, pp. 439, 440.

Reserve Capital

By **s. 60**, a company may, by special resolution, determine that any part of its capital, not called up, shall not be capable of being called up except in the event of winding up.

As to mortgaging reserve capital, see *post*, p. 260

[93] *Re Australian Estates, etc., Co.* [1910] 1 Ch. 414.
[94] *Re Palace Hotel, Ltd.* [1912] 2 Ch. at p. 442, and *Re J. A. Nordberg, Ltd.* [1915] 2 Ch. 439.
[95] See s. 206 (6).
[96] *Re Steuart Precision Carburettor* [1912] W.N. 100; 28 T.L.R. 335.
[97] *Re North Cheshire Brewery* [1920] W.N. 149.
[98] *Re Stephen Walters & Sons, Ltd.* [1926] W.N. 236.

CHAPTER 8

MEMBERSHIP

EVERY company under the Act of 1948 is composed of members, though in contemplation of law it is an entity distinct from such constituent members. In the case of a company limited by shares, the terms 'member' and 'shareholder' are synonymous. A member is a shareholder, and a shareholder is a member. We have now to consider what it is which constitutes membership. It is a point of the first importance in the law of companies, and to answer it we must turn to **s. 26**; that section provides as follows:—

26.—(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.

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

(1) Those persons who have subscribed the company's memorandum of association.

(2) Those persons who have agreed to be members, and whose names are entered in the register.

Who are members.

These and these only can strictly be called members in the sense of having acquired the full status of membership.[1]

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

(1) By subscribing the memorandum of association before its registration.

(2) By agreeing with the company to take a share or shares, and being placed on the register of members.

(3) By taking a transfer of a share or shares, and being placed on the register of members.

(4) By registration on succession to a deceased or bankrupt member.

(5) By allowing his name to be on the register of members or otherwise holding himself out or allowing himself to be held out as a member.[2]

Subscribers to the Memorandum

Every such subscriber becomes a member *ipso facto* on the incorporation of the company, and liable as the holder of whatever number of shares he has subscribed for. 'It is plain', said Lord Cairns in *Evans' Case*,[3] 'that the original subscribers are, by the Act of Parliament, deemed to

[1] *Nicol's Case* (1885) 29 Ch.D. 421.
[2] See *post*, p. 104.
[3] (1867) L.R. 2 Ch.App. 430.

have taken the shares set opposite their names'; the object being that the public might rely with confidence on the subscribers of the memorandum becoming members of the company.[4] In the case of the subscribers of the memorandum, therefore, no allotment is necessary,[5] no entry on the register of members is necessary.[6] The subscriber is bound to take the shares from the company, and to pay for them on calls duly made like any other shareholder.[7] He cannot in satisfaction of this obligation take a transfer of fully paid shares from another member; the only way he can possibly escape liability is by showing that all the shares have been allotted to others.[8] In *Re Esparto Trading Co.*[9] a subscriber who had not been placed on the register was nevertheless held liable after a lapse of nine years for the shares for which he had subscribed.

But where the subscriber showed that his subscription was intended to be on behalf of his firm, and the shares were allotted to the firm, it was held that he had discharged his obligation.[10]

As to the subscriber's liability to pay, see *post*, pp. 95, 96.

A subscriber cannot repudiate on the ground of misrepresentation.[11]

Other Members

To come next to the second class of persons dealt with by **s. 26 (2)**—every *other* person who agrees to become a member, and whose name is entered in its (the company's) register of members.

Here the section contemplates two things:—(1) an agreement; (2) entry on the register. An agreement alone does not create the status of membership. It is a condition precedent to acquiring such status of membership that the shareholder's name should be entered on the register.[12]

The Agreement to take Shares

There is no difference, as Chitty J. said in *Nicol's Case*[13] between a contract to take shares and any other contract. A formal agreement is not necessary. If, in substance, an agreement is made, the form is not material.[14] To constitute a binding contract to take shares in a company, when such contract is constituted, as it usually is, by application and allotment, there must be an application by the intending shareholder, an allotment by the directors of the company of the shares applied for, and a communication by the directors to the applicant of the fact of such allotment having been made.[15]

[4] And see *Migotti's Case* (1867) L.R. 4 Eq. 238.
[5] *Re London and Provincial, etc., Co.* (1877) 5 Ch.D. 525.
[6] *Nicol's Case* (1885) 29 Ch.D. 444; *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 63.
[7] *Alexander* v. *Automatic, etc., Co., supra.*
[8] *Mackley's Case* (1875) 1 Ch.D. 247; *Evan's Case, supra.*
[9] (1879) 12 Ch.D. 191.
[10] *Dunster's Case* [1894] 3 Ch. 473.
[11] *Re Metal Constituents Co.* [1902] 1 Ch. 707.
[12] *Nicol's Case* (1885) 29 Ch.D. 421; see further, *post*, p. 90.
[13] (1885) 29 Ch.D. 421.
[14] *Ritso's Case* (1877) 4 Ch.D. 782.
[15] *Re Scottish Petroleum Co.* (1883) 23 Ch.D. 413, 430.

Application for Shares

An application for shares is usually made in writing signed by the applicant, but an application by word of mouth is effective.[16] An application is an offer by the applicant and, like any other offer, it may be withdrawn at any time before acceptance is notified to the applicant, or, if the acceptance is by post, at any time before the letter of acceptance is posted,[17] and such withdrawal may be by word of mouth.[18] Withdrawal by post is not effective unless it reaches the company before notice of allotment is posted.[19]

Application by agent.

The general rule *qui facit per alium facit per se* applies to a contract to take shares, and, accordingly, A can authorise B to apply for shares on A's behalf, and, if shares are allotted to A, he becomes a member.[20] Nor is it essential that the agent should have actual authority: it is sufficient if he is held out as having authority. Thus, where A gives B an open letter authorising him to apply, and gives him private instructions limiting the authority; here, if B applies showing his authority but concealing the private instructions, A is bound, though the application is in contravention of the private instructions.[21]

If A applies for shares in a fictitious name and is allotted some, he will be held liable as a member in respect thereof, and his real name may be entered on the register.[22] Where an application is sent in the name of another not *sui juris* (*e.g.*, an infant son), it has been held that the case is the same as if the application were sent in in a false or fictitious name, and the applicant himself may be put on the list of contributories[23]; but there must, to constitute liability in such a case, be a contract, and there can be no contract where there is no intention of contracting.[24]

Allotment of Shares

Acceptance of an application for shares is ordinarily evidenced by what is termed allotment. Allotment means the appropriation to an applicant by a resolution of the directors of a certain number of shares in response to an application. Shares so allotted are not, in general, specific shares identified by number; the numbering is left till later. To be effective an acceptance of an application for shares must be unconditional. If it introduces a new term (*e.g.*, says that the shares must be paid up at once under penalty of forfeiture), it is not an effective acceptance, and

[16] *Bloxam's Case* (1864) 33 Beav 529; *Levita's Case* (1867) L.R. 3 Ch.App. 36.
[17] *Hebb's Case* (1867) L.R. 4 Eq. 9; *Dunlop* v. *Higgins* (1848) 1 H.L.Cas. 381; *Henthorn* v. *Fraser* [1892] 2 Ch. 27; *Wallace's Case* [1900] 2 Ch. 671.
[18] *Truman's Case* [1894] 3 Ch. 272.
[19] *Byrne* v. *Van Tienhoven* (1880) 5 C.P.D. 344.
[20] *Barrett's Case* (1864) 4 De G.J. & S. 416; *Re Hannan's Empress, etc., Co.* [1896] 2 Ch. 643; *Hindley's Case* [1896] 2 Ch. 121.
[21] *Re Henry Bentley & Co.* (1893) 69 L.T. 204.
[22] *Pugh and Sharman's Case* (1872) L.R. 13 Eq. 566.
[23] *Pugh and Sharman's Case* (1872) L.R. 13 Eq. 566; *Richardson's Case* (1875) L.R. 19 Eq. 588; *G. H. Levita's Case* (1870) L.R. 5 Ch.App. 489.
[24] *Coventry's Case, Britannia Fire Association* [1891] 1 Ch. 202 (C.A.).

is to be regarded as a new offer made by the company which will not result in a contract unless accepted by the applicant.[25]

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

To constitute a valid allotment there must, as a general rule, be a duly constituted board of directors.[26] But the rule in *Royal British Bank* v. *Turquand*, *ante*, p. 32, may sometimes render an allotment by an irregular board effective.[27] And an allotment by a board irregularly constituted may be subsequently ratified by a regular board.[28] A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment.[29]

The duty of the directors as to allotment is clear. They are bound to act in good faith in the best interests of the company.[30] But it is generally considered that they may properly offer the shares to the existing shareholders at par or over, even though the shares stand at a higher price in the market: there is no duty to the company to hold out for the highest price.[31]

When first public Allotment may be made

Before the Companies Act, 1900, directors had an absolute discretion as to when they should proceed to allotment; but the many mischiefs which arose from companies going to allotment on a wholly inadequate subscription and merely for the purpose of paying preliminary expenses, led the Legislature to interfere, and s. 4 of the Act of 1900 and s. 1 of the Act of 1907 imposed restrictions which, in substance, were re-enacted in s. 85 of the Act of 1908, requiring the ' minimum subscription ' upon which the directors might proceed to allotment to be stated in the articles and in the prospectus. These provisions were, however, rendered practically useless by the practice which grew up of fixing seven shares as the ' minimum subscription '.

Section 85 of the Act of 1908 has now been repealed and replaced by the restrictions on allotment which are contained in **ss. 47** and **48** of the Act of 1948. These sections provide as follows:—

Allotment

47.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Fourth Schedule to this Act has been subscribed, and the

[25] *Re Leeds Banking Co.* (1865) 2 Dr. & Sm. 415; *Addinell's Case* (1865) L.R. 1 Eq. 225; *Jackson* v. *Turquand* (1869) L.R. 4 H.L. 305.
[26] *Re Homer District Consol. Gold Mines* (1888) 39 Ch.D. 546.
[27] And see *Owen and Ashworth's Claim* [1900] 2 Ch. 272.
[28] *Re Portuguese Consolidated Copper Mines* (1889) 42 Ch.D. 160.
[29] *York Tramways Co.* v. *Willows* (1882) 8 Q.B.D. 685.
[30] *Re London and Colonial Finance Corporation* (1897) 13 T.L.R. 576 (C.A.); *Shaw* v. *Holland* [1900] 2 Ch. 305; *Percival* v. *Wright* [1902] 2 Ch. 421.
[31] *Hilder* v. *Dexter* [1902] A.C. 474.

sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus 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 cent. per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment 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.

48.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration 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 Part I of the Fifth Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

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

(4) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

It should be noted that it is no longer necessary to state the minimum subscription in the articles. **Section 47** only applies to companies which invite the public to subscribe for shares, and does not apply to private companies or to companies which on their formation do not invite the public to subscribe and file a statement in lieu of prospectus unless and until these companies invite the public to subscribe.

The prospectus means the prospectus on which the applicant subscribed.[32]

The words at the end of sub-s. (1) of s. 85 of the Act of 1908, 'has been paid to and received by the company', were not satisfied by the giving of a cheque until the cheque was honoured[33]; but by **s. 47 (1)**[34] 'a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid'.

As to the meaning of 'the public', see **s. 55** and *post*, p. 354.

Sections 47 and **48** should be read in conjunction with **s. 49** of the Act, which provides as follows:—

Effect of irregular allotment.

49.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting[35] of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, 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 said sections 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

[32] *Roussell* v. *Burnham* [1909] 1 Ch. 127.
[33] *Mears* v. *Western Canada, etc., Co.* [1905] 2 Ch. 353; *Re National Motor, etc., Co.* [1908] 2 Ch. 228; *Burton* v. *Bevan* [1908] 2 Ch. 240.
[34] Re-enacting s. 39 (1) of the Act of 1929.
[35] *Post*, p. 139.

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.

An allotment made by directors before the minimum subscription is obtained is, as **s. 49** provides, voidable, not void, and the allottee is entitled to rescind the contract at any time within one month of the date of the statutory meeting. If the company is one to which the statutory meeting section (**130**) does not apply, the Act of 1908 fixed no time limit on the shareholder's right to rescind short of his affirming the contract[36]; but now, by **s. 49 (1)**, where the company is not required to hold a statutory meeting, or where the allotment is made after the statutory meeting, the limit of time is one month after the date of allotment.

It is not necessary that the rescinding shareholder should take actual legal proceedings to avoid the contract within the month. Notice of avoidance followed by prompt legal proceedings, though after the month, is sufficient.[37]

After allotment is once made, though irregularly, it is only voidable at the option of the shareholder. The company cannot insist on paying back the application moneys, for the shareholder may prefer to keep the shares.[38] But he may still bring his action against the directors who have 'knowingly contravened' the section to compel them to make good the loss occasioned to him by the irregular allotment.[39]

'Knowingly contravening' the section means contravening it with knowledge of the facts upon which the contravention depends. It is immaterial whether the directors had knowledge of the law or not. A director merely hearing the minutes of a preceding meeting, at which the resolution for the irregular allotment has been passed, read, and voting for their confirmation, will not thereby be fixed with knowledge so as to become liable under this section.[40] The court, it seems, has no jurisdiction to restrain directors by injunction from going to allotment in contravention of **s. 47**, and it is said the proper remedy is by action against the directors for breach of their statutory duty.[41] This seems to be a lame conclusion.

It will be observed that **s. 47** of the Act applies only to the first allotment of shares offered to the public for subscription, whereas **clause 4 of Sched. IV, Part I** (as to the statement of the minimum subscription in the prospectus), applies to all shares offered to the public for subscription. Neither provision affects in any way an allotment of shares not offered for public subscription, *e.g.*, offered to a limited circle of friends or relations.

[36] *Finance and Issue Co.* v. *Canadian Produce Corporation* [1905] 1 Ch. 37.
[37] *Re National Motor, etc., Co.* [1908] 2 Ch 228.
[38] *Burton* v. *Bevan* [1908] 2 Ch. 240.
[39] *Ibid.*
[40] *Burton* v. *Bevan* [1908] 2 Ch. 240.
[41] *Finance and Issue Co.* v. *Canadian Produce Corporation* [1905] 1 Ch. 37.

Further restrictions on allotment.

Section 59 of the Act of 1947 introduced further restrictions on allotment. These now appear in **s. 50** of the Act of 1948, **sub-ss.** (1) and (5) of which provide as follows:—

50.—(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally[42] and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as 'the time of the opening of the subscription lists'.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally[42] shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section forty-three of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

'First issued' refers to the first newspaper advertisement (**subs. 2**). The validity of an allotment is not to be affected, the penalty is a fine (**subs. 3**). **Subsection 4** contains modifications where shares or debentures are offered for sale. The section does not apply where a certificate of exemption is given under **s. 39.**[43]

Refusal of application to deal.

By **s. 51,** where a prospectus states that application has been or will be made for the shares or debentures to be dealt with on any stock exchange, any allotment made on an application under the prospectus shall be void (1) if permission has not been applied for before the third day after the first issue of the prospectus or, (2) if permission is refused, before the expiration of three weeks (subject to extension by the Stock Exchange) from the date of the closing of the subscription lists. Where permission has not been so applied for or has been refused within three weeks, the money must be returned and, in default, the directors may become liable to refund it. Money so received must be kept at a separate banking account so long as there may be a liability to refund. An intimation that the application will be given further consideration is not to be treated as a refusal. The section applies to underwriters and to offers of shares for sale with some modification.[44]

A new company must not commence business so long as it may become liable to repay money under this section (**s. 109** (1) (c)).

Notice of Allotment

'I think', said Lord Cairns in *Pellatt's Case*,[45] on p. 535, 'that where an individual applies for shares in a company, there being no obligation

[42] As to the meaning of these words see **s. 455,** Appendix 1, *post.*
[43] For the full text of this section see Appendix 1, *post.*
[44] See the full text of the section, Appendix 1, *post.*
[45] (1867) L.R. 2 Ch. App. 527.

to let him have any, there must be a response by the company, otherwise there is no contract'; and this statement of the law has always been accepted. The communication of the acceptance need not necessarily be in writing, but it must be communicated in some way, whether by writing or verbally, or by conduct.[46] A letter demanding payment may be a sufficient notification of acceptance.[47] Prima facie notice of allotment must be given to the applicant or to his agent duly authorised to receive notice of allotment.[48] It depends on the facts of each case whether an agent to *apply* for shares has implied authority to receive notice of allotment.[49] Thus, if A, in applying, says, 'Give notice of allotment to B' and notice is so given, that is sufficient.[50] An applicant may waive notice of allotment, and there are other cases in which notice of allotment is not necessary to complete the contract, *e.g.*, where, by virtue of some agreement upon reconstruction or amalgamation, the company is under an obligation to allot the shares, and a person, entitled to an allotment in response to a circular calling on him to come in, claims allotment of his shares. In such case notice of allotment is not necessary,[51] unless the circular shows that the offer is intended to invite application, not acceptance.[52] In any case in which the company, by letter or otherwise, in effect offers a specified number of shares to a person and he writes back accepting them, no further notice of allotment is necessary.

Allotment and notice after incorporation, in response to an application before incorporation, is sufficient to constitute a complete contract,[53] for in such a case the application operates as a continuing offer and matures, on acceptance by the company after incorporation, into a contract.

By post.

As a general rule, notice of allotment may be given by post,[54] and in such case the contract is complete when the letter is posted, even though it is never received.[54a] But handing to a postman in the street who is clearing a pillar-box is not enough.[55]

Proof of notice.

If notice of allotment is disputed, the onus is on the company to prove the notice[56]; but this onus it may discharge by proving acts on the part of the alleged member going to show that he was aware of the allotment

[46] *Gunn's Case* (1867) L.R. 3 Ch.App. 40.
[47] *Forget* v. *Cement Products Co. of Canada* [1916] W.N. 259.
[48] *Levita's Case* (1870) L.R. 5 Ch.App. 489; *De Rosaz's Case* (1869) 21 L.T. 10.
[49] *Robinson's Case* (1869) L.R. 4 Ch.App. 330; *Wallis' Case* (1868) L.R. 4 Ch.App. 325, n.
[50] *De Rosaz's Case* (1869) 21 L.T. 10.
[51] *Gunn's Case* (1867) L.R. 3 Ch.App. 40.
[52] *Wallace's Case* [1900] 2 Ch. 671.
[53] *Downes* v. *Ship* (1868) L.R. 3 H.L. 343; *Lawrence's Case* (1867) L.R. 2 Ch.App. 412.
[54] *Household Fire, etc., Insurance Co.* v. *Grant* (1879) 4 Ex.D. 216; *Henthorn* v. *Fraser* [1892] 2 Ch. 27.
[54a] *Harris' Case* (1872) L.R. 7 Ch.App. 587.
[55] *London and Northern Bank, Ex p. Jones* [1900] 1 Ch. 220.
[56] *Reidpath's Case* (1870) L.R. 11 Eq. 86.

and assented to it.[57] Notice of allotment, if brought home to the allottee, not from the company but *aliunde*, will bind him,[58] *e.g.*, if the allottee is present at a board meeting at which the allotment is resolved on.[59]

In *Crawley's Case*,[57] C had applied for shares that were not allotted to him for fourteen months, and accordingly he might have refused the allotment on the ground that it was not made within a reasonable time. No notice of the allotment was given to him, but some months afterwards, he, at the request of B, signed a blank transfer of the shares, and that was held sufficient to show that he must have known of, and assented to, the allotment. 'I think that after that act', said Selwyn L.J., 'he cannot be heard to say that he did not know of the allotment, or that it had not been communicated to him'.[60]

Stamp.

A letter of allotment and letter of renunciation or any other document having the effect of a letter of allotment of any company had, by the Stamp Act, 1891, to be stamped with a penny stamp. But by s. 9 of the Finance Act, 1899, a duty of 6d. was substituted for the 1d. duty when the nominal amount which is allotted or to which the letter of allotment relates is not less than £5 These duties were increased to 1s. and 2d. respectively by s. 52 of the Finance Act, 1947 A separate duty is charged in respect of letters of allotment and renunciation although entered in the same document. An unstamped letter of allotment, if posted or delivered, is still an effective acceptance of the application.[61]

Entry on Register

Where membership is constituted otherwise than by subscribing the memorandum of association, entry in the register of members is, by **s. 26**, made a condition precedent to membership. The complete status of membership in such case is not acquired unless and until it can be predicated of the person that he is, within the words of the section, one 'who agrees to become a member of a company, and whose name is entered in its register of members'.

An allotment of shares is merely a contract until it is completed by registration.[62]

In this respect there is an essential difference between the requisites of membership as regards persons who subscribe the memorandum, and those who otherwise agree to become members. The former, as we have seen,[63] become *ipso facto*, on the registration of the company, members irrespective of entry in the register of members; but the latter do not become members until agreement, plus entry in the register This distinction is recognised in *Nicol's Case*.[64] In that case A had agreed to

[57] *Crawley's Case* (1869) L.R. 4 Ch.App. 322; *Re Richards and Home Assurance Association* (1871) L.R. 6 C.P. 591.
[58] *Walhs' Case* (1868) L.R. 4 Ch.App. 325, n
[59] *Re Saloon Steam Packet Co.* [1867] W.N. 259.
[60] *Supra*, at p. 328.
[61] *Re Whitley Partners.* (1886) 32 Ch.D. 337.
[62] *Re Florence Land Co.* (1885) 29 Ch.D. 421.
[63] *Ante*, p. 81.
[64] (1885) 29 Ch.D. 421.

take shares, and shares had been allotted to him; but his name had not been entered in the register. After some years, the agreement for membership not having been acted on, a winding-up order was made, and it was sought to place A on the list of contributories, on the ground that he was a member. The learned judges were all of opinion that he had never become a member, that he had only agreed to be a member.

Cotton L.J. said that the question was, whether, under the circumstances, A had become an actual member or had only agreed to become a member, and stated that ' there was in this case no actual membership, although it would have been possible, if proper proceedings had been taken, to render the membership complete '.

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

So, too, if B takes a transfer of shares from A, and the company rightly or wrongly refuses to register such transfer, B is not a member, although either A or B can enforce registration of the transfer under **s. 116** of the Act.

Nor is the rule, that entry in the register is necessary to establish the status of membership, in any way at variance with the rule as to settling the list of contributories in winding up, namely, that a person who has agreed to become a member, and whose name is not, but *ought* to be, on the register, is to be included in such list, for in a winding up the court has full power to rectify the register of members (**ss. 116** and **257** of the Act); but even in contributory cases the court will not exercise this power unless the agreement relied on is one which, at the commencement of the winding up, the company was entitled to have specifically enforced.[65]

Wrongful removal from register.

The above-mentioned cases must also be distinguished from those in which a person who has acquired the full status of membership is afterwards wrongfully removed from the register, as, for example, in consequence of a forged transfer. In such a case the person remains a member; he has acquired the full status, and the wrongful removal of his name does not affect his membership.[66]

Registration subject to a condition.

Moreover, it has been held that where shares are allotted subject to a condition, and the name of the allottee is entered in the register with words expressly referring to the condition, he has not obtained the complete status of a member.[67] The same result followed where the defendant signed an application form by reason of a fraudulent representation by the company's agent that it was merely a matter of form.[68]

[65] *Arnot's Case* (1887) 36 Ch.D. 702.
[66] *Barton* v. *L. & N. W. Ry.* (1889) 24 Q.B.D. 77; *Re Bahia, etc., Co.* (1868) L.R. 3 Q.B. Cases, 584, 595.
[67] *Spitzel* v. *Chinese Corporation* (1899) 80 L.T. 347.
[68] *Humphrey and Denham* v. *Kavanagh* (1925) 41 T.L.R. 378.

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

Delay in Allotment

It is an implied term in an application for shares that the offer must be accepted within a reasonable time, and, if it is not, the applicant is entitled to repudiate the allotment.[69] What is a reasonable time must depend on circumstances; but an allottee who receives notice of allotment, after a reasonable time has expired, must exercise his right of repudiation promptly. If he does not, he will be bound; *a fortiori* if creditors' rights have intervened by a winding up.[70]

Conditional Applications

Sometimes an application for shares is made subject to a condition precedent, *e.g.*, A writes to a hotel company saying, If you will give me an order for furniture, I will take up fifty shares in your capital, which please allot. In such case an allotment disregarding the condition may be repudiated by the allottee; for where there is a conditional application for shares and an unconditional allotment there is no contract constituted. The parties are not *ad idem*.[71] The condition need not be contained in the letter of application. It is sufficient if the letter containing the condition reach the directors before allotment.[72] But in such cases if, after notice of allotment before the condition is complied with, the allottee abstains from repudiating, he will be taken to have waived the condition and be bound.[73]

A distinction of a very material kind exists between an application with a condition precedent annexed, and an application with a collateral agreement or a condition subsequent. In the latter case the applicant on allotment becomes a shareholder *in presenti* absolutely, with only a right to enforce (if valid) the collateral agreement or condition subsequent against the company.[74]

Mistake as to Company

Where a person applies for and takes an allotment of shares in Company A believing it to be Company B, he may in some cases be entitled to repudiate membership if he acts promptly on discovering his mistake.[75]

Who may take Shares

Any person not under disability may become a member; a married woman is under no disability since the Law Reform (Married Women, etc.) Act,

[69] See *Crawley's Case* (1869) L.R. 4 Ch.App. 322, and *Ramsgate Victoria Hotel* v. *Montefiore* (1866) L.R. 1 Ex. 109.
[70] *Boyle's Case* (1885) 33 W.R. 450; *Crawley's Case*, *supra*.
[71] *Roger's Case and Harrison's Case* (1868) L.R. 3 Ch.App. 633; *Wood's Case* (1858) 3 De G. & J. 85; *Shaw's Case* (1876) 34 L.T. 715; *Wood's Case* (1873) L.R. 15 Eq. 236.
[72] *Roger's Case*, *Harrison's Case*, *supra*.
[73] *Wheatcroft's Case* (1873) 29 L.T. 324.
[74] *Elkington's Case* (1867) L.R. 2 Ch.App. 511; *Fisher's Case and Sherington's Case* (1885) 31 Ch.D. 120; *Bridger's Case* (1870) L.R. 5 Ch.App. 305; and *Thomson's Case* (1865) 4 De G.J. & S. 749, are good illustrations of the distinction.
[75] *Re International Society of Auctioneers and Valuers, Baillie's Case* [1898] 1 Ch. 110.

1935; a foreigner may take shares[76]; a company having power to take shares may become a member.[77] This sometimes causes confusion where Company A holds shares in Company B and Company B also holds shares in Company A, and sometimes facilitates fraud or trickery. Now by s. 27 (1) of the Act (giving effect to s. 80 of the Act of 1947), a company cannot be a member of its holding company and any allotment or transfer of shares in a company to its subsidiary or a nominee for its subsidiary is void. This does not apply where the subsidiary is concerned as personal representative or trustee, unless the holding company or its subsidiary is beneficially interested in the trust, except by way of a security issued in the ordinary way of business.

A subsidiary which was a member of its holding company at the commencement of the Act may continue to be a member, but with restrictions on its power to vote.

The section applies to nominees, and, with modifications, to guarantee companies and unlimited companies.[78]

An infant may become a member, subject, however, to the right to repudiate shares when he attains majority.[79] Till disaffirmed, the infant's contract is valid.

Typical Examples of Contracts to take Shares

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

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

(c) A authorises some agent to apply for shares on his behalf, and such agent applies accordingly. The shares are allotted to A, and notice is given to him as above, and he is duly registered. He is a member.

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

(e) A accepts office as a director of the company. The regulations of the company state that the qualification of a director is so many shares, and that, unless he acquires such qualification within (say) a month after the incorporation of the company, he is *to be deemed* to have agreed to take the shares from the company, and is to be registered accordingly.

[76] *Princess of Reuss* v. *Bos* (1871) L.R. 5 H.L. 193.
[77] *Re Barned's Banking Co.* (1867) 3 Ch.App. 112.
[78] For the full text of **s. 27**, see Appendix 1, *post*.
[79] *Capper's Case* (1868) L.R. 3 Ch.App. 458; *Pugh and Sharman's Case* (1872) L.R. 13 Eq. 566.

A does not take up the shares within the month, and shortly afterwards he is, by the officers of the company, placed on the register as the holder of such shares. He thereby becomes a member in respect of such shares. By accepting the office he is regarded as in effect agreeing to comply with the regulations, and by placing him on the register the company accepts his offer.

(f) A, who has not applied for shares, is informed that he has been registered as a holder of a specified number of shares in a company. He signs a proxy paper in respect of such shares, or otherwise acts as the owner of such shares He is estopped from denying that he is the holder of such shares.[80]

(g) A applies for shares on the footing that he is not to be liable thereon for the full amount, and the company allots shares which involve the full liability. A nevertheless exercises acts of ownership, *e g* , by selling some and obtaining proxies A is bound.[81]

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

Mere entry of a person's name on the company's register, however, without agreement or assent is not enough Thus, if a director resigns before the time for taking up his qualification shares has expired, and the company has, notwithstanding, entered his name on the register, without his assent, as the holder of the qualification shares, he may compel the company to take his name off the register.[82] So, too, if a man's name is put on the register upon the application of some person professing to act as his agent, but without any authority in fact, the company can be compelled to take the name off.[83] Or, again, where a man applies for shares, but withdraws his application before acceptance; if, nevertheless, the company allots and puts his name on the register, he may have it taken off [84]

A person improperly registered as a transferee of a share is not bound, and may have his name taken off the register.[85]

Infants and lunatics.

The above are all cases of persons *sui juris* In the case of persons not *sui juris*, such as infants or lunatics, a contract to take shares is voidable [86]

[80] *Crawley's Case* (1869) L R. 4 Ch.App. 322.
[81] *Re Railway Time Tables, etc , Co.* (1889) 42 Ch.D. 98
[82] *Salisbury-Jones and Dale's Case* [1891] 3 Ch. 356.
[83] *Ormerod's Case* [1894] 2 Ch. 474
[84] *Hebb's Case* (1867) L.R. 4 Eq. 9; *Truman's Case* [1894] 3 Ch. 272.
[85] *Heritage's Case* (1869) L.R. 9 Eq. 5; *Cartmell's Case* (1874) L.R. 9 Ch.App. 691
[86] *Lumsden's Case* (1868) L.R. 4 Ch.App. 34; *Ebbett's Case* (1870) L.R. 5 Ch.App 302; *Capper's Case* (1868) L.R. 3 Ch.App. 458; *Re Yeoland Consols (No. 2)* (1888) 58 L.T. 922; *Symons' Case* (1870) L.R. 5 Ch.App. 298.

but valid till disaffirmed. If an infant repudiates, he cannot recover money paid, unless the shares were of no value at all.[87]

Specific Performance

The court has jurisdiction to decree specific performance of a contract by a person to take, or by a company to allot, shares[88]; but the matter is one of judicial discretion, and if before action brought all the shares have been allotted to other persons, the only remedy of a plaintiff claiming an allotment is an action for damages for breach of contract.[89] A company may, by delay, disentitle itself to obtain specific performance.[90]

Cesser of Membership

A person may cease to be a member of a company—

(1) By transferring his shares to another person. In such case, the transferor ceases to be a member so soon as the transferee is registered, but not before. After registration the transferor is still liable to be placed on the B list of contributories as a past member, if the company is wound up within a year.[91]

(2) By his shares being forfeited.[92]

(3) By his shares being sold by the company under some provision in its articles (*e.g.*, for enforcing a lien), and by the purchaser being registered as holder in his place.

(4) By death: but in such a case the deceased member's estate remains liable until the registration of some person entitled under a transfer from his executors or administrators.[93]

(5) By a valid surrender.[94]

(6) By the trustee in bankruptcy of an insolvent member disclaiming his shares.[95]

(7) By rescission of the contract of membership on the ground of misrepresentation[96] or mistake.[97] This, however, does not apply to shares subscribed for in the memorandum of association.

Liability to pay for Shares

The terms of the Act of 1948, and in particular the provisions of **ss. 20** and **212**, leave no doubt, in the case of a company limited by shares, about the obligation of shareholders to pay to the company the full

[87] *Hamilton* v. *Vaughan-Sherrin, etc., Co.* [1894] 3 Ch. 589; *Steinberg* v. *Scala (Leeds), Ltd.* [1923] 2 Ch. 452.
[88] *New Brunswick, etc., Land Co.* v. *Muggeridge* (1860) 1 Dr. & Sm. 363; *Oriental Inland Steam Co.* v. *Briggs* (1861) 31 L.J.Ch. 241; *Odessa Tramways Co.* v. *Mendel* (1878) 8 Ch.D. 235.
[89] *Ferguson* v. *Wilson* (1866) L.R. 2 Ch.App. 77.
[90] *Nicol's Case* (1885) 29 Ch.D. 421.
[91] *Stanhope's Case* (1865–6) L.R. 1 Ch.App. 161; *Heritage's Case* (1869) L.R. 9 Eq. 5
[92] *Dawe's Case* (1868) L.R. 6 Eq. 232.
[93] *Heward* v. *Wheatley* (1853) 3 De G.M. & G. 628; *Baird's Case* (1870) L.R. 5 Ch.App 725.
[94] *Trevor* v. *Whitworth* (1887) 12 App Cas. 409.
[95] See Bankruptcy Act, 1914, s. 54.
[96] *Post*, p. 105.
[97] *Ante*, p. 92.

amount of their shares. The words of the section limiting the liability of members to 'the amount unpaid on their shares', can only mean, as Lord Macnaghten pointed out in the *Ooregum Case*,[98] that the liability of the member continues so long as anything remains unpaid on his shares. Nothing but payment, and payment in full, can put an end to the liability. 'But all this legislation', said his Lordship, on p. 144, 'proceeds on the footing of recognising and maintaining the liability of the individual member to the company until the prescribed limits are reached'. Under the Act of 1862 the shares could be paid for either in money, or, with the company's consent, money's worth.[99] But by s. 25 of the Companies Act, 1867, the Legislature restricted the power to pay otherwise than in cash by providing that any shares should be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the same should have been otherwise determined by a contract duly made in writing and filed with the Registrar of Companies at or before the issue of such shares. Whilst this section was in force it followed that once a share was issued it had to be paid up in full in cash unless a sufficient contract providing for some other mode of payment was duly filed before such issue. See, further, *post*, p. 99. The cash payment section was repealed by the Companies Act, 1900, and the Act of 1948 leaves that repeal untouched. Hence shares, whether subscribed for in the memorandum or otherwise taken, may now be paid up in money or (with the consent of the company) in money's worth, *e.g.*, by making over to the company property or rendering to it services [1]; but it is necessary within one month after allotment to deliver to the registrar for registration a contract constituting the title of the allottee to the shares.[2] Failure to do this does not render the allottee liable to pay for the shares, and the time may be extended.[3] See *Re Wilkinson Sword Co., Ltd.*,[4] where a contract was allowed to be filed twenty-four years after the formation of the company in respect of shares for which the memorandum had been subscribed.

It is now well settled that, if a valid contract be made for the acceptance by the company of specified property or services of substantial value in payment or part payment of shares, the court will not, whilst the contract stands, inquire into the value of the consideration even at the instance of the liquidator.[5] See, as to future services, *Pellatt's Case*,[6] and *Gardner* v. *Iredale*.[7]

The result of these decisions is that a company may and sometimes does issue paid-up shares at what is in effect a discount, by taking as the cash equivalent of payment property worth in the market much less than

[98] [1892] A.C. 145.
[99] *Re Baglan Hall Colliery Co.* (1870) L.R. 5 Ch.App. 346.
[1] *Re Baglan Hall Colliery Co.* (1870) L.R. 5 Ch.App. 346.
[2] See *post*, p. 98.
[3] See *post*, p. 99.
[4] [1913] W.N. 27; 29 T.L.R. 242.
[5] *Pell's Case* (1869) L.R. 5 Ch.App. 11; *Re Baglan Hall Colliery Co.* (1870) L.R. 5 Ch.App. 346; *Re Wragg, Ltd.* [1897] 1 Ch. 796; *Re Theatrical Trust* [1895] 1 Ch. 771; *Re Innes & Co.* [1903] 2 Ch. 254.
[6] (1867) L.R. 2 Ch.App. 527.
[7] [1912] 1 Ch. 700.

the nominal amount of such shares, and the transaction, though an abuse of the Acts, cannot practically be upset; but, except in this way, it was not before 1929 permissible or practicable to issue shares on a cash basis at a discount, nor can shares be issued by way of bonus.[8]

After allotment, calls must be paid in cash. As to the meaning of 'cash', see *post*, p. 100. Where under a scheme of arrangement the company agreed to accept 'deferred creditors' certificates' of another company in payment of calls, the shares were held not to be fully paid for the purposes of the liquidation of the first-mentioned company.[9]

Where, however, the contract is fraudulent or shows on the face of it that the consideration given to the company is illusory, or is clearly not equivalent to the nominal value of the shares, the shares cannot to this extent be treated as fully paid.[10] And the shareholder may be held liable to pay for the shares in full.[11]

By s. 47 of the Act of 1929 the issue of shares at a discount was authorised, but subject to the leave of the court and to very special provisions. This section is replaced by **s. 57** of 1948.[12]

Companies have not so far made much use of this liberty, having regard to the necessity for an application to the court and to the many ways in which a similar result can be obtained indirectly, as by issuing shares for a consideration other than cash or issuing shares of a low nominal value carrying the same rights as shares of a higher nominal value.

Under **s. 53** of the Companies Act, 1948, a commission may be paid for subscribing for shares, and thus in effect the rule that shares may not be issued at a discount is still further relaxed: that is, the financial result to the company is the same as if the shares were issued at a discount; but as a matter of form the transaction is correct: the shares are fully paid up by the subscriber, and the commission is paid him by the company out of its funds as part of its business expenditure. The payment must, however, be in the nature of a commission for services rendered and not a discount allowed to the subscriber, who does nothing beyond subscribing for the shares in the usual way [13]; and by **s. 53 (1) (b)** of the Act of 1948 the amount or rate per cent. must not exceed 10 per cent. of the price at which the shares are issued.

Who is Liable

The registered holder of a share is the person liable in respect of anything unpaid on the share, and it makes no difference whether he is the beneficial owner of the share or a mere trustee, nor, in the latter case,

[8] *Ooregum Gold Mining Co. of India* v. *Roper* [1892] A.C. 125; *Re Eddystone Marine Insurance Co.* [1893] 3 Ch. 9.
[9] *Re White Star Line* [1938] Ch. 458.
[10] *Re Wragg, Ltd.* [1897] 1 Ch., at p. 836; *Hong Kong & China Gas Co.* v. *Glen* [1914] 1 Ch. 527 (an agreement to allot as fully paid a certain proportion of all future increases of capital).
[11] *Re James Pitkin & Co.* [1916] W.N. 112.
[12] See Appendix 1, *post*.
[13] *Keatinge* v. *Paringa Consolidated Mines, Ltd.* [1902] W.N. 15.

whether the company is or is not cognisant of the trust.[14] The *cestui que trust* cannot be made liable either as shareholder or as a contributory,[15] for there is no privity of contract between him and the company.

The liability of the registered holder to pay arises in most cases from the operation of **s. 20** (2) of the Act, which expressly provides that '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 the articles generally provide that calls and instalments made payable by the terms of issue shall be paid when due by the holder to the company.[16] Sometimes, however, the articles are defective in this respect, and in such cases it is necessary to resort to the contract under which the shares were issued, and to rely on the promise therein to pay the whole or part by specified instalments. In a winding up the liability to pay whatever may be called for arises under **s. 212** of the Act. Where the holder dies, his estate remains liable in respect of his share until some other person is registered as the holder thereof. When the holder transfers and the transferee is registered, the transferee becomes liable to pay all moneys subsequently becoming payable in respect of the share.[17] But though a person has by transfer, forfeiture, or surrender, ceased to be a member, he still remains secondarily liable in the event of a winding up commencing within one year after he ceased to be a member (**s. 212**).

Returns as to Allotments and Filing Contracts with Registrar

The cash payment section of the Act of 1867 was repealed because it was found to operate very harshly at times on persons who had given full consideration for their shares and were not aware of the non-compliance with the section; but the policy of the law which dictated the section remains the same, that is to say, that persons dealing with the company, and shareholders of the company also, are entitled to know the nature of the *quid pro quo* for which shares have been issued as fully paid by the directors of the company. In repealing this section the Legislature has therefore, in pursuance of this policy, made provision by **s. 52** for the company promptly delivering to the registrar particulars of all allotments from time to time made. The substituted section runs as follows:—

52.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar of Companies for registration—

(*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

[14] *Chapman and Barker's Case* (1867) L.R. 3 Eq. 361.
[15] *Bunn's Case* (1860) 2 De G.F. & J. 275, 300; *Somervail* v. *Cree* (1879) 4 App.Cas. 648.
[16] See 'Calls', *post*, p. 126.
[17] See *post*, pp. 110, 111.

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.[18]

The section also provides for delivering particulars as to oral contracts and imposes penalties for default, and gives the court power to extend the time for delivery in certain cases, a remedy first given by the Act of 1898.[19] Neglect to file the required contract or particulars will not, as under s. 25 of the Act of 1867, below referred to, render the shares liable to payment in cash.

In case of default in filing any returns, any shareholder or creditor can now apply to the court for an order directing the company to make good the default (**s. 428**).

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

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

The result was that, to use Bowen L.J.'s language in *Re London Celluloid Co.*,[20] ' there is a statutory liability to pay the whole amount in *cash*, which can only be avoided under the statute in one way, namely, by a registered contract '. A registered contract under s. 25 did not, however, it must be remembered, exempt the shares from being paid up in full; the section only regulated the *mode* of payment.[21] It did not affect the *quantum* or the adequacy of the consideration. That was regulated by the Act of 1862, read in the light of the decisions cited on p. 96.

Section 25 was, as above mentioned, repealed (by s. 33 of the Act of 1900); but this repeal has not affected the power of the court to grant relief under the Act of 1898.[22]

The commonest cases for relief under the Companies Act, 1898, have been as follows:—

(a) Where no contract in writing at all was filed ' at or before the issue ' of the shares.[23]

(b) Where a contract was filed at or before the issue. but it was insufficient—

(i) Because it was not made between the proper parties.[24]

(ii) Because it was not signed by both parties.[25]

[18] For the full text of the section see Appendix 1.
[19] *Re Wilkinson Sword Co.* [1913] W.N. 27; 29 T.L.R. 242.
[20] (1888) 39 Ch.D. 204.
[21] See Lindley L.J., *Re Addlestone Linoleum Co.* (1887) 37 Ch.D. 205.
[22] *Re Brutton and Burney, Ltd.* [1901] 1 Ch. 637; *Re Wilkinson Sword Co.* [1913] W.N. 27.
[23] *Re Jackson & Co.* [1899] 1 Ch. 348.
[24] *Smith* v. *Brown* [1896] A.C. 614.
[25] *Re New Eberhardt Co.* (1889) 43 Ch.D. 118.

(iii) Because it did not specify or correctly specify the consideration or the general nature of the consideration.[26]

(iv) Because it did not state the number of shares to be allotted under it or gave merely an option to take shares instead of cash.[27]

(v) Because the shares were subscribed in the memorandum and the only contract filed was filed some time afterwards.[28]

The application in the Chancery Division is commonly made by motion, but may properly be by summons adjourned into court [29]; in the winding-up court it should be in court.[30]

The application must be supported by affidavit. The affidavit must not barely state that the omission to file was accidental or due to inadvertence, but must set out the circumstances.[31]

The section used the term ' cash '. This did not mean exclusively current coin. If the company owed to A £100, presently payable, and A owed the company £100, also presently payable in respect of his shares, and it was agreed between the parties that the one sum should be set off against the other, that amounted to payment in cash within the section. It was not necessary to go through the idle form of the company handing the £100 over and the allottee handing it back again. See *Spargo's Case* [32] and *White's Case*.[33]. Some doubts were thrown on these cases by Lord Halsbury's observations in *Re Johannesburg Hotel Co.*,[34] but the Privy Council subsequently expressed a very clear opinion that *Spargo's Case* was rightly decided.[35]

Annual Summary of Capital and List of Members

By **ss. 124 to 129** of the Act of 1948, every company having a share capital must every year make an annual return containing a list of members and summary of shares issued, calls paid, directors, secured debts, etc. By ss. 108 and 110 of the Act of 1929 the return was to be made up as on ' the fourteenth day after the first or only *ordinary* general meeting in the year ', and it had to be completed within twenty-eight days after the ' first or only general meeting in the year '. But now, by **s. 124 (1)** of the Act of 1948 the annual return must contain with respect to the registered office, registers of members and debenture holders, shares and debentures, indebtedness, past and present members, directors and secretary, the matters and be in the form set out in the **Sixth Schedule.** A company need not make an annual return in the year of its

[26] *Re Jackson & Co.* [1899] 1 Ch. 348.
[27] *Transvaal Exploring Co.* v. *Albion (Transvaal) Gold Mines* [1899] 2 Ch. 370.
[28] *Re Whitehead & Brothers* [1900] 1 Ch. 804.
[29] *Re Whitefriars Financial Co.* [1899] 1 Ch. 184; *Re Dowson* [1889] W.N. 222.
[30] *Re Concessions Acquisitions Syndicate* (1898) 68 L.J.Ch. 49.
[31] *Re Victoria Brick Works* [1898] W.N. 162; see, further, *Company Precedents*, 15th ed., Part I, p. 1212.
[32] (1873) L.R. 8 Ch.App. 407.
[33] (1879) 12 Ch.D. 517.
[34] [1891] 1 Ch., at p. 129 (C.A.).
[35] *Larocque* v. *Beauchemin* [1897] A.C. 358; *North Sydney Investment, etc., Co.* v. *Higgins* [1899] A.C. 263.

incorporation or in the following year if it is not required to hold an annual general meeting in that year, and there are other modifications which are set out in the section.[36] The annual return must be completed within forty-two days after the annual general meeting and a copy forwarded forthwith to the registrar (**s. 126**).

The copy of the annual return forwarded to the registrar and the certificate as to any balance sheet included in the return, and any certificate as to the annual return of a private company must be signed both by a director and by the secretary (**s. 126**).

A reference to the **Sixth Schedule,** which is very long and complicated, will show that the contents of the annual return must include the address of the registered office and the place where the registers of members and debenture holders are kept, details of the capital, shares, calls, forfeitures and share warrants, indebtedness of the company on mortgages and debentures, names and addresses of the members and of persons who have ceased to be members since the last return, details of shareholdings and transfers, and an index where needed. Also particulars of directors and secretary.

Part II of the Schedule sets out the form of the annual return.[37]

The return must also include a written copy certified by a director and the secretary to be a true copy, of every balance sheet laid before the company during the period to which the return relates, including every document required to be annexed to it, and a copy of the directors' and auditors' reports (**s. 127**).[38]

A private company must now include a copy of its balance sheets and annexed documents, unless it is an 'exempt private company'.[39]

'Year' no doubt means the year commencing January 1 and ending December 31.[40] A director not taking care that the return is made affords prima facie evidence of default.[41] And a director cannot excuse himself by showing that by his own default the meeting was not in fact called. Though the meeting is not held, the return should be made.[42] An offence under s. 124 (2) is a criminal offence.[43] Proceedings to enforce the penalty are taken before a magistrate under the Summary Jurisdiction Acts, 1847 to 1884. The magistrate may inquire into the sufficiency or accuracy of the return.[44] As to what is a sufficient return, *Galloway* v. *Schill & Co.*,[45] The complaint must be brought within six months.[46]

A company not having a share capital must also make an annual return containing particulars as to the register of members, directors and debts, mortgages and charges (**s. 125**).

[36] See Appendix 1, *post*.
[37] See **Sixth Schedule,** Appendix 1, *post*.
[38] See notes to **Sixth Schedule,** Appendix 1, *post*.
[39] See *post*, p. 356.
[40] *Gibson* v. *Barton* (1875) L.R. 10 Q.B. 329.
[41] *Gibson* v. *Barton*, *supra*; *Edmonds* v. *Foster* (1875) 45 L.J.M.C. 41.
[42] *Park* v. *Lawton* [1911] 1 K.B. 588.
[43] *R.* v. *Tyler* [1891] 2 Q.B. 588.
[44] *Re Briton Medical, etc., Association* (1888) 37 W.R. 52.
[45] [1912] 2 K.B. 354.
[46] *Edmonds* v. *Foster*, *supra*.

CHAPTER 9

REGISTER OF MEMBERS

EVERY company under the Act is to keep in one or more books a register of its members (**s. 110**).

Contents

This register must contain:—

(i) The names and addresses of the members, and in the case of a company having a share capital a statement of the shares or amount of stock held by each member, distinguishing each share by its number (if any) (except as authorised by **s. 74** of the Act of 1948) 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.

The company must send notice to the registrar of the place where its register of members is kept and any change in that place, except where it has always been kept at the registered office (**s. 110 (3)**).

In default the company and every officer in default are liable to a default fine.

By **s. 110 (2)** the register must be kept at the registered office, except that, if the work of making it up is done at another office of the company, it may be kept at that office, and if the register is kept by an agent, the register may be kept at the office of the agent, but, in any case, not out of England.[1]

By **s. 74** every share must be distinguished by its appropriate number; but if all the issued shares or all the issued shares of a particular class are fully paid and rank *pari passu*, they need not have a distinguishing number.[2]

It is not now necessary to state the occupations of the members.

A firm can be registered.[3]

Notice of any change of address is to be entered on the register. No notice of any trust is to be entered on the register (**s. 117**).

In *Re Key & Son*[4] the court refused to allow a memorandum of lien to be entered on the register by the company.

Index

A company having more than fifty members must keep an index of the names of its members unless the register is in the form of an index, and

[1] **S. 110** adopts the changes effected by s. 50 of 1947.
[2] **S. 74**, re-enacting s. 69 of 1947.
[3] *Weikersheim's Case* (1873) L.R. 8 Ch.App. 831.
[4] [1902] 1 Ch. 467.

all alterations in the register must be carried to the index within fourteen days (**s. 111**). The index must be kept at the same place as the register. The register or index may be in loose-leaf ledgers.[5]

Share Ownership

Where the registered holder is a nominee for some other person who really controls the share this fact does not appear on the register. This is prohibited by **s. 117** of the Act of 1948.[6] This enables the persons who are really in control of a company to conceal their position from the shareholders and from the public, a state of affairs which sometimes leads to abuse, and even fraud. As a check on such abuses, **ss. 172** and **173** of the Act of 1948 (re-enacting ss. 46 and 47 of the Act of 1947) give to the Board of Trade power to appoint an inspector to report on the membership of a company, or, where it appears to the Board that there is good reason to investigate the ownership of shares or debentures, to require information for that purpose from persons interested in the shares or debentures.[7]

Inspection

The register of members commencing from the date of the registration of the company and the index of members are, by **s. 113,**[8] to be open for inspection by members gratis, and for inspection by any other person on payment of one shilling or such less sum as the company may prescribe for each inspection.

A right is also given to require a copy of such register and index or any part thereof, which must be sent within ten days, and a penalty is imposed in case of default, and in addition to this penalty a judge sitting in chambers may by order compel an immediate inspection of the register, and disobedience of that order being a contempt of court may be punished by imprisonment.

The right to inspection does not in this case carry with it the right to take copies, such right being excluded by the section entitling the person inspecting to require a copy on certain terms.[9] Sixpence a folio of 100 words must therefore be paid. The right terminates on a winding up.[10] Refusal in this section means a distinct and definite refusal.[11] A creditor or member may inspect by his solicitor or agent.[12] The court will compel production, irrespective of motive.[13]

Closing of Register

The company is empowered to close the register by advertisement, but not for more than thirty days in each year (**s. 115**).

[5] See *post*, p. 233.
[6] See Appendix 1, *post*.
[7] See Appendix 1, *post*.
[8] See Appendix 1, *post*.
[9] *Re Balaghat Gold, etc., Co.* [1901] 2 K.B. 665, overruling *Boord* v. *African, etc., Co.* [1898] 1 Ch. 596.
[10] *Re Kent Coalfields Syndicate* [1898] 1 Q.B. 754.
[11] *R.* v. *Wilts and Berks Canal Navigation* (1835) 3 Ad. & El. 477. See, too, *R.* v. *Thames Navigation Commissioners* (1839) 8 Ad. & El. 901.
[12] *Bevan* v. *Webb* [1901] 2 Ch. 59, 75.
[13] *Davies* v. *Gas Light & Coke Co.* [1909] 1 Ch. 248.

Register Prima facie Evidence

The register of members is to be prima facie evidence of any matters by the Act directed or authorised to be inserted therein (**s. 118**). It is not conclusive.[14]

Publicity of Register

It is important to note the fact that the register of members is, by the Act, open to the public. In this respect the Act of 1862 differed from the Act of 1844 [15] By s. 50 of the Act of 1844 every *shareholder* was to have liberty to search the register at all reasonable times, but nobody was to be at liberty to search it who was not a shareholder.

The Companies Act, 1862, retained the obligation as to keeping a register; but the Act introduced an important change in providing [16] that the register should be open to the inspection not only of shareholders, but, on payment of one shilling, of *all other persons.* This would, of course, include creditors and persons dealing or about to deal with the company, and the change indicates unmistakably an intention on the part of the Legislature that the creditors and persons who contemplate dealing in some way with the company ought to have the means by inspecting the register of satisfying themselves to what extent they may safely trust the company. **Section 113** of the Act of 1948 is to the same effect.

' When the Legislature enabled shareholders to limit their liability, not merely to the amount of their shares, but to so much of that amount as should remain unpaid, it is obvious that no creditor could safely trust the company without having the means of ascertaining, first, who the shareholders might be, and, secondly, to what extent they would be liable. . . . The Legislature took care to provide the register as the means of enabling persons dealing with the company to know to whom and to what they might trust '.[17]

Doctrine of holding out.

On the same principle in *Sewell's Case,*[18] where a registered shareholder wished to disclaim the ownership of certain shares, Lord Cairns, while assuming in the shareholder's favour that he might have had a right to disclaim, was of opinion that ' not having done so, and being aware that he was held out to the public as the holder of the shares, it is too late for him, months or even years afterwards, to enter into that question '. ' It is difficult ', the same learned judge remarked on another occasion during the argument, ' to disembarrass these cases of the effect which a man's name being on the register has in inducing other persons to alter their position '.[19]

[14] *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 80.
[15] *Ante*, p. 6.
[16] S. 32 of the Act of 1862.
[17] *Per* Lord Cranworth, *Oakes* v. *Turquand* (1867) L.R. 2 H.L. 366.
[18] (1868) L.R. 3 Ch.App. 138.
[19] *Lawrence's Case* (1867) L.R. 2 Ch.App. 417.

Delay.

The result of this doctrine of holding out is that if a person's name is on the register with his consent, and he claims a right to have it removed on some ground or other, he must exercise the right promptly, otherwise he forfeits it.[20] Even where a name is, pursuant to a *void* contract, placed on the register, delay after knowledge may be fatal.[21] And where an allottee under a void allotment sold the shares and transferred them to a purchaser who was registered, the allottee was held not to be entitled to sue the company for the money subscribed as paid for a consideration which had failed.[22]

Register not conclusive.

Nevertheless the reliance to be placed on the register is qualified to this extent that anyone dealing with the company must be taken to know—

(1) That shares may be transferred in accordance with the articles, and thus an insolvent shareholder may be substituted for a solvent one.

(2) That a member who has been induced to take shares by misrepresentations or mistake, even though on the register for years, may, while the company is a going concern, repudiate his shares and get off the register.[23]

(3) That there may be persons on the register placed there without their consent who may subsequently enforce the removal of their names.[24]

(4) That a person whose name has been improperly entered on the register under an allotment in contravention of **ss. 47** or **48** of the Act of 1948 may claim under **s. 49** to be removed.

(5) Where the entry on the register is there stated to be subject to some condition, membership is not complete.[25]

Rectification of Register

It is a corrollary from the principle that the register of members is to be the creditors' guarantee, showing them to whom and to what they have to trust, that the register should be properly kept and that the names appearing therein should be the names of the persons really for the time being liable to the creditors. That this may be the case the Legislature in **s. 116** of the Act of 1948 provides a summary mode of rectifying the register from time to time by application to the court in two classes of cases:—

(1) Where the name of any person is without sufficient cause entered in or omitted from the register of members.

[20] *Re Scottish Petroleum Co.* (1883) 23 Ch.D. 434.
[21] *Re Railway Time Tables Publishing Co.* (1889) 42 Ch.D. 107; *ante*, p. 94.
[22] *Linz* v. *Electric Wire Co. of Palestine* [1948] A.C. 371; [1947] 1 All E.R. 604.
[23] See *post*, p. 344.
[24] *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 80; *Baillie's Case* [1898] 1 Ch. 110.
[25] *Spitzel* v. *Chinese Corporation* (1899) 80 L.T. 347.

(2) Where default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member.

This jurisdiction is exercisable after as well as before winding up,[26] and is frequently exercised. It may be invoked by the company.[27] The following are a few illustrative cases in which orders have been made: where the applicant was induced to take shares by misrepresentation[28]; where the company improperly neglected to register a transfer[29]; where shares had been issued to the applicant as paid up without filing a contract in compliance with s. 25 of the Companies Act, 1867[30]; where shares were improperly forfeited[31]; where the company, acting on a forged transfer, had removed the name of the applicant, the real owner[32]; where there was a dispute between the vendor and purchaser of shares[33]; where shares had been irregularly allotted to applicant[34]; where the signatory of an underwriting letter not constituting a contract had been placed on the register[35]; where a shareholder, who had made an *ultra vires* surrender of his shares to the company, claimed to have his name reinstated.[36]

The court has rarely declined, as between a member and the company, to exercise its jurisdiction under the section[37]; but the court had and has a discretion, although the words ' if satisfied of the justice of the case ', in s. 35 of the Act of 1862 were not used in s. 32 of the Act of 1908. See, per Lord Macnaghten in *Trevor* v. *Whitworth*[38] as to the materiality of these words. Where justice requires it, the order to rectify will be made *nunc pro tunc*.[39] An application under **s. 116** should be by motion intituled in the matter of the particular company and in the matter of the Companies Act, 1948.[40] If there is no winding up pending, the application should be made to one of the ordinary judges of the Chancery Division, and not to the winding-up judge.[41] Directors are not proper parties as respondents,[42] and cannot be made to pay the costs of the motion (*ibid.*) except where added at their own request.[43] For forms of notice of motion, and orders to rectify, see *Company Precedents*, Part I, 15th ed., pp. 1205 *et seq.* There is jurisdiction to

[26] *Re Sussex Brick Co.* [1904] 1 Ch. 598.
[27] *Re Indo-China Steam Navigation Co.* [1917] 2 Ch. 100.
[28] *Stewart's Case* (1866) L.R. 1 Ch.App. 574; *Anderson's Case* (1881) 17 Ch.D. 373.
[29] *Re Stranton Iron and Steel Co.* (1873) L.R. 16 Eq. 559.
[30] *Re New Zealand Kapanga, etc., Co.* (1873) L.R. 18 Eq. 17, n.
[31] *Re Ystalyfera Gas Co.* [1887] W.N. 30.
[32] *Re Bahia, etc., Co.* (1868) L.R. 3 Q.B. 584.
[33] *Ex p. Shaw* (1877) 2 Q.B.D. 463.
[34] *Re Portuguese Consolidated, etc., Mines* (1889) 42 Ch.D. 160; *Re Homer District Consolidated Gold Mines* (1888) 39 Ch.D. 546.
[35] *Re Consort, etc., Mines* [1897] 1 Ch. 575.
[36] *Bellerby* v. *Rowland and Marwood's Steamship Co.* [1902] 2 Ch. 14 (C.A.).
[37] *Ex p. Parker* (1867) L.R. 2 Ch.App. 685.
[38] (1887) 2 App.Cas. at p 440.
[39] *Re Sussex Brick Co.* [1904] 1 Ch. 598.
[40] *Duffin* v. *Mexican Gold, etc., Co.* [1890] W.N. 116.
[41] *Re British Columbian Exploitation and Gold Estates* [1899] W.N. 32.
[42] *Re Keith, Prowse & Co.* [1918] 1 Ch. 487.
[43] *Re Copal Varnish Co.* [1917] 2 Ch. 349.

rectify the register not only upon motion under **s. 116**, but in an action against the company.[44]

Section 116 is not exhaustive, and does not prevent the court from altering the register in cases other than those therein specified, *e.g.*, to enable joint holders to exercise their joint rights as members by altering the order in which they are registered.[45]

In a voluntary winding up the liquidator may alter the register on sanctioning transfers of shares made after the commencement of the winding up.[46]

Under a winding up by the court, the liquidator can now only rectify the register with the special leave of the court (**s. 273**).

A secretary, as such, has no power to alter the register.[47]

Where there were no directors or secretary the court made an order appointing the applicant to rectify the register under R. S. C., O. XLII, r. 30.[48]

Dominion Registers

A company is by **s. 119** given power in the circumstances specified therein, to cause to be kept in any part of H.M. Dominions outside Great Britain, the Channel Islands or the Isle of Man, in which it transacts business, a branch register or registers of the members resident in that part. Such a register is called a 'dominion register', and may be rectified by any competent court in the dominion. The dominion register becomes part of the register of the company. Shares entered in the dominion register must not be dealt with in the main register. By s. 50 (2) of the Act of 1947, re-enacted in **s. 120** (3) of the Act of 1948, the company must transmit to its registered office a copy of every entry in its dominion register as soon as may be, and keep at the place where the company's principal register is kept a duplicate of its dominion register.

Branch registers of dominion companies may also be kept in Great Britain so far as authorised by Order in Council (**s. 123**).

[44] *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 80.
[45] *Burns* v. *Siemen Bros.' Dynamo Works* [1919] 1 Ch. 225.
[46] See **s. 282**; *Taylor, Phillips and Rickard's Cases* [1897] 1 Ch. 298.
[47] *Wheatcroft's Case* (1873) 29 L.T. 324, 326; *Chida Mines, Ltd.* v. *Anderson* (1905) 22 T.L.R. 27.
[48] *Re Manihot Rubber Plantations* (1919) 63 S.J. 827.

CHAPTER 10

TRANSFER AND TRANSMISSION OF SHARES

Transfer of shares, Act permits, subject to company's articles.

'WHEN joint stock companies were established the great object', said Lord Blackburn, 'was that the shares should be capable of being easily transferred'.[1] In pursuance of this object, **s. 73** provides that shares in a company under the Act shall be capable of being transferred in manner provided by the articles of the company; and it is well settled that, unless the articles otherwise provide, the shareholder has a free right to transfer to whom he will.[2]

It is not (as that case decided) necessary to seek in the articles for a power to transfer, for the Act gives that. It is only necessary to look to the articles to ascertain the mode of transfer and the restrictions upon it.[3] Thus a member has a right to transfer his shares to another member unless this right is clearly taken away by the articles.[4]

So absolute, prima facie, is the right, that a transfer by a shareholder, if out-and-out, is valid, though made to a pauper and with the avowed object of escaping liability.[5]

Restrictions by articles.

There is nothing to limit the restrictions which a company's articles may place on the right of transfer.[6] The articles may give the directors power to refuse to register a transfer in any specified cases; for instance, where calls are in arrear, or where the company has a lien on the shares—and some such provisions are usually inserted. Thus, **Table A** in **clause 24** provides that the directors may decline to register any transfer of shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. But the articles in many cases go far beyond this. They prohibit, for example, the transfer of a share to any person who is not a member of a specified class, or they provide, as they often do in private companies, that before transferring to an outsider the intending transferor must first offer the shares to the other members, and give them a right of pre-emption. And there is nothing in such provisions, though permanent, to contravene the rule against perpetuities.[7]

Where a shareholder, acting in accordance with the provisions of the articles, offers to sell the whole of his shareholding at a certain price,

[1] *Re Bahia and San Francisco Rail Co.* (1868) L.R. 3 Q.B. 595.
[2] *Weston's Case* (1868) L.R. 4 Ch.App. 20.
[3] *Gilbert's Case* (1870) L.R. 5 Ch.App. 559, 565.
[4] *Delavenne* v. *Broadhurst* [1930] W.N. 238.
[5] *De Pass's Case* (1859) 4 De G. & J. 544; and see *post*, p. 111.
[6] *Re Crawley & Co.* (1889) 42 Ch.D. 209, 231; *Re Stockton Malleable Iron Co.* (1875) 2 Ch.D. 101.
[7] *Borland's Trustee* v. *Steel Brothers & Co.* [1901] 1 Ch. 279.

another shareholder cannot accept the offer in respect of part only of the shares offered.[8]

The nomination of a substitute on the issue of existing shares to shareholders or their nominees is not a transfer within the meaning of such articles.[9]

Where discretion of directors as to registration of transfers.

Where a discretion as to registering transfers is by the articles given to the directors, the court will not control the exercise of such discretion, unless it is proved that the directors are not exercising it bona fide,[10] or are acting, in other words, oppressively, capriciously, or corruptly, or in some way mala fide.[11] Nor will the court draw unfavourable inferences against directors because they do not give their reasons for refusing to pass a particular transfer, for they are under no obligation to disclose their reasons either in court or out of court; it is enough that they have in fact considered the transfer, and that in exercise of the discretion given to them by the articles they have not passed it.[12] But if the directors choose to give their reasons, the court will then consider whether they are legitimate or not.[13] And interrogatories have been allowed as to the grounds upon which the directors refused, where the articles provided that the directors might ' without assigning any reason ' decline to register a transfer.[14] But where the articles provided that the directors should ' not be bound to specify the grounds ' upon which registration was declined, interrogatories were not allowed.[15] Where the discretion is to refuse to register transfers to persons of whom they do not approve, the refusal must be on grounds personal to the proposed transferee.[16] In the absence of a wider power to refuse to register a transfer, the directors cannot refuse on the ground that the title will on the registration vest in the trustee in bankruptcy of the transferee.[17]

Where directors have power to decline to register a transfer and the board is equally divided, the transfer must be registered.[18]

Where one of two directors (the quorum being two) refused to attend a meeting to consider the transfers which were executed by the other, the court ordered the register to be rectified.[19]

Transfer must be in proper form.

Whatever the articles as to transfer may be, a shareholder desiring to transfer must conform to them. If he does not, the company is

[8] *The Ocean Coal Co.* v. *The Powell Duffryn Steam Coal Co.* [1932] 1 Ch. 654.
[9] *Re Pool Shipping Co.* [1920] 1 Ch. 251.
[10] *Re Gresham, etc., Society* (1872) L.R. 8 Ch.App. 452; *Re Coalport China Co.* [1895] 2 Ch. 404; *Re Smith and Fawcett, Ltd.* [1942] 1 All E.R. 542.
[11] *Re Bell Bros.* (1891) 65 L.T. 245.
[12] See *Re Coalport China Co., supra*; *Re Smith and Fawcett, Ltd., supra*; *Re Bell Bros., supra.*
[13] *Re Bell Bros., ubi supra.*
[14] *Duke of Sutherland* v. *British Dominions, etc., Corporation* [1926] Ch. 746.
[15] *Berry and Stewart* v. *Tottenham Hotspur Football, etc., Co.* [1935] Ch. 718.
[16] *Re Bede S.S. Co.* [1917] 1 Ch. 123.
[17] *Sutton* v. *English and Colonial Produce Co.* [1902] 2 Ch. 502.
[18] *Re Hackney Pavilion* [1924] 1 Ch. 276.
[19] *Re Copal Varnish Co.* [1917] 2 Ch. 349.

entitled to refuse to register the transfer, and the court declines in such a case to interfere.

Restrictions on the right of transfer may interfere with a mortgagee's power of sale over the shares.[20] Registration by the secretary without the authority of the directors can be repudiated by them.[21]

One of several transferors revoking his signature on mere suspicion of a breach of trust does not justify an absolute refusal to register.[22]

A party aggrieved by a refusal to register a transfer should proceed by motion to rectify the register.[23]

Registration necessary to complete transfer.

A transfer is incomplete until registered.[24] Pending registration, the transferee has only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered on the register in respect of the shares transferred to him. But delay in registration involves danger to him, for some prior equity may come to light, as in *Ireland* v. *Hart*,[25] where a husband had mortgaged shares of which he was trustee for his wife; or a second transfer may be passed and registered, and thus the prior transfer may be defeated.

'[The rule on this point is that,] as between two persons claiming title to shares in a company like this which are registered in the name of a third party, priority of title [*i.e.*, equitable title] prevails, unless the claimant, second in point of time, can show that, as between himself and the company, before the company received notice of the claim of the first claimant, he, the second claimant, has acquired the full *status* of a shareholder, or, at any rate that all formalities have been complied with, and that nothing more than some purely ministerial act remains to be done by the company, which, as between the company and the second claimant, the company could not have refused to do forthwith; so that, as between himself and the company, he may be said to have acquired, in the words of Lord Selborne, "a present, absolute, unconditional right to have the transfer registered before the company was informed of the existence of a better title".'[26]

Liability of transferor until registration.

Delay in registration may prejudice the transferor as well as the transferee, for in the case of shares which are only in part paid up, the transferor, whilst the transfer is unregistered, continues liable to the company to pay all calls in respect of the shares comprised therein that may be made by the company. Hence the transferor is given by law a right to enforce registration of the transfer (**s. 77**).

It is not clear that the registration of the transfer divests the liability of the transferor for calls in arrear[26a]; but where the transfer is in the

[20] *Hunter* v. *Hunter* [1936] A.C. 222.
[21] *Chida Mines* v. *Anderson* (1905) 22 T.L.R. 27.
[22] *Grundy* v. *Briggs* [1910] 1 Ch. 444.
[23] See *ante*, p. 105.
[24] *Société Générale* v. *Walker* (1885) 11 App.Cas. 28; *Shropshire Union, etc., Co.* v. *The Queen* (1875) L.R. 7 H.L. 496; *Roots* v. *Williamson* (1888) 38 Ch.D. 485; *Powell* v. *London and Provincial Bank* [1893] 2 Ch. 555.
[25] [1902] 1 Ch. 522.
[26] *Per* Romer J., *Moore* v. *N. W. Bank* [1891] 2 Ch. 599, on p. 602; *Peat* v. *Clayton* [1906] 1 Ch. 659; *Guy* v. *Waterlow Bros.* (1909) 25 T.L.R. 515; *Coleman* v. *London County and Westminster Bank, Ltd.* [1916] 2 Ch. 353.
[26a] *Re Hoylake Ry. Co.* (1874) L.R. 9 Ch.App. 257.

usual form it seems that the company may sue the transferee for the calls in arrear,[27] and it is clear that the transferee takes the shares on the footing that the call has not been paid, and cannot vote in respect thereof if the articles provide that no member shall be entitled to vote at all if any calls or other sums of money shall be due and payable to the company in respect of the shares of such members.[28] In a winding up he can certainly be called on to pay up whatever is then unpaid on his shares (**s. 212**), and it would seem that, even while the company is a going concern, it could make a fresh call on him for the amount of the old unpaid call, and that he would be liable to pay such call.[29]

Power to repudiate registered transfer.

Where the articles contain a clause empowering the directors to reject a transferee whom they do not approve, and a holder of partly paid-up shares has improperly induced the directors to pass and register a transfer which but for his conduct they would have refused to register, the company on discovering the facts may repudiate the registration[30]; and where the directors have a discretion as to registering transfers and the consideration is misstated, the company, on discovering the facts, may repudiate the transfer and restore the transferor's name to the register.[31] But where the articles contain no clause authorising the directors to reject a transferee, a shareholder may at the last moment before liquidation, and for the express purpose of escaping liability, transfer his partly-paid shares to a transferee even though he be a pauper, and may compel the directors to register that transfer, provided that it be an out-and-out transfer, reserving to the transferor no beneficial right to the shares, direct or indirect Whether the transfer is of that character is a question of fact.[32]

Written transfer required.

By **s. 75** of the Act of 1948, it is illegal for a company to register a transfer of shares unless a proper instrument of transfer has been delivered. The object of this is to prevent the evasion of stamp duty.

Form and Execution of Transfer

The form of transfer provided by a company's regulations is usually in close accord with the form formerly given in clause 18 of Table A, 1929. The directors may refuse to register if the prescribed form is not substantially followed, but they may waive any irregularity, *e.g.*, non-signature by the transferee.[33] And they must not be too technical. Thus, where the articles required a transfer to be ' in the usual common form ', according

[27] *Herbert Gold, Ltd.* v. *Haycraft* (C.A.), March 27, 1901.
[28] *Randt Gold Mining Co.* v. *Wainwright* [1901] 1 Ch. 184.
[29] *Randt Gold Mining Co.* v. *New Balkis Eersteling* [1904] A.C. 165.
[30] *De Pass's Case* (1859) 4 De G. & J. 544; *Lindlar's Case* [1910] 1 Ch. 312.
[31] *Snow's Case* (1871) 19 W.R. 1057; *sub nom. Rogers' Case*, 25 L.T. 406. Compare *Weston's Case* (1868) L.R. 4 Ch.App. 20, 27, where there was no misrepresentation.
[32] *Hyam's Case* (1859) 1 De G.F. & J. 75; *Costello's Case* (1860) 2 De G.F. & J. 302; *De Pass's Case* (1859) 4 De G. & J. 544; *Lindlar's Case* [1910] 1 Ch. 312.
[33] *Marino's Case* (1867) L.R. 2 Ch.App. 596.

to which the address of the transferor and the distinctive number of the shares should appear, and the transfer tendered omitted these particulars, but was accompanied by the transferor's share certificate giving the omitted particulars, it was held that the transfer should be registered.[34] Where there are joint holders, a transfer, to be effective, must be executed by all. If the signature of anyone be forged, the transfer will be void.[35] Unless otherwise provided by the regulations, a transfer may be merely *signed* by the parties to it, but sometimes the regulations provide that a transfer is to be by deed; this, however, causes inconvenience without any corresponding advantage, for it interferes with the ordinary practice as to blank transfers. See *infra*, p. 304. The obligation to prepare the transfer is, as a general rule, on the purchaser.[36]

Where the regulations require a transfer to be under hand, the fact that it is under seal does not make it the less effective.[37]

If a deed is requisite, it must be duly signed, sealed and delivered.[38] A printed circle with the words ' place for seal,' is not equivalent to a seal.[39]

Infants and lunatics.

Transfers by infants can only be made in pursuance of an order of some court of competent jurisdiction, *e.g.*, the Chancery Division, and by the person named in the order.

Shares held by a lunatic member or by joint holders, one of whom is a lunatic, can only be transferred pursuant to an order in lunacy and by the person named in the order.[40]

Married women could transfer without the concurrence of their husbands, even before the Law Reform (Married Women, &c.) Act, 1935.

A member can transfer his shares by attorney, but the power of attorney must be left with the transfer, and should either be retained by the company or should be filed pursuant to s. 125 of the Law of Property Act, 1925. It should be duly authenticated, and unless it is irrevocable under s. 126 of the same Act, evidence should be adduced that at the time the transfer was signed the appointor was alive.

Practice observed on transfer.

The instrument of transfer, when executed by the transferor, is handed to the transferee or his broker, together with the certificates of title, and is then executed by the transferee and deposited with the company for registration.

Delivery of certificates.

A seller of shares is bound, if the contract fixes no date, to deliver the certificates within a reasonable time, and the reasonableness of the

[34] *Re Letheby and Christopher, Ltd., Jones's Case* [1904] 1 Ch. 815.
[35] *Barton* v. *L. & N. W. Ry.* (1889) 24 Q.B.D. 77.
[36] *Birkett* v. *Cowper-Coles* (1919) 35 T.L.R. 298.
[37] *Ortigosa* v. *Brown, Janson & Co.* (1878) 38 L.T. 145.
[38] *Powell* v. *London and Provincial Bank* [1893] 2 Ch. 555.
[39] *Re Balkis Consolidated Co.* (1888) 36 W.R. 392.
[40] Lunacy Act, 1890, ss. 133, 136–139.

time cannot depend upon the circumstances which are unknown to the buyer and are not disclosed to him by the seller.[41]

Vendor not bound to procure registration.

An agreement for the sale of a share does not impliedly bind the vendor to procure the registration of the transfer. His duty is performed when he hands over to the transferee a duly executed transfer, together with the certificate or its equivalent.[42] But until the registration of the transfer the transferor is a trustee of the share for the transferee.[43] If the buyer wishes to protect himself he must buy ' with registration guaranteed '.

Investigation by company before registration.

A company is not bound to register a transfer at once. It may inquire, *e.g.*, as to the authenticity of the transfer.[44] And where a transfer purports to be executed or signed by the agent of the transferor, the directors are entitled to call for evidence of authority.

Stamp.

A transfer of shares must be duly stamped with an ad valorem stamp at the rate of £2 per cent. on the amount or value of the consideration: Stamp Act, 1891, First Schedule (conveyance or transfer on sale); doubled by s. 36 of the Finance Act, 1920, and redoubled by s. 52 of the Finance Act, 1947. Special provision is made as to transfers to ' dealers '. See Finance Act, 1920, s. 42. Voluntary transfers and transfers for a nominal consideration were formerly chargeable only with a 10s stamp, but by s. 74 of the Finance (1909–10) Act, 1910, transfers operating as voluntary dispositions inter vivos became chargeable as if they were transfers on sale. The directors cannot safely register a transfer not duly stamped, for the transfer in such a case not being available as evidence for any purpose in a court of justice,[45] the directors could not use it to justify altering the register.[46] It makes no difference that the stamp is sufficient on the face consideration, if the directors know that such consideration is less than the real consideration.[47]

Mortgage of Shares

Upon a sale or mortgage of shares, the transferor very commonly signs and hands over what is called a blank transfer (*i.e.*, a transfer signed by the transferor, but with a blank for the name of the transferee), the intention being that the purchaser or mortgagee shall be at liberty later on to fill up the blank and perfect his security by getting himself

[41] *De Waal* v. *Adler* (1886) L.R. 12 App.Cas. 141.
[42] *Skinner* v. *City of London, etc., Corporation* (1885) 14 Q.B.D. 882; *London Founders' Association* v. *Clarke* (1888) 20 Q.B.D. 576
[43] *Loring* v. *Davis* (1886) 32 Ch.D. 625; *Hardoon* v. *Belilios* [1901] A.C. 118; *Stevenson* v. *Wilson* [1907] S.C. (Ct. of Sess.) 445.
[44] *Société Générale de Paris* v. *Walker* (1885) 11 App.Cas. 20, 41; *Ireland* v. *Hart* [1902] 1 Ch. 522; *Re Ottos Kopje Diamond Mines* [1893] 1 Ch. 618.
[45] Stamp Act, 1891, s. 14 (*a*).
[46] *Maynard* v. *Consolidated Kent Collieries Corporation, Ltd.* [1903] 2 K.B. 121.
[47] *Ibid.*

registered. If, however, the regulations require the transfer to be by deed, the transferee cannot effectively fill up the blank and deliver the deed unless authorised so to do by power of attorney under seal; whereas, if the transfer may be under hand merely, the authority to fill up the blank may be oral and may be implied from the nature of the transaction.[48]

Sale or foreclosure.

A person taking a blank transfer and certificate by way of security is an equitable mortgagee, not a pledgee, and can sell after reasonable notice.[49] Or he can foreclose.[50]

Though a mortgagee cannot give an option to purchase, he can leave the purchase money on mortgage and agree to re-purchase at the sale price if called upon.[51]

Where a shareholder executes blank transfers to enable another to deal with the shares, he is bound not to do anything to prevent registration of the transfer; and if he improperly intervenes, he is liable in damages.[52]

The measure of damages in such a case is the difference between the value of the shares (*i.e.*, the price which could have been realised on a sale of the shares) at the time when the transfer ought to have been registered and the value at the time when the transfer was in fact registered.[53]

If the mortgagee sells the shares to a purchaser who fills in his own name, the purchaser can only hold them as security for the amount due to the mortgagee[54]; but where the mortgagee fills in the name of the purchaser, the purchaser apparently gets a good title.[55]

A person who gives an agent a blank transfer of shares with authority to borrow on the security of the shares may be bound by a pledge of those shares by the agent, even if it was not in accordance with the authority given.[56]

As to the right of the mortgagee to vote, see p. 150.

Priorities as between persons taking such blank transfers depend upon priority of date, not of notice.[57]

Charging orders.

A charging order has no operation except upon shares standing in the name of a debtor in his own right or in the name of some person in trust for him[58]; and the effect is that it entitles the judgment creditor to all

[48] *Hibblewhite* v. *McMorine* (1840) 6 M. & W. 200; *Powell* v. *London and Provincial Bank* [1893] 2 Ch. 555; *France* v. *Clark* (1884) 26 Ch.D. 257; *Re Tahiti Cotton Co.* (1874) L.R. 17 Eq. 273; *Re Tees Bottle Co.* (1876) 33 L.T. 834.
[49] *Stubbs* v. *Slater* [1910] 1 Ch. 632.
[50] *Harrold* v. *Plenty* [1901] 2 Ch. 314.
[51] *Belton* v. *Bass, Ratcliffe & Gretton* [1922] 2 Ch. 449.
[52] *Hooper* v. *Herts* [1906] 1 Ch. 549.
[53] *Ibid.*
[54] *France* v. *Clark* (1884) 26 Ch.D. 257.
[55] *Easton* v. *London Joint Stock Bank* (1886) 34 Ch.D. 95.
[56] *Fry* v. *Smellie* [1912] 3 K.B. 282.
[57] *Société Générale de Paris* v. *Walker* (1885) 11 App.Cas. 20.
[58] *Cooper* v. *Griffin* [1892] 1 Q.B. 740; *Howard* v. *Sadler* [1893] 1 Q.B. 1.

such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor himself.[59] Hence a mortgage by way of deposit of certificates with blank transfer has priority over a charging order subsequent in date.[60] A charging order on shares of an undischarged bankrupt is not a transaction for value within *Cohen* v. *Mitchell*,[61] and is therefore invalid against the trustee.[62]

The remedy of the holder of a charging order on shares is sale, not foreclosure.[63]

As to equitable mortgage by deposit of certificate, see p. 125.

The Limitation Act, 1939, fixes the period of limitation in respect of mortgages of shares and other personalty at twelve years. Formerly no statute of limitations applied.[64]

Forged Transfers

Sometimes a forged transfer is presented for registration. If the company acts thereon it may incur serious liability, for the registration of the transfer does not defeat the title of the true owner, and he has a right to require the company to restore his name to the register.[65] *Re Bahia, etc. Co.*[66] is an illustrative case. There the company, acting on a forged transfer, registered the transferee and gave him a certificate of title; he then sold the shares, and the purchaser, when the shares were claimed by the real owner, was held entitled to damages as against the company. In order to minimise the danger incident to the registration of transfers, it is usual for the company, upon the deposit with it of a transfer, to write to the transferor a letter informing him of the deposit of the transfer, and stating that it will be registered unless, by return of post, he objects. This course of procedure practically operates as a safeguard, but, in adopting it, a company does not relieve itself of its obligation to ascertain the authenticity of the deposited transfer. The transferor may not receive the notice, and, even if he does receive it, he is not bound to reply; by not replying, he does not estop himself from asserting his rights at some subsequent period.[67] Where the company registers a forged transfer it may, prima facie, on discovering the forgery, remove the name of the transferee from the register; it is not estopped by the registration.[68] But, if it has issued to the transferee a certificate of title, and he or a bona fide buyer from him has acted thereon, the company may be liable in damages.[69] Where, however, the certificate has been issued and sealed

[59] *Scott* v. *Lord Hastings* (1858) 4 K. & J. at p. 636.
[60] *Gill* v. *Continental Union Gas Co.* (1872) L.R. 7 Ex. 332; *Re General Horticultural Co.* (1886) 32 Ch.D. 512.
[61] (1890) 25 Q.B.D. 262.
[62] *Hosack* v. *Robins (No. 2)* [1918] 2 Ch. 339.
[63] *Daponte* v. *Schubert* [1939] Ch. 958.
[64] *Weld* v. *Petre* [1929] 1 Ch. 33.
[65] *Davis* v. *Bank of England* (1824) 2 Bing. 393; *Sloman* v. *Bank of England* (1845) 14 Sim. 475; *Barton* v. *L. & N. W. Ry.* (1888) 38 Ch.D. 149.
[66] (1868) L.R. 3 Q.B. 595.
[67] *Barton* v. *L. & N. W. Ry.* (1889) 24 Q.B.D. 77.
[68] *Simm* v. *Anglo-American, etc., Co.* (1879) 5 Q.B.D. 214.
[69] See *post*, p. 123; *Re Bahia, etc., Co.* (1868) L.R. 3 Q.B. 595; *Balkis Consolidated Co.* v. *Tomkinson* [1893] A.C. 396; *Bloomenthal* v. *Ford* [1897] A.C. 156.

by the secretary fraudulently, without the authority of the directors and for his own purposes, it has been held that the company is not estopped.[70]

A person, claiming under a forged transfer, who sends in and procures registration of such transfer and the issue of a fresh certificate, is bound, though acting in good faith, to indemnify the company.[71] And on the same principle where a stockbroker, acting innocently under a forged power of attorney from one of two trustees of stock, had induced the Bank of England to transfer the stock, he was held liable to indemnify the Bank as having impliedly warranted his authority to the Bank.[72]

Companies can, in some cases, pay compensation under the Acts known as the Forged Transfer Acts, 1891 and 1892. These Acts, however, do not give any *right* to compensation; they merely give the company power to pay.

Indemnity

Upon a sale of shares there is an implied contract on the part of the buyer to indemnify the seller from any calls or liability which may arise in respect of the shares subsequently to the transfer.[73]

This rule applies in the case of a blank transfer.[74]

Contract to Transfer

Upon breach of a contract to transfer shares, the measure of damages is the difference between the contract price and the market price at the date of the breach.[75]

Transfers during Winding Up

Where the winding up is compulsory or under supervision, transfers during the winding up are avoided by **s. 227** of the Act unless sanctioned by the court and the court will not, if a transfer is incomplete by reason of want of registration at the commencement of the winding up, put the buyer on the register.[76]

A voluntary liquidator has power under **s. 282**, to register a transfer after winding up,[77] and the transfer, if registered, has full effect. The transferee in such a case ought to be placed on the A list of contributories, the transferor on the B list.

It is doubtful whether a voluntary liquidator can rectify *nunc pro tunc*, although the court can.[78]

[70] *Ruben* v. *Great Fingall Consolidated* [1906] A.C. 439, overruling *Shaw* v. *Port Philip, etc., Mining Co.* (1884) 13 Q.B.D. 103.
[71] *Sheffield, Corporation of* v. *Barclay* [1905] A.C. 392 (H.L.).
[72] *Starkey* v. *Bank of England* [1903] A.C. 114; *Oliver* v. *Bank of England* [1902] 1 Ch. 610.
[73] *Kellock* v. *Enthoven* (1874) L.R. 9 Q.B. 241; *Loring* v. *Davis* (1886) 32 Ch.D. 625; *Levi* v. *Ayers* (1878) 3 App.Cas. 842; *Hardoon* v. *Belilios* [1901] A.C. 118.
[74] *Spencer* v. *Ashworth, Partington & Co.* [1925] 1 K.B. 589.
[75] *Jamal* v. *Moolla Dawood & Co.* [1916] 1 A.C. 175.
[76] *Emmerson's Case* (1866) L.R. 1 Ch.App. 433; *Re Onward Building Society* [1891] 2 Q.B. 463.
[77] *Re National Bank of Wales* [1897] 1 Ch. (C.A.) 298.
[78] *Re Sussex Brick Co.* [1904] 1 Ch. 598, *ante*, p. 106.

Transferor a Past Member

Where there is a liability in respect of uncalled capital on the shares transferred, the transferor, upon registration of the transfer, is freed from this liability, subject to this qualification, that, if a winding up takes place within one year, he may be placed on the B list of contributories as a past member, if the A list proves inadequate. (See **s. 212**.)

Certification of Transfers

When the holder of shares executes a transfer thereof, it is for the transferee, as the party mainly concerned, to get the transfer registered, and in order to do this he must be prepared to hand over, or to procure someone else to hand over, to the company the transferor's certificate of title to such shares. If the certificate comprises the shares transferred and no more, it can of course be handed over with the transfer to the transferee, and can then be delivered by him to the company; but very commonly the certificate includes other shares, for example, the certificate may certify that A is the holder of 100 shares; if he transfers only 50, he retains 50, and, therefore, does not want to hand over his certificate to the purchaser. And again, if, having 100 shares, he sells 50 to B and 50 to C, he cannot hand over the certificate to both. In such cases the transferor usually lodges his certificate with the company, and then at his request, or at the request of his broker, the secretary 'certifies' the transfers (before they are handed over to the transferees) by stamping in the margin the form of certification and signing the same. The following forms are used: 'Certificate lodged: for the —— Company, Limited, —— Secretary,' or 'Certificate for —— shares [has been lodged] at the company's office. Date. —— Secretary'.

Effect of certification.

Section 79 of the Act of 1948 provides as follows:—

79.- (1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(*a*) an instrument of transfer shall be deemed to be certificated if it bears the words 'certificate lodged' or words to the like effect;

(*b*) the certification of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;

. . . . .

Before 1947 it was held that the company was not bound by estoppel where the secretary certified in cases in which he was not authorised to certify, acting fraudulently for his own purposes. See *George Whitechurch, Ltd.* v. *Cavanagh*[79]; *Kleinwort Sons & Co.* v. *Associated Automatic Corporation*[80]; but the law so laid down was changed by s. 70 of the Act of 1947, now re-enacted as above. For the rest of **s. 79** see Appendix 1, *post*.

Stock Exchange rules.

A transfer certified as above is, by the rules of the London Stock Exchange, accepted as good delivery of the shares to a purchaser without delivery of the certificate. But, irrespective of these rules, by the general practice a transferee requires the share certificate or a certified transfer in order to comply with the articles of the company, which usually provide for the production of the certificate before a transfer will be registered.

Sometimes an official of the London Stock Exchange certifies.

If the company, after certifying, returns the certificate by mistake to the transferor, and the transferor pledges it in fraud of the transferee, this, it seems, gives the pledgee no ground of action against the company.[81]

Transmission of Shares

Where a member of a company dies, his shares vest in his executors or administrators, and the estate is liable for calls if the shares are not fully paid.[82] The executors or administrators, in whom shares have so become vested, are entitled to be registered as the holders of the shares, in the absence of provisions in the articles to the contrary[83]; but the executors or administrators do not *ipso facto* become members of the company, nor is the company entitled, without their consent, to register them as members. Such registration (as members) may involve them in a personal liability,[84] and to justify it there must be some distinct and intelligent request on their part.[85] If executors accept new shares offered to them in that capacity they will be personally liable.[86] Where registered as members, there should be a clean registration, without any reference to their representative capacity. They may choose the order in which their names are to stand.[87] Such a registration is not a transfer, and no instrument of transfer is necessary (**s. 75**). The company is bound to accept the production of probate or letters of administration as sufficient evidence (**s. 82**).

Section 76 of the Act of 1948 enables the personal representatives of a deceased member, without himself becoming a member, to transfer the

[79] [1902] A.C. 117.
[80] [1934] W.N. 65.
[81] *Longman* v. *Bath Electric Tramways* [1905] 1 Ch. 646.
[82] *Baird's Case* (1870) L.R. 5 Ch.App. 725.
[83] *Scott* v. *Scott (London), Ltd.* [1940] Ch. 794.
[84] *Re Cheshire Banking Co., Duff's Executor's Case* (1886) 32 Ch.D. 301.
[85] *Buchan's Case* (1879) 4 App.Cas. 588.
[86] *Re Leeds Banking Co., Fearnside and Dean's Case, Dobson's Case* (1865) L.R. 1 Ch. App. 231.
[87] *Re Saunders & Co.* [1908] 1 Ch. 415.

shares of the deceased, and the provision is commonly repeated in the regulations. See **clauses 29 to 32 of Table A.** This power is frequently exercised when the shares are not fully paid up. The power to transfer must be construed reasonably.[88]

The articles usually give power to the personal representatives to vote at meetings on proof of transmission. Such a provision is fairly construed in favour of the representatives.[89]

In *Re Hackney Pavilion, Ltd.*,[90] where the articles provided that a person becoming entitled on the death of a member should have the right to be registered, but the directors should have the right to decline registration, and the board were equally divided, it was held that the right to be registered was absolute.

One of two executors registered as shareholders cannot transfer: all must concur.[91]

A transfer by executors to one of themselves should be treated as prima facie regular.[92]

If a shareholder is domiciled abroad, the company may not recognise his executor or administrator till probate or letters of administration are obtained in England.[93] As to colonial probate, see Colonial Probates Act, 1892.

Trustee in bankruptcy.

The trustee of a bankrupt member generally has a right under the regulations to be registered as a member in respect of the bankrupt's shares. See **clause 32 of Table A** and *Re Bentham Mills Spinning Co.*[94] and *Re W. Key & Son, Ltd.*[95] In the latter case there was a lien clause, and the company claimed to enter the trustee's name with a memorandum stating the lien, and to indorse a similar memorandum, but the court disallowed the entry and held the trustee entitled to a 'clean' certificate. The equitable title vests in the trustee, and he has also, under s. 48 (3) of the Bankruptcy Act, 1914, a statutory power to transfer the shares subject to the same conditions as the bankrupt is subject to. If the shares are onerous, the trustee may by writing, within twelve months of his appointment, disclaim the shares, leaving the company to prove for the injury caused by the disclaimer (Bankruptcy Act, 1914, s. 54)[96] The measure of damages is the amount which could have been called up on the shares.[97] A bankrupt's interest in shares subject to mortgages can be disclaimed.[98]

[88] *Re Hobson, Houghton & Co.* [1929] 1 Ch. 300.
[89] *Marks* v. *Financial News* [1919] W.N. 237.
[90] [1924] 1 Ch. 276.
[91] *Barton* v. *North Staffordshire Ry. Co.*, 38 Ch.D. 458; *Barton* v. *L. & N. W. Ry.* (1889) 24 Q.B.D. 77.
[92] *Grundy* v. *Briggs* [1910] 1 Ch. 444.
[93] *Fernandez' Executors' Case* (1870) L.R. 5 Ch.App. 314; *Att.-Gen.* v. *New York Breweries* [1899] A.C. 62.
[94] (1879) 11 Ch.D. 900.
[95] [1902] 1 Ch. 467.
[96] *Re West of England Bank, Ex p. Budden and Roberts* (1879) 12 Ch.D. 288; *Levi* v. *Lucas* (1878) 3 App.Cas. 842.
[97] *Re Hallett* [1894] W.N. 156; *Re Hooley* [1899] 2 Q.B. 579. See also *post*, p. 128.
[98] *Wise* v. *Landsell* [1921] 1 Ch. 420.

On the bankruptcy of a trustee of shares, the shares will not pass to his trustee in bankruptcy.[99]

A company cannot refuse to register a transfer of shares to a bankrupt director on the ground that if registered the shares will pass to the trustee in bankruptcy.[1]

A provision in articles for the compulsory transfer of shares of a bankrupt shareholder at a prearranged valuation is no fraud on the bankruptcy law.[2]

A clause, entitling a company to refuse to register any transfer made by a member who is indebted to it, has no application to a person claiming by transmission, such as a trustee in bankruptcy or an executor[3]; but this oversight is usually corrected in properly framed regulations.

Share Warrants to Bearer

The Act of 1862 made no provision for the creation of shares to bearer. Shares of this description were first introduced by the Companies Act, 1867, and the provisions there relating to them are re-enacted in **s. 83** of the Act of 1948. Under this section a company is empowered, if authorised by its articles so to do, to issue, with respect to any share which is fully paid up, or with respect to stock, a warrant under the common seal stating that the bearer of the warrant is entitled to the share or shares or stock therein specified. The section also empowers the company to provide, by coupons or otherwise, for the payment of future dividends. **Section 83** further enacts that a share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by delivery of the share warrant. A considerable number of companies have taken advantage of these provisions as contained in the Act of 1867. Share warrants to bearer are always treated as negotiable instruments. Whether they are so or not under the Act is not quite clear, but there is a valid mercantile custom to treat them as negotiable which is as effective.[4] One circumstance which operates as a check on or discourages the issue of share warrants is the heavy stamp duty payable on the issue of them under the Stamp Act, 1891, as amended by the Finance Acts, 1920 and 1947, *viz.*, three times the amount of duty payable on transfer, that is to say, £6 per cent. When a share warrant is issued, the name of the prior holder of the share is to be struck out of the register of members and particulars entered of the issue of the warrant, the shares included in the warrant, distinguishing each share by its number, if it has a number,[5] and the date of the issue of the warrant (**s. 112**). Hence, whilst the share warrant is outstanding there will be no registered holder. The Act provides in **s. 124** and **Sixth Schedule, 3** (j)

[99] *Colonial Bank* v. *Whinney* (1886) 11 App.Cas. 426.
[1] *Sutton* v. *English and Colonial Produce Co.* [1902] 2 Ch. 502.
[2] *Borland's Trustee* v. *Steel Brothers* [1901] 1 Ch. 279.
[3] *Re Bentham Mills Spinning Co.* (1879) 11 Ch.D. 900; see, however, *Ex p. Harrison* (1884) 26 Ch.D. 522.
[4] *Webb, Hale & Co.* v. *Alexandria Water Co.* [1905] 21 T.L.R. 572. See *post*, p. 294.
[5] See **s. 75**, Appendix 1, *post*.

as to the particulars to be contained in the annual summary where share warrants have been issued, and **s. 84** provides penalties for forgery and personation.

Holding a share warrant will not qualify a director where a share qualification is required (**s. 182 (2)**).

The holder of a share warrant may be deprived of the right of voting, but this is seldom done, though the right to vote is usually qualified by providing for the deposit beforehand of the warrant.

CHAPTER 11

CERTIFICATES OF SHARES

Nature and Form

SECTION 81 (re-enacting s. 68 of 1929) provides that a certificate under the common seal of a company specifying any shares or stock held by any member of the company, shall be prima facie evidence of the title of the member to the shares or stock, and the articles of the company usually contain express provision as to the issue of such certificates. **Section 80** of the Act provides that certificates must be completed and ready for delivery within two months after allotment or after a transfer is lodged. In case of refusal to register, notice of refusal must be given within two months (**s. 78**), and the court may order the company to make good the default, and may order any officer of the company to pay the costs (**s. 80 (3)**). The document issued is commonly in these terms:—

The *Company, Limited.*

This is to certify that A B is the registered holder of —— shares of £—— each, [numbered —— to —— inclusive], in the above-named company, and that the sum of £—— has been paid up on each of the said shares.

Given under the common seal of the said company this —— day of ——.

Right to certificate.

The right to a certificate can be enforced by action against the company.[1]

Where articles provide that a shareholder shall be entitled to one certificate free or to several certificates on payment of 1s. for every subsequent certificate, the shareholder is entitled to have any number of certificates for one or more shares making together the total number of shares held.[2]

Convenience of.

A share certificate is meant to facilitate dealings by shareholders with their shares in the market by enabling them, on any such dealing, whether it is one of sale, mortgage or pledge, to show on the spot a good prima facie marketable title to the shares. ' . . . the certificates ', said Lord Selborne, in *Société Générale de Paris* v. *Walker*,[3] ' are the proper (and indeed the only) documentary evidence of title in the possession of a shareholder . . .'.

May raise an estoppel.

[A share certificate] ' . . . is a declaration by the company to all the world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the company, and it is given by the company with the intention that it shall be so used by the person to whom

[1] *Burdett* v. *Standard Exploration Co.* (1899) 16 T.L.R. 112.
[2] *Sharpe* v. *Tophams* [1939] Ch. 373.
[3] (1885) 11 App.Cas. 20, 29.

it is given, and acted upon in the sale and transfer of shares '.[4] Being thus addressed to the world, and all persons being invited to rely upon it, the directors of a company are bound to use the utmost care in issuing certificates; for the general rule is that a person making a representation of fact with the intention that it shall be acted on, is estopped from denying its truth as against any person acting on it bona fide.[5] Hence if, by inadvertence or negligence, an incorrect certificate is issued, the company incurs serious liabilities in respect thereof. But the case is different where the secretary of a company, for his private ends, has fraudulently affixed the seal of the company to a certificate and forged the names of two of the directors. A certificate so issued is a mere forgery and raises no estoppel against the company in favour even of a mortgagee without notice.[6] In *Re South London Greyhound Racecourses, Ltd.* v. *Wake*,[7] a certificate in fact signed by a director and the secretary, but without proper authority, was held to be a forgery. It is submitted, however, that a document which bears the genuine signature of a director and the secretary is not a forgery within the decision of *Ruben* v. *Great Fingall Consolidated Co.*[8] The cases on estoppel by certificate fall into two classes—representations raising an estoppel as to title, and representations raising an estoppel as to the amount paid up on the shares. The principle in both is the same.

Estoppel as to Title to Shares

In *Re Bahia and San Francisco Co.*,[9] the company, acting upon a forged transfer, purporting to be a transfer by A, a shareholder, to B, issued to B a certificate representing him to be the owner of the shares. C, in reliance on this certificate and in good faith, purchased and paid for the shares specified in it, and was duly registered as owner thereof. The forgery was subsequently discovered, and the company was compelled to restore the name of A to the register in respect of the shares in question: his title, of course, no forgery could displace[10]; but the company was also held liable, in an action by C, to pay him damages for wrongfully removing his name; for though the shares were not really his, the company was estopped, by its conduct, from setting up this defence.

In *Re Ottos Kopje Diamond Mines*,[11] A bought shares on the faith of a certificate representing B as the holder, and took a transfer from B accordingly. The company had, in fact, issued the certificate to B in pursuance of a forged transfer, and refused to register the transfer to A. The court held that A was, under the circumstances, entitled to damages, and that the measure of such damages was the value of the shares at the time of the refusal to register. The aggrieved party must, however, in

[4] *Per* Cockburn C.J. in *Re Bahia, etc., Ry.* (1868) L.R. 3 Q.B. 595. And see *per* Lord Cairns L.C. in *Shropshire Union, etc., Co.* v. *The Queen* (1875) L.R. 7 H.L. at p. 509, and *Burkinshaw* v. *Nicolls* (1878) 3 App.Cas. 1004, at p. 1017.
[5] *Pickard* v. *Sears* (1836) 6 Ad. & El. 469; *Freeman* v. *Cooke* (1848) 2 Ex.Reps. 654.
[6] *Ruben* v. *Great Fingall Consolidated Co.* [1906] A.C. 439.
[7] [1931] 1 Ch. 496.
[8] *Supra*. See *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869.
[9] (1868) L.R. 3 Q.B. 584.
[10] *Barton* v. *L. & N. W. Ry.* (1888) 38 Ch.D. 144.
[11] [1893] 1 Ch. 618.

such cases show that he acted on the certificate, for if he merely relies on a forged transfer and is registered and receives a certificate of title, the company is not estopped as against him[12]; *but if he acts on the certificate* the case is different. Thus, where A was registered as the holder of shares under a forged transfer, and received a certificate of title thereto and bona fide acted upon it by selling the shares, the company was held estopped from denying his title to the shares, and such title being displaced by that of the true owner, he was held entitled to damages from the company.[13] So, also, if he is put to rest until it is too late to get redress against the real wrongdoer, there is an estoppel.[14]

Estoppel as to Payment on Shares

If a company issues a certificate describing a share as fully paid up, when in fact it is not fully paid up, a purchaser of the share, who acts on the faith of the certificate, is entitled to hold the share as paid.[15] In *Bloomenthal* v. *Ford*,[16] A lent the company £1,000 on the terms that he was to have fully-paid shares as security, and the company issued to him a certificate stating that he was the registered holder of 10,000 fully paid-up shares. The shares were, in truth, not paid up, but of this fact the lender had no knowledge, and it was held, in a winding up, that the company was estopped from saying that the shares were not paid up, and that A, who honestly believed the representation made in the certificate to be true, was not bound to make any inquiry, or to ascertain how it was that the company was in a position thus to register him as the holder of paid-up shares for which he had not in fact paid. The company, in such a case, has no right to say: 'I told you so-and-so, but you ought not to have believed me. You were too great a fool. I had the right to mislead you because you were too great a fool.' Per Lord Halsbury L.C. The estoppel will arise in favour of a firm, though one of the directors signing the certificate is a member of the firm: *Re Coasters, Ltd.*[17] See, also, *Parbury's Case*,[18] in which the company was held estopped as against an original allottee who had acted on the company's certificate.

A transferee with knowledge or notice that the representation is not correct cannot, however, invoke the doctrine of estoppel in his favour,[18a] but the onus of proving notice rests on the person setting up the case of notice.[19]

Directors who issue certificates for shares or stock which do not exist may be held personally liable in damages upon an implied warranty of authority.[20]

[12] *Simm* v. *Anglo-American Telegraph Co.* (1879) 5 Q.B.D. 188; *Coates* v. *L. & S. W. Ry.* (1879) 41 L.T. 553; *Re Vulcan Ironworks Co.* [1885] W.N. 120.
[13] *Balkis Consolidated Co.* v. *Tomkinson* [1893] A.C. 396.
[14] *Dixon* v. *Kennaway & Co.* [1900] 1 Ch. 833.
[15] *Burkinshaw* v. *Nicolls* (1878) 3 App.Cas. 1004. See also *Rowland's Case* [1880] W.N. 80; and *Markham and Darter's Case* [1899] 1 Ch. 414.
[16] [1897] A.C. 162.
[17] [1911] 1 Ch. 86; 103 L.T. 632.
[18] [1896] 1 Ch. 100.
[18a] *Crickmer's Case* (1875) L.R. 10 Ch.App. 614.
[19] *Re A. W. Hall & Co.* (1887) 37 Ch.D. 712.
[20] *Firbank's Executors* v. *Humphreys* (1886) 18 Q.B.D. 54.

A certificate that a person is the holder of shares or stock does not require any stamp. It is not a deed.[21]

But a scrip certificate or other document entitling any person to become the proprietor of any share of any company or proposed company requires a fourpenny stamp.[22]

Deposit by way of Equitable Mortgage

A valid equitable mortgage of shares or stock may be effected by depositing the certificate relating thereto.[23] If a purchaser of shares leaves them in the hands of a broker, together with blank transfers (see pp. 113, 114, *supra*), and the broker deposits the certificates by way of charge, the purchaser may be estopped from disputing the validity of the charge.[24]

Renewing Lost Certificates

The articles very commonly contain provision for the issue of a fresh certificate in the place of any certificate which has been lost or defaced. (See **Table A, cl. 9,** Appendix 1, *post.*)

Note at Foot

The certificate very commonly bears at the foot thereof a note to the effect that before any transfer is registered the certificate must be produced. This note, it seems, is only a warning to the shareholder to take care of the certificate. It is not addressed to outsiders, and therefore does not create a contract or estoppel against the company on which they can rely.[25]

[21] *R.* v. *Morton* (1873) L.R. 2 C.C.R. 22.
[22] Stamp Act, 1891, as amended by the Finance Acts, 1920 and 1947.
[23] *Williams* v. *Colonial Bank* (1888) 38 Ch.D. 388; *London Joint Stock Bank* v. *Simmons* [1892] A.C. 201; and *Sheffield (Earl of)* v. *London Joint Stock Bank* (1888) 13 App.Cas. 333; *Deverges* v. *Sandeman, Clark & Co.* [1902] 1 Ch. 579.
[24] *Fuller* v. *Glyn, Mills, Currie & Co.* [1914] 2 K.B. 168.
[25] *Rainford* v. *James Keith and Blackman Co.* [1905] 1 Ch. 296; *Guy* v. *Waterlow Bros.* (1909) 25 T.L.R. 515. See dicta to the contrary in *Société Générale de Paris* v. *Walker* (1885) 11 App.Cas. 20.

CHAPTER 12

CALLS

Calls on shares

A MEMBER is under a liability to pay up in accordance with the articles the amount for the time being unpaid on his shares If his shares have been issued as paid up or partly paid up, whether for cash or otherwise, or if he or some prior holder has paid them up wholly or in part, he may be wholly or *pro tanto* exempt from calls; but prima facie his liability is to pay the full amount in money or, subject to the delivery to the registrar of a contract under **s. 52**,[1] in money's worth.

The nature of this liability is defined by **s. 20** of the Act. A shareholder is bound, indeed, to pay the full amount unpaid on his shares, but he is not bound (unless, indeed, the terms of issue so provide) to pay up at once. He is only bound to pay *in accordance with the articles, e.g.*, by instalments, according to the terms of issue, or in response to calls.[2] When the liability to pay has thus matured into a debt, this indebtedness on the shareholder's part to the company is by the section 'of the nature of a specialty debt'. An instalment payable by the terms of issue is not a call.[3]

As to the necessity for payment of calls in cash, see *ante*, p. 98

Call-making Power a Trust

The power to make calls is a power in the nature of a trust, and it must be exercised for the general benefit of the company.[4] If it is being exercised *mala fide*, *e.g.*, for the directors' own ends or other indirect purpose, this is an abuse of the power, and an injunction may be obtained restraining the call.[5] But the court does not readily accede to such an application. The onus of proving *mala fides* in such a case is on the shareholder.[6] In the absence of proof of *mala fides*, it is a well-established principle that the court will not interfere with the discretion of the directors in making a call.[7]

Making of Calls

A call is made by the directors or other the executive of the company pursuant to the provisions of the company's articles. These generally

[1] See *ante*, p. 98.
[2] *Whittaker* v. *Kershaw* (1890) 45 Ch.D. 320; *Re Russian Spratts, Ltd.* [1898] 2 Ch. 149; *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 56.
[3] *Croskey* v. *Bank of Wales* (1863) 4 Giff. 314; *Alexander* v. *Automatic Telephone Co* [1900] 2 Ch. 56.
[4] *Gilbert's Case* (1870) L.R. 5 Ch.App. 559; *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 56.
[5] See *post*, p. 129.
[6] *Odessa Tramways Co.* v. *Mendel* (1878) 8 Ch.D. 245.
[7] *Ibid.*

provide (see **Table A, cll. 16–20**) that the directors may from time to time make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them and not by the conditions of allotment thereof made payable at fixed times, and that each member shall pay the amount of every call so made on him to the persons and at the times and places fixed by the directors. Usually the notice of a call is fourteen or twenty-one days. The terms thus defined by the articles are the terms on which, and on which only, the shareholder has agreed to pay, and in making a call care must, therefore, be taken that the directors making it are (i) duly appointed [8]; and (ii) duly qualified [9]; (iii) that the meeting of the directors has been duly convened [10]; (iv) that the proper quorum is present [11]; and (v) that the resolution making the call is duly passed and specifies the amount of the call, the time and place of payment —for these are of its essence—and to whom the call is to be paid.[12] A proper entry must also be made in the minutes.[13] Unless these matters are attended to the call may be invalid, and when the company comes to sue for the amount or seeks to enforce payment by forfeiture it may be embarrassed by finding that all the proceedings are vitiated by an initial irregularity. See, however, as to such irregularities, *post*, pp. 173, 174.

Sometimes the articles limit the amount of a call—provide, for example, that the amount shall not exceed one-fourth of the nominal amount of the share, and sometimes that a specified interval must elapse between the times fixed for payment of two successive calls. Any conditions of this kind must be kept in mind in making a call

Calls should be made *pari passu* unless the articles otherwise provide, and directors can only justify a call made on certain selected members (if at all) on very special grounds.[14]

It may sometimes be proper for directors to make a call in order to restrain threatened transfers [15]: and where a company is about to sell its undertaking, there is no objection to a call being made with a view to increasing the saleable assets by the amount thereof.[16]

A call may be made payable in instalments without any express authority in the articles.[17]

Directors may make calls after a voluntary winding up has commenced with the sanction of a general meeting or of the liquidators.[18]

[8] *Howbeach Coal Co.* v. *Teague* (1860) 5 H. & N. 151.
[9] *Iron Ship, etc., Co.* v. *Blunt* (1868) L.R. 3 C.P. 484; *Sharp* v. *Dawes* (1876) 2 Q.B.D. 26.
[10] *Garden Gully United Quartz Mining Co.* v. *McLister* (1875) L.R. 1 App.Cas. 46; *Faure Electric Accumulator Co.* v. *Phillipart* (1888) 58 L.T. 525.
[11] *Austin's Case* (1871) 24 L.T. 932.
[12] See *Re Cawley & Co.* (1889) 42 Ch.D. 209; cf. *Johnson* v. *Lyttle's Iron Agency* (1877) 5 Ch.D. 687.
[13] *Cornwall, etc., Mining Co.* v. *Bennett* (1860) 5 H. & N. 423.
[14] *Galloway* v. *Hallé Concerts Society* [1915] 2 Ch. 233.
[15] *Gilbert's Case* (1870) L.R. 5 Ch.App. 559.
[16] *New Zealand, etc., Co.* v. *Peacock* [1894] 1 Q.B. 622.
[17] *Ambergate, etc., Ry. Co.* v. *Norcliffe* (1851), 6 Ex.Reps. 629; *Lawrence* v. *Wynn* (1839) 5 M. & W. 355.
[18] *Fairbairn Engineering Co., Ladd's Case* [1893] 3 Ch. 450.

Calls are specialty debts, and the period of limitation is twelve years: Limitation Act, 1939, s. 2 (3).

Interest on Calls

The articles usually contain a provision to the effect that, if any call is not paid at the time fixed, the holder for the time being of the share is to be liable to pay interest at a specified rate, sometimes 5 or 10 per cent. (See **Table A, cl. 18.**) Such a clause is binding and will be given effect to. It does not, however, apply in the case of calls made by the liquidators of a company.[19] As to liability to pay interest on calls after forfeiture of the shares, see *Stocken's Case* [20]; *Faure Electric Accumulator Co.* v. *Phillipart.*[21]

Deceased Member

Although the articles generally provide that calls are to be made on the 'members', a deceased member, whilst his name remains on the register, is to be treated as a continuing member so far as may be necessary to make his estate liable.[22]

In the administration of the insolvent estate of a deceased person the amount due for calls which may be made in respect of shares in a company held by him should be estimated and proved for, as well when the company is a going concern as when it is being wound up.[23]

Bankrupt Member

If a shareholder becomes bankrupt and the company proves in the bankruptcy for the uncalled liability on the shares and receives a dividend, this does not make the bankrupt a holder of fully-paid shares so as to entitle him to participate in surplus assets of the company. Proof is not equivalent to payment.[24]

Enforcing Payment

The duty of the directors of a company when a call is made is to compel every shareholder to pay to the company the amount due from him in respect of such call, and they are guilty of a breach of their duty if they do not take all reasonable means for enforcing payment.[25]

It is a breach of trust for them to favour any director in such a matter.[26]

It is now common to sue for a call on a writ specially indorsed under Ord. 3, r. 6 of Supreme Court Rules. After judgment has been obtained against the defaulting shareholder, the company can, if needs be, proceed against him in bankruptcy.[27] See also as to forfeiture, Chap. 13. Whilst the company is a going concern the shareholder can plead a set-off.[28] As

[19] *Re Welsh Flannel and Tweed Co.* (1875) L.R. 20 Eq. 367.
[20] (1868) L.R. 3 Ch.App. 412.
[21] (1888) 58 L.T. 525.
[22] *New Zealand, etc., Co.* v. *Peacock* [1894] 1 Q.B. 622.
[23] *Re McMahon, Fuller* v. *McMahon* [1900] 1 Ch. 173.
[24] *Re West Coast Goldfields* [1906] 1 Ch. 1.
[25] *Spackman* v. *Evans* (1868) L.R. 3 H.L. 186.
[26] *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 56.
[27] *Re Winterbottom* (1886) 18 Q.B.D. 446.
[28] *Re Hiram Maxim Lamp Co.* [1903] 1 Ch. 70.

to the method of enforcing calls due to an English company from contributories in Ireland, see *Re Bank of Egypt, Ltd.*[29]

Misrepresentation is no defence to an action for calls unless the defendant has promptly applied for rectification of the register either by counterclaim in the action or by separate proceedings.[30]

Injunction to Restrain Enforcement of Call

If a call is improperly made, the shareholder can obtain an injunction to restrain the directors from enforcing the call by forfeiture pending the trial of the question; but usually only on the terms that the amount of the call should be paid into court.[31]

An injunction to restrain the enforcement of a call by action at law cannot be granted.[32]

Payment in Advance of Calls

The articles of a company usually contain a clause similar to **clause 21 of Table A,** empowering the directors to receive from any member money in advance of calls, on the footing that interest is to be paid thereon whilst in advance. This is an extremely important power and one which is frequently exercised. It is in the nature of a trust to be faithfully exercised for the benefit of the company, and accordingly the directors should only receive money in advance when, in their judgment, the same can be advantageously used for the purposes of the company, and the rate of interest should not be excessive.[33] Hence, where directors under a power of this kind paid up in advance their own shares, and the same day appropriated the amount in payment of their fees, the company being insolvent, it was held, that the transaction, not being bona fide, was ineffectual, and that the directors remained liable on their shares.[34] It has now been settled by the House of Lords that where money is paid up in advance under such a clause on the footing that it is to carry interest, such interest is to be paid whether there are or are not profits for the payment thereof. If there are no profits, or the profits are insufficient, then the company must pay out of capital, and there is nothing ultra vires in this.[35] Where capital has been paid up in advance it ranks for repayment in a winding up prima facie before capital not paid up in advance.[36] The company is not entitled to repay the amount advanced at any time against the wish of the shareholder in the absence of a duly sanctioned reduction of capital.[37]

[29] [1913] 1 Ir.R. 502.
[30] *First National Re-insurance Co.* v. *Greenfield* [1921] 2 K.B. 260.
[31] *Lamb* v. *Sambas Rubber, etc., Co.* [1908] 1 Ch. 845; *Jones* v. *Pacaya Rubber, etc., Co.* [1911] 1 K.B. 455.
[32] Judicature Act, 1925, s. 41; *Galloway* v. *Hallé Concerts Society* [1915] 2 Ch. 233
[33] *Poole, Jackson, and Whyte's Case* (1878) 9 Ch.D. 322; *Re Pyle Works* (1890) 44 Ch.D. 586.
[34] *Sykes's Case*, 13 Eq. 255. See, however, *Mason's, etc., Case, Re Liverpool, etc., Insurance Co.* (1882) 30 W.R. 378; *Re A. M. Woods, Ship's Woodite Protection Co.* (1890) 2 Meg.C.R. 164; also *Re Washington Diamond Mining Co.* [1893] 3 Ch. 95.
[35] *Lock* v. *Queensland, etc., Mortgage Co.* [1896] A.C. 461, 467.
[36] *Maude, Ex p.* (1870) L.R. 6 Ch.App. 51; *Re Wakefield, etc., Co.* [1892] 3 Ch. 165; *Re Exchange Drapery Co.* (1888) 38 Ch.D. 171.
[37] *London and Northern S.S. Co.* v. *Farmer* [1914] W.N. 200; 111 L.T. 204.

CHAPTER 13

FORFEITURE

Forfeiture for non-payment of calls

THE articles of a company generally contain provisions for the forfeiture of shares for non-payment of calls or instalments. (See **Table A, cll. 33–39.**) Such a power to forfeit is not inherent in a company.[1] It only exists where it is given by the articles or introduced into them, as it may be, by special resolution.[2] When given, it is like other powers of directors, fiduciary—to be exercised, that is, for the benefit of the company.

A power to forfeit shares for non-payment of debts other than calls or instalments is invalid.[3]

Collusion. Irregularity.

A collusive forfeiture made for the purpose of enabling a member favoured by the directors to escape from his liabilities is an abuse of the power and a fraud on the other shareholders.[4] Forfeiture is treated very strictly by the courts, and directors seeking to enforce it must exactly pursue the course of procedure marked out by the articles.[5] A slight irregularity is as fatal as the greatest.[6] Thus if the call, in respect of which the forfeiture is made, was not validly made,[7] or if the notice on which the forfeiture is founded is inaccurate in requiring payment of interest from a wrong date, *e g*, the date of the call instead of the date appointed for payment, the forfeiture may be held invalid.[8] Where a shareholder is seeking to rescind his contract the court can restrain a forfeiture.[9]

Where a shareholder is bankrupt, the notice of forfeiture may still be given to him [10]; but it is well to give notice to the trustee also. So where the shareholder is dead, the notice may be sent to his registered address (*Allen* v. *Gold Reefs of West Africa*).[11] In this case the notice in fact

[1] *Clarke* v. *Hart* (1858) 6 H.L.C. 633.
[2] *Dawkins* v. *Antrobus* (1881) 17 Ch.D. 615, 631; *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[3] See *post*, p. 138.
[4] *Re Esparto Trading Co.* (1879) 12 Ch.D. 191; *Spackman* v. *Evans* (1868) L.R. 3 H.L. 171, 186; *Lord Wallscourt's Case* [1899] W.N. 258.
[5] *Clarke* v. *Hart*, *supra*.
[6] *Garden Gully, etc., Mining Co.* v. *McLister* (1875) 1 App.Cas. 39; *Johnson* v. *Lyttle's Iron Agency* (1877) 5 Ch.D. 687.
[7] *Garden Gully United Quartz Mining Co.* v. *McLister*, *supra*.
[8] *Johnson* v. *Lyttle's Iron Agency*, *supra*; *Watson* v. *Eales* (1856) 23 Beav. 294. *Faure Electric Accumulator Co.* v. *Phillipart* (1888) 58 L.T. 525.
[9] *Lamb* v. *Sambas Rubber, etc., Co.* [1908] 1 Ch. 845; *Jones* v. *Pacaya Rubber and Produce Co.* [1911] 1 K.B. 455.
[10] *Graham* v. *Van Diemen's Land Co.* (1856) 26 L.J.Ex. 73.
[11] [1900] 1 Ch. 656, at p. 670.

reached the executors; but the statement of the law [12] is probably sufficient to override the doubt expressed in *James* v. *Buena Ventura Nitrate, etc., Syndicate*.[13]

The exercise of a power of forfeiture is a question of expediency as to which the directors must exercise their discretion.[14] On forfeiture the shares become the property of the company and may be sold by it. (See **Table A, cl. 36.**)

Directors do not lose the power of forfeiture because the company charges all its uncalled capital in favour of trustees for debenture holders.[15]

Forfeiture after winding up.

In a voluntary winding up the directors can exercise the power of forfeiture if they obtain the sanction of the liquidator or the company in general meeting in case of a 'members' voluntary winding up' (**s. 285**), or with the sanction of the committee of inspection or the creditors in the case of a 'creditors' voluntary winding up' (**s. 296**).[16]

Sale of shares.

The articles generally give power to the directors to sell forfeited shares. In such a case the directors can sell at a discount, that is, for less than the amount paid up prior to the forfeiture.[17] But *semble* the transferee will remain liable to pay any amount remaining unpaid on the shares at the time of sale.[18] In such a case the transferee will be a holder of shares in respect of which money is due, and may therefore by a clause in the regulations be debarred from voting.[19] He should be credited with any subsequent payments made by the ex-owner.[20]

Power to annul.

The articles very commonly give power to the directors, so long as they have not sold the forfeited shares, to annul the forfeiture on such terms as they think proper. This power cannot be exercised without the consent of the late holder.[21]

Relief against Forfeiture

Where a forfeiture has been duly and bona fide effected, equity will not relieve against it.[22] A shareholder who desires to challenge a forfeiture as invalid may bring an action to set it aside[23]; and may obtain an injunction to restrain the forfeiture pending the trial, usually on the

[12] *Ibid.*, at p. 670.
[13] [1896] 1 Ch. at p. 465.
[14] *Bigg's Case* (1865) L.R. 1 Eq. 309.
[15] *Re Agency Land and Finance Co. of Australia* (1903) 20 T.L.R. 41.
[16] *Re Fairbairn, etc., Co.* [1893] 3 Ch. 450.
[17] *Morrison* v. *Trustees, Executors, etc., Corpn.* (1898) 68 L.J.Ch. 11; 79 L.T. 605 (C.A.).
[18] *Ibid.*; *New Balkis Eersteling* v. *Randt Gold Mining Co.* [1904] A.C. 165, and *post*, p. 133.
[19] *Randt Gold Mining Co.* v. *Wainwright* [1901] 1 Ch. 184.
[20] *Re Randt Gold Mining Co.* [1904] 2 Ch. 468.
[21] *Re Exchange Trust, Ltd., Larkworthy's Case* [1903] 1 Ch. 711.
[22] *Sparks* v. *Liverpool Waterworks* (1807) 13 Ves. 428.
[23] *Sweny* v. *Smith* (1869) L.R. 7 Eq. 324; *Johnson* v. *Lyttle's, etc., Agency* (1877) 5 Ch.D. 687; *Re New Chili, etc., Co.* (1890) 45 Ch.D. 598.

terms of payment of the amount called up into court; see *Lamb* v. *Sambas Rubber, etc. Co.*,[24] and *Jones* v. *Pacaya Rubber, etc., Co.*[25] (where the forfeiture was restrained pending the trial of an action claiming rescission of the contract to take the shares); and mere laches will not disentitle a legal owner of shares to such relief if the forfeiture is invalid[26]; but it is different where years have elapsed and the shareholder claiming relief was himself party as director to the forfeiture.[27]

Damages for irregular forfeiture.

A shareholder whose shares have been irregularly forfeited (*e.g.*, without proper notice) can sue the company or, in a winding up, prove for damages against the company.[28]

A clause in a company's articles forfeiting the shares of any shareholder who should commence or threaten an action against the company or the directors on payment to the shareholder of the full market value of his shares is invalid, as an infringement of a shareholder's legal rights.[29]

Liability after Forfeiture

Forfeiture of shares prevents *prima facie* any action by the company for past calls.[30] But the articles commonly provide that where a share has been forfeited the member shall be liable for payment of the call with interest, and this creates a new obligation[31] which can be enforced by action at law, but not by placing the holder on the list of contributories[32]

A call may be 'owing' within the meaning of such a clause, though it has not become payable when the forfeiture takes place.[33] But the company cannot recover more than the difference between the amount payable on the shares and the amount received from subsequent holders of the forfeited shares.[34]

When a person has been induced by misrepresentation to become a member, and is sued by the company after forfeiture of his shares, he can set up the misrepresentation by way of defence, even in a winding up.[35]

The forfeiture of a share does not relieve the forfeiting member from liability to be placed on the B list if the company should be wound up within a year after the forfeiture.[36] So a shareholder who has transferred his shares within a year of a winding up is liable as a past member, though the shares have been forfeited in the hands of a transferee.[37]

A liquidator has no power to cancel a forfeiture of shares duly made by the directors before the commencement of the winding up.[38]

[24] [1908] 1 Ch. 845.
[25] [1911] 1 K.B. 455.
[26] *Garden Gully, etc., Co.* v. *McLister* (1875) L.R. 1 App.Cas. 39.
[27] *Jones* v. *North Vancouver Land, etc., Co.* [1910] A.C. 317.
[28] *Re New Chili, etc., Co.* (1890) 45 Ch.D. 598.
[29] *Hope* v. *International Financial Society* (1876) 4 Ch.D. 327.
[30] *Stocken's Case* (1868) L.R. 3 Ch.App. 415.
[31] *Stocken's Case, supra.*
[32] *Ladies' Dress Association* v. *Pulbrook* [1900] 2 Q.B. 376.
[33] *Faure, etc., Co.* v. *Phillipart* (1888) 58 L.T. 525.
[34] *Re Bolton* [1930] 2 Ch. 48.
[35] *Aaron's Reef* v. *Twiss* [1896] A.C. 273.
[36] *Creyke's Case* (1869) L.R. 5 Ch.App. 63.
[37] *Bridger's and Neill's Cases* (1869) L.R. 4 Ch.App. 266.
[38] *Dawes' Case* (1868) L.R. 6 Eq. 232.

When shares forfeited for non-payment of calls are sold, the purchaser is liable to a fresh call in respect of the capital comprised in such prior calls,[39] for the company cannot sell free from that liability. But subsequent payments by the former holder, on account of the prior calls, should be credited to the purchaser in due course.[40]

Sureties released.

Where a surety has guaranteed the repayment of calls on shares, he will be released if the company forfeits the shares and thus alters the liability of the principal debtor and deprives the surety of the lien which he would otherwise have had if called upon to pay.[41]

[39] *New Balkis Eersteling* v. *Randt Gold Mining Co.* [1904] A.C. 165.
[40] *Re Randt Gold Mining Co.* [1904] 2 Ch. 468.
[41] *Re Darwen and Pearce* [1927] 1 Ch. 176.

CHAPTER 14

LIEN ON SHARES

How created

A COMPANY has, prima facie, no lien on the share of a member [1]; but the articles may, and usually do, provide that the company shall have a paramount lien on the shares of each member for his debts and liabilities to the company, whether matured or not (See *Company Precedents*, 15th ed., Part I, p. 613, and **Table A, cl. 11.**) And such a provision is effective.[2] The lien thus created takes effect as an equitable charge [3] created in favour of the company by covenant of the shareholder, the covenant being implied by virtue of **s. 20** of the Act [4] A lien clause may be adopted by special resolution.[5]

A right of lien may be discharged by a clear arrangement between the shareholder and the company.[6]

Validity of Lien against Third Persons

As to subsequent mortgage or purchase.

A lien clause in the articles not infrequently gives rise to questions of priority between the company asserting the lien and persons claiming under the shareholder. For example, the company may receive notice that the shareholder has mortgaged or sold the shares, and the question then arises whether, if the shareholder subsequently becomes indebted to the company, the company's lien will rank in priority to the mortgagee or purchaser.

Exemption clause.

The answer to the question is to some extent affected by the presence or absence in the articles of a clause (below referred to as an exemption clause) relieving the company from the obligation to take notice of equities in relation to its shares. The terms of exemption clauses vary considerably. In *New London and Brazilian Bank* v. *Brocklebank* [7] the clause ran—

'The company shall not be bound by or recognise any agreement to transfer or charge any share, or any equitable, contingent, future or partial interest, or other right in, to, or in respect of such share, except an absolute right thereto in the person from time to time registered as the holder thereof.'

[1] *Pinkett* v. *Wright* (1842) 2 Ha. 120; on appeal, *sub nom. Murray* v. *Pinkett* (1846) 12 Cl. & Fin. 764.
[2] *New London, etc., Bank* v. *Brocklebank* (1882) 21 Ch.D. 302; *Bradford Banking Co.* v. *Briggs* (1886) 12 App.Cas. 29.
[3] *Re General Exchange Bank* (1871) L.R. 6 Ch.App. 818.
[4] See *Bradford Bank* v. *Briggs*, *supra*; and also *ante*, pp 27 and 28.
[5] *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[6] *Bank of Africa* v. *Salisbury Gold Mining Co.* [1892] A.C. 281.
[7] (1882) 21 Ch.D. 302, *post*, p. 135.

Another provision very commonly found in articles is that

'[Save as herein otherwise provided] the company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and, accordingly, shall not [except as ordered by a court of competent jurisdiction or as by statute required] be bound to recognise any equitable or other claim to, or interest in, such shares on the part of any other person.'

Such a clause is framed with a view to enabling the company, whether in relation to a lien clause or otherwise, to deal with the registered holder of a share as the absolute owner, and to relieve the company altogether from any obligation to take notice of any claims or assertions of equitable interests that may come to it.

It is doubtful, having regard to recent decisions, whether these exemption clauses add much, if anything, for this purpose to the effect of **s. 117** [8] *post*; but it will be convenient to consider, in the first place, cases where there is an exemption clause.

In *New London and Brazilian Bank* v. *Brocklebank* [9] there was a paramount lien clause and also an exemption clause. The shares were acquired with trust money. One of the holders became indebted to the bank, and upon the bank seeking to enforce its charge the prior equity of the beneficiaries was set up, with the result that the Court of Appeal held that the bank had a lien on the shares which must prevail over the title of the beneficiaries. Jessel M.R. considered that, as the lien was given by the articles, it took effect from the time the member was admitted, and further, that the beneficiaries were not entitled to repudiate the lien and exemption clauses, and Lindley L.J. said that he failed to see upon what ground the equitable owner could claim title to the shares and yet 'repudiate the terms upon which the trustees have acquired the shares'.

It was not alleged in this case that the company had notice of the trust before the obligation of the company was incurred

Principle of decision.

The principle of this decision appears to be that a shareholder cannot both approbate and reprobate, and that those who claim under him cannot repudiate either the lien clause or the exemption clause.[10]

Object of **s. 117** *of the Act.*

The importance of thus relieving the company from an obligation to recognise equities is well pointed out by Lord Coleridge C.J. sitting in the Court of Appeal in *Re Perkins* [11]:

'It seems to me extremely important not to throw any doubt on the principle that companies have nothing whatever to do with the relations between trustees and their *cestuis que trust* in respect of the shares of the company. If a trustee is on the company's register as a holder of shares, the relations which he may have with some other person in respect of the shares are matters with which

[8] See *post*, pp. 135 and 136.
[9] (1882) 21 Ch.D. 302.
[10] *Borland's Trustee* v. *Steel Brothers & Co.* [1901] 1 Ch. 279.
[11] (1890) 24 Q.B.D. 613.

the company have nothing whatever to do; they can look only to the man whose name is upon the register '.

The actual point decided was that as the company were not bound to recognise trusts, they had no lien upon the shares for a debt due to them by the *cestui que trust* of the shareholder.

In *Miles* v. *New Zealand, Alford, etc., Co.*[12] there being a lien clause and an exemption clause, it was held by the Court of Appeal that the company was not bound to take notice of a mortgage, and was entitled to rank before the second mortgagee in respect of a claim arising after notice to the company of such mortgage. In this case, however, the Court of Appeal merely followed its own decision in the *Bradford Banking Co.*,[13] which was subsequently overruled by the House of Lords.

In *Mackereth* v. *Wigan Coal and Iron Co.*,[14] Peterson J. held that a company could not, after specific notice that three persons held certain shares as executors, make advances to one of them and then claim a lien on the shares as against the beneficiaries. This decision seems to be based on the assumption (which, it is submitted, is correct) that *Miles* v. *New Zealand, etc., Co.*[15] had been overruled; it appears to establish the proposition put forward in the argument for the plaintiffs that, notwithstanding the exemption clause, in disputes between the company and other persons the company is subject to the ordinary rules of law and equity. ' Where the company in which shares are held sees fit to deal with the shares for its own benefit, then that company is liable to be affected with notice of the interest of a third party '.[16]

Where no exemption clause.

Where there is a lien clause but no clause exempting the company from taking notice of trusts and equities, the company has to rely exclusively on **s. 117** of the Act, which provides that ' No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England '.

In such a case, notice of an equitable mortgage created by a shareholder, is not notice of a ' trust ' within the meaning of the sections: *Bradford Banking Co.* v. *Briggs.*[17] In that case the articles contained a clause giving the company a first and permanent lien, and there was no exemption clause. The company received notice of a mortgage by the shareholder, and afterwards it advanced money to the shareholder and claimed priority for its advance, contending (1) that on the true construction of the lien clause (103) in its articles (which gave the company ' a first and permanent lien ') the shareholder had agreed that the company should have a lien ranking in priority to all other charges with or

[12] (1886) 32 Ch.D. 266.
[13] (1886) 12 App.Cas. 29.
[14] [1916] 2 Ch. 293.
[15] (1886) 32 Ch.D. 266.
[16] *Per* Peterson J., quoting Stirling J. in *Rainford* v. *James Keith, etc., Co.* [1905] 2 Ch. 147, at p. 161.
[17] (1886) 12 App.Cas. 29.

without notice, and that the second mortgagee with notice of this bargain could not establish any claim in violation of it; and (2) that the company was, under s. 30 of the Act of 1862 (now **s. 117**), entitled to disregard the notice as notice of a trust, and, on that ground, entitled to priority.

The House of Lords held that the principle of *Hopkinson* v. *Rolt* [18] applied, and there being nothing in the articles to the contrary, the company was not entitled to disregard notices of the mortgage and insist upon priority for its subsequent advances.

It is material to note that this case was decided on the construction of the articles and of s. 30 to the Act of 1862. It did not decide that there was any inexorable rule of equity making it impossible, by the articles, to exclude the application of the rule in *Hopkinson* v. *Rolt*.[19] The provisions of the articles were carefully considered, and it was held that they did not import any intention to exclude the rule, for they in no way attempted to relieve the company from noticing equities. And as regards s. 30 of the Act of 1862 (now **s. 117** of 1948), the case merely decided that notice of a mortgage was not notice of a trust. *Bradford Banking Co.* v. *Briggs*, therefore, in no way derogates from the authority of *New London and Brazilian Bank* v. *Brocklebank* [20] and *Borland's Trustee* v. *Steel Brothers & Co.*,[21] and it did not in terms overrule *Miles* v. *New Zealand, etc., Co.* [22]; but, it is submitted, that the decision in *Mackereth* v. *Wigan Coal and Iron Co.* [23] would now be followed.

How Lien enforced—Sale

The articles generally give power to the company to enforce a lien by sale after default (see **Table A, cl. 12**), and, if need be, to transfer the shares into the purchasers' names. This is right; for, in the absence of some such provision, it may be necessary to apply to the court.[24] On the other hand, the charge which a lien creates being a mortgage within the meaning of s. 205, subs. (1) (xvi) of the Law of Property Act, 1925, the shareholder or his transferee is entitled, by s. 95, subs. (1) of that Act, to require the company, on payment of the sum due, to assign the debt and their lien on the shares to his nominee: *Everitt* v. *Automatic, etc., Co.*,[25] but see *Re Magneta Time Co.*[26] as to the necessity of concurrence of a subsequent incumbrancer.

This being so, it may be that the power of sale given by s. 101 of the same Act to mortgagees is applicable. Section 101, no doubt, only gives the power to a mortgagee to sell where the mortgage is 'by deed', but under **s. 20** of the Act of 1948, the lien clause binds the shareholder as if it were his deed of covenant with the company.[27]

[18] (1861) 9 H.L.C. 514.
[19] (1861) 9 H.L.C. 514.
[20] (1882) 21 Ch.D. 302.
[21] [1901] 1 Ch. 288, *ante*, p. 135.
[22] *Ante*, p. 136.
[23] *Ante*, p. 136.
[24] *New London, etc., Bank* v. *Brocklebank* (1882) 21 Ch.D. 302, *ante*, p. 134.
[25] [1892] 3 Ch. 506.
[26] [1915] W.N. 318.
[27] *Bradford Bank* v. *Briggs* (1886) 12 App.Cas. 29.

The clause conferring a lien extends not only to the shares, but to the dividends thereon,[28] and also to any assets which, in a winding up, may come to the shareholders in respect thereof.[29]

When the holder of shares subject to a lien by the company sells some of them, the purchaser is entitled to marshal as against an execution creditor of the vendor, and to throw the lien in the first instance upon the shares remaining unsold.[30]

Forfeiture

Occasionally the articles provide that a lien may be enforced by forfeiture, but such a provision is not effective; for the lien is an equitable mortgage, and a clause for forfeiture in a mortgage is, in equity, inoperative. The rule is that, 'once a mortgage always a mortgage',[31] and any attempt to clog the equity of redemption is futile. See *Hopkinson* v. *Mortimer, Harley & Co*,[32] where it was held that a forfeiture of shares by directors for non-payment of an ordinary debt would be invalid as a reduction of capital.

[28] *Re General Exchange Bank* (1871) L.R. 6 Ch.App. 818; *Hague* v. *Dandeson* (1848) 2 Ex.Reps. 741.
[29] *Ex p. Lewis* (1871) L.R. 6 Ch.App. 818.
[30] *Gray* v. *Stone & Funnell* [1893] W.N. 133; 69 L.T. 282.
[31] *Salt* v. *Marquis of Northampton* [1892] A.C. 1.
[32] [1917] 1 Ch. 646.

CHAPTER 15

GENERAL MEETINGS

The Statutory Meeting

Section 130 of the Companies Act, 1948, runs as follows:—

130.—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled [1] 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 fourteen [2] days before the day on which the meeting is held, forward a report (in this Act referred to as 'the statutory report') to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company 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 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 required by this section, to be delivered to the registrar of companies for registration 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.

[1] See *ante*, p. 44.
[2] Seven days in s. 113 of the Act of 1929.

(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) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

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

Default in delivering the statutory report or in holding the statutory meeting is one of the statutory grounds for winding up the company (**s. 222**); but the court may, instead of making a winding-up order, direct the report to be delivered or the meeting to be held and order the costs to be paid by the persons in default (**s. 225**).[3]

The terms of any contract mentioned in the prospectus must not be varied before the date of the statutory meeting except subject to the approval of the statutory meeting (**s. 42**).

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company—what shares have been taken up, what moneys received, what contracts entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars, the shareholders are to have an opportunity of meeting and discussing the whole situation—the management, methods and prospects of the company. If the shareholders fail to do so, they have only themselves to blame.

Notes on the section.

Under the Act of 1908, this section was only applicable in the case of a company limited by shares; it is now extended to companies limited by guarantee, if they have a capital divided into shares. The section does not apply to unlimited companies, and it does not apply to private companies (see **subs. (10)**).[4]

The words 'entitled to commence business' at the commencement of the section refer, in the case of a company which has a share capital and has issued a prospectus inviting the public to subscribe for shares, to **s. 109.**[5]

The notices convening the statutory meeting should state that it is to be the statutory meeting.[6]

[3] *Re Kent Outcrop Coal Co.* [1912] W.N. 26.
[4] As to the law under the Act of 1908, see *Gardner* v. *Iredale* [1912] 1 Ch. 700.
[5] *Ante*, p. 44.
[6] *Gardner* v. *Iredale* [1912] 1 Ch. 700.

Ordinary and Extraordinary General Meetings

Annual meeting.

A general meeting of the shareholders of a company was, by s. 112 of the Act of 1929, 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. This provision was inconvenient and not very clear. It implied (see s. 108 of the same Act as to annual returns) that an ordinary meeting must be held in every year, and it was thought that this was to be in addition to the statutory meeting, though probably an extraordinary meeting held in any year would be a compliance with the section. These doubts and inconveniences were met by a new provision in s. 1 of the Act of 1947, now **s. 131** of 1948, which provides as follows:—

131.—(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

There are penalties for default; moreover, in case of default, the Board of Trade (**s. 131** (2) of 1948) can, on the application of any member, order the meeting to be convened. The Board may for this purpose modify the provisions of the articles and may direct that one member may constitute a meeting. The meeting may be treated as an annual general meeting. If the meeting is not called in the year of default, the company may resolve to treat it as the annual meeting for the year in which it is held. If so, notice must be sent to the registrar within fifteen days and recorded.[7] 'Each year' must have the same meaning as 'calendar year'.[8] The statutory meeting is not an annual general meeting. Under the Act of 1929, both the statutory meeting and an ordinary meeting had to be held in the first year; but see now the proviso to **s. 131**, *supra*. As to date when the offence is committed, see *Smedley* v. *Registrar of Companies*.[9]

Ordinary and extraordinary meetings.

The articles usually distinguish between ordinary meetings and extraordinary meetings (see **Table A, cl. 48**). The term 'ordinary meeting' is generally confined to the annual general meeting which, by the articles, is usually to be held at some specified period of the year. The article for this purpose commonly provided that the directors were to hold one meeting every year at a specified date. The articles should of course now correspond with **s. 131** of the Act of 1948. They usually provide that the directors may call other meetings whenever they choose; and further, that they *shall* call an extraordinary meeting whenever they are required

[7] See **s. 131** of 1948, Appendix 1, *post*.
[8] *Park* v. *Lawton* [1911] 1 K.B. 588.
[9] [1919] 1 K.B. 97.

so to do by a requisition signed by a specified proportion of the members [10] (see **Table A, cl. 49**). **Section 132** of the Act of 1948 (re-enacting with amendments provisions first introduced by s. 13 of 1900) provides that the directors must call an extraordinary meeting on the requisition of the holders of not less than one-tenth of such of the paid-up capital of the company as carries the right of voting at general meetings, and that if the directors do not, pursuant to any such requisition, convene a general meeting within twenty-one days, the requisitionists, or any of them representing more than one-half of their total voting rights, may themselves convene such a meeting.

Who may Convene

The articles, as above stated, generally provide that the directors may, and that they shall, upon a specified requisition by members, convene a general meeting. This means prima facie that the directors may by resolution passed at a duly convened and constituted meeting of the board order the meeting to be convened.[11] But if the articles so provide, a resolution in writing signed by the directors without meeting is as effective as a resolution passed at a board meeting. Notice of a general meeting given by the secretary without the sanction of the directors or other proper authority is invalid.[12] But such a notice may be ratified by the directors before the meeting.[13]

Moreover, a resolution passed by a meeting which has the appearance of being regularly convened, will not be invalidated because some of the acting directors who joined in convening the meeting were not duly appointed.[14] A meeting convened as a meeting of directors may be valid as a meeting of the company if all the members are present.[15]

Directors in calling meetings, as in other matters, must consider the general interests of the company.

If the articles make no provision for calling meetings, any two or more members holding not less than one-tenth of the issued share capital (or where there is no share capital, 5 per cent. of the members) may now convene a meeting (**s. 134 (b)**).

Extraordinary general meeting.

As regards a meeting on requisition the articles commonly contain independent provisions on the subject. Where this is so, the shareholders can proceed either under the articles or under **s. 132**, as may seem the more convenient, but subject to this qualification, that the articles cannot abridge the statutory right. Usually it is found better to proceed under the section.

[10] *Macdougall* v. *Gardner* (1875) L.R. 10 Ch.App. 606.
[11] *Re Haycraft Gold Reduction, etc., Co.* [1900] 2 Ch. 230; *Harben* v. *Phillips* (1883) 23 Ch.D. 14.
[12] *Ibid.*; and *Re State of Wyoming Syndicate* [1901] 2 Ch. 431.
[13] *Hooper* v. *Kerr Stuart & Co.* (1900) 83 L.T. 729, *post*, p. 180.
[14] *Browne* v. *La Trinidad* (1887) 37 Ch.D. 1; *British Asbestos Co.* v. *Boyd* [1903] 2 Ch. 439. See also *Boschoek Proprietary Co.* v. *Fuke* [1906] 1 Ch. 148, where the object was to confirm past proceedings.
[15] *Re Express Engineering Works* [1920] 1 Ch. 466.

The section above referred to runs thus:—

132.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly 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 within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A 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.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

Subs. (1). The holder of fully paid shares could take part in a requisition in respect of those shares under s. 66 of 1908, notwithstanding that calls remained unpaid on other shares held by him.[16]

Subs. (2). Documents may be 'in like form', notwithstanding slight differences of language.[17]

The mere fact that some of the resolutions referred to in the requisition could not be put to the meeting does not relieve the directors from an obligation to call the meeting.[18]

The court would not under the old law compel directors to convene a general meeting pursuant to a requisition where the articles enabled the requisitionists themselves to call the meeting.[19]

In an urgent case, however, a mandatory injunction was granted directing the directors to call a meeting 'forthwith' under s. 66 (1) of 1908 (now **s. 132**).[20] P. O. Lawrence J. (June 27, 1922) gave the plaintiff the costs of the action where the directors had declined to call a meeting, but convened it immediately after the writ. Note also that by **subs. (5)**,

[16] *Fruit and Vegetable Growers' Association* v. *Kekewich* [1912] 2 Ch. 52.
[17] *Fruit and Vegetable Growers' Association* v. *Kekewich*, *ubi sup.*
[18] *Isle of Wight Ry.* v. *Tahourdin* (1883) 25 Ch.D. 320.
[19] *Macdougal* v. *Gardiner* (1875) L.R. 10 Ch.App. 606.
[20] *Rutherford* v. *Farmery* (1915, R. No. 1524), Astbury J., November 12, 1915. And in *Maxwell* v. *Mitchell* (1921, M. No. 2633).

if the directors make default in calling the meeting, the expenses of the requisitionists are to be paid out of the directors' remuneration.

Meeting convened by the court.

If it is impracticable to call a meeting or to conduct it in the manner prescribed by the articles, the court may, either on its own motion or on the application of a director or any member entitled to vote, order a meeting to be called, held and conducted in such manner as the court thinks fit, and may direct a 'meeting' of one member (**s. 135**).[21]

A strong case is required before the court will restrain a general meeting of the company.[22] In *Harben* v. *Phillips*,[23] directors prima facie improperly appointed were restrained from presiding over a meeting called by them as an extraordinary general meeting or from representing it as such. In case of a deadlock the court will sometimes appoint a receiver [24]

Notice

Under the Act of 1929 the length of notice required for convening an ordinary meeting depended on the articles. If they were silent, seven days' notice was required (s. 115). The Act of 1947 required longer notice: a minimum of twenty-one days for the annual general meeting and fourteen days for other meetings. **Section 133** of the Act of 1948 re-enacts this provision and now provides as follows.—

133.—(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

(*a*) in the case of the annual general meeting, twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by the foregoing subsection) a meeting of the company (other than an adjourned meeting) may be called—

(*a*) in the case of the annual general meeting, by twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

A meeting called by a shorter notice is to be deemed to be duly called if it is so agreed

(a) in the case of the annual general meeting, by all members entitled to attend and vote;

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting and

[21] The provision as to a meeting of one member was first introduced by s. 6 of the Act of 1947.
[22] *Isle of Wight Ry.* v. *Tahourdin* (1883) 25 Ch D 320
[23] (1883) 23 Ch.D. 14.
[24] *Stanfield* v. *Gibbon* [1925] W.N. 11.

holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, if there is no share capital, representing not less than ninety-five per cent. of the total voting rights at the meeting of all the members (**s. 133 (3)**).[25]

Every member is entitled to notice of a general meeting, and the omission to give due notice, therefore, invalidates the meeting[26]; but a clause in the articles commonly relaxes this rule as regards an accidental omission or non-receipt (see **Table A, cl. 51**); and as to members who are abroad, see *post*, p. 221. The failure to give notice to one member of a committee has been held to invalidate the meeting even though that member had given general notice of inability to attend.[27] Unless the articles otherwise provide, the executors or administrators of a deceased member, until registered as members, are not entitled to notice.[28] To convene a meeting of the subscribers of the memorandum a reasonable notice is sufficient. Two days was held sufficient in *John Morley Building Co.* v. *Barras*.[29] Sunday is not a *dies non*, apart from express provision.[30]

Notices: Contents of notice. Special or ordinary business.

The notice of meeting must be given in accordance with the articles; these usually require the notice to specify the date, place, and hour of meeting, and in case of special business, the general nature thereof. Where the articles are thus framed, it is necessary to define what is special business, and this is usually done by saying that at an ordinary meeting, the consideration of the accounts and reports, the election of directors and other officers in the place of those retiring by rotation, and the declaration of a dividend shall be considered ordinary business; but that any *other* business transacted at an ordinary meeting, and *all* business transacted at an extraordinary meeting shall be considered *special* business. An ordinary meeting may deal with special business, if the notice specifies it.[31] The notice convening a meeting at which any special business is to be transacted must state the nature thereof, otherwise the meeting will have been irregularly convened and cannot deal with the matter.[32]

Special notice.

The Act of 1947 for the first time required 'special notice' to be given of certain resolutions. These are re-enacted in the Act of 1948 and include notice for removal of a director (**s. 184 (2)**), for appointment of a director over seventy (**s. 185 (5)**), and the appointment of an auditor other than the retiring auditor (**s. 160 (1)**).

[25] A similar agreement is possible in the case of a special resolution. See **s. 141 (2)**.
[26] *Smyth* v. *Darley* (1849) 2 H.L.C. 789.
[27] *Young* v. *Ladies' Imperial Club* [1920] 2 K.B. 523.
[28] *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[29] [1891] 2 Ch. 386.
[30] *Child* v. *Edwards* [1909] 2 K.B. 753.
[31] *Graham* v. *Van Diemen's Land Co.* (1856) 26 L.J.Ex. 73.
[32] *Lawe's Case* (1852) 1 De G.M. & G. 421; *Hampshire Land Co.* [1896] 2 Ch. 743; *Kaye* v. *Croydon Tramways Co.* [1898] 1 Ch. 358 (C.A.); *Pacific Coast Coal Mines, Ltd.* v. *Arbuthnot* [1917] A.C. 607.

Special notice is defined by **s. 142** as follows:—

142. Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

A resolution need not be in the identical terms of the resolution specified in the notice of meeting, if, as passed, it is in substance covered by the notice.[33]

If a member is known to be dead, it is enough to send a notice to his registered address.[34]

Terms of notices not strictly construed; but must be reasonably sufficient.

Notices are not construed with excessive strictness.[35] Substantial compliance with the articles is sufficient.[36] Notices are to be construed as a business man would construe them, and to be understood in the ordinary sense[37]; but it is not enough, in a notice of an extraordinary meeting, merely to say 'special business'.[38] Nor is it enough to state that remuneration is to be allowed to the directors, without stating the amount, if the amount is large.[39] Nor is it enough, at any rate in the case of an extraordinary or special resolution, to say that the capital will be increased without stating the amount.[40]

A notice of a resolution to adopt a particular course of action will not justify the adoption of only a part thereof, for it is impossible for the court to know how many shareholders abstained from attending the meeting, being satisfied that the arrangement as it was proposed was advantageous to them, and being quite content to exercise no voice about it.[41] Thus, where a meeting was convened to consider resolutions for reconstruction and for winding up as incidental thereto, and at the meeting a naked resolution for winding up was passed, it was held to be invalid as not in accordance with the notice: see *Re Teede & Bishop*.[42] Some doubt, however, is thrown upon the authority of this case by the

[33] *Torbock* v. *Lord Westbury* [1902] 2 Ch. 871.
[34] *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[35] *Grant* v. *United Kingdom Switchback, etc., Co.* (1888) 40 Ch.D. 137; *Henderson* v. *Bank of Australasia* (1890) 45 Ch.D. 330.
[36] *Re British Sugar Refining Co.* (1857) 3 K. & J. 408; *Young* v. *South African, etc., Syndicate* [1896] 2 Ch. 268.
[37] *Alexander* v. *Simpson* (1889) 43 Ch.D. 139.
[38] *Wills* v. *Murray* (1850) 4 Ex.Reps. 869.
[39] *Baillie* v. *Oriental Telephone, etc., Co.* [1915] 1 Ch. 503.
[40] *MacConnell* v. *E. Prill & Co.* [1916] 2 Ch. 57.
[41] *Clinch* v. *Financial Corporation* (1868) L.R. 5 Eq. 450, at p. 478.
[42] [1901] W.N. 52; 70 L.J.Ch. 409; 84 L.T. 561.

decision in *Thomson* v. *Henderson's Transvaal Estates Co.*,[43] in which it was held that where the notice specified several separate resolutions, some ultra vires and some intra vires, and all were passed, the latter were effective, although the other resolutions were void. And see per Lord Selborne, *Ashbury Railway, etc. Co.* v. *Riche*.[44]

If the articles or the Act give a general power to deal with certain business at a general meeting without notice of such business, the fact that the notice convening the meeting specifies a particular resolution for dealing with such business does not limit the powers of the meeting: *Bethell* v. *Trench Tubeless Tyre Co.*[45] In that case it was held that at a meeting to confirm a special resolution for winding up voluntarily, the company, having a general power under the Act to appoint a liquidator without notice, might appoint B though the notice stated that A would be proposed. So, if the notice convening an ordinary meeting states that A and B will be proposed as directors, this does not prevent the appointment of C and D if by the regulations the appointment of directors is part of the business of the meeting and requires no special notice.[46]

Where a contract is to be submitted to a meeting for confirmation, and directors of the company are interested therein, it has been held that the notice convening the meeting should give particulars as to that interest.[47]

On the other hand, where a meeting is convened to pass a special resolution adopting a new set of articles in lieu of the existing articles, it has been generally assumed that if the notice states the terms of the proposed resolution, it is a sufficient compliance with **s. 141** of the Act, without the notice specifying the details of alteration involved. The court has repeatedly acted on this assumption, and the most eminent counsel have advised that it was correct.

In *Normandy* v. *Ind, Coope & Co*,[48] however, a learned judge considered that such a notice was insufficient, and that the notice ought to specify the material alterations proposed. It was not, however, really necessary to decide the point.[49]

Notice of meeting to be held on contingency only.

A notice that a meeting will be held in a certain contingency is not a good notice,[50] unless the articles sanction such a form of notice.[51] But even without special authority in the articles, it was possible to convene the two meetings formerly required for passing and confirming a special resolution if care was taken that the notice convened both meetings

[43] [1908] 1 Ch. 765.
[44] (1875) L.R. 7 H.L. 693.
[45] [1900] 1 Ch. 408.
[46] And see *Betts & Co.* v. *Macnaghten* [1910] 1 Ch. 430.
[47] *Kaye* v. *Croydon Tramways Co.* [1898] 1 Ch. 358 (C.A.); *Tiessen* v. *Henderson* [1899] 1 Ch. 861; *Normandy* v. *Ind, Coope & Co.* [1908] 1 Ch. 84. See *contra*, *Southall* v. *British Mutual, etc., Soc.* (1871) L.R. 6 Ch.App. 614 (C.A.), and *Grant* v. *United Kingdom Switchback Ry.* (1888) 40 Ch.D. 135 (C.A.).
[48] [1908] 1 Ch. 84.
[49] See, too, *Grant* v. *United Kingdom Switchback Ry.* (1888) 40 Ch.D. 135; *Southall* v. *British Mutual, etc., Soc.* (1871) L.R. 6 Ch.App. 614.
[50] *Alexander* v. *Simpson* (1889) 43 Ch.D. 139.
[51] *Re North of England Steamship Co.* [1905] 2 Ch. 15; *Company Precedents*, **Pt. I, 15th ed., p. 955.**

unconditionally.[52] In construing a notice, the rule is that the shareholders, to whom it is addressed, are to be presumed to know the Acts of Parliament, and also the terms of the memorandum and articles; and they must therefore read the notice in the light of these documents.[53] Under s. 69 of the Act of 1908, it was held that a notice convening a meeting to pass a special resolution need not state that the resolution will be proposed 'as an extraordinary resolution',[54] but a notice convening a meeting to pass an extraordinary resolution must do so.[55] It would appear that under **s. 141** (2) of the Act of 1948 the notice of a special resolution must expressly specify the intention to propose the resolution 'as a special resolution'. Copies of special resolutions and some other resolutions must be registered.[56]

Notice of intended resolutions.

By **s. 140** of the Act of 1948, members representing one-twentieth of the total voting rights of all the members having a right to vote at the meetings, or not less than 100 members holding shares on which there has been paid up an average sum per member of not less than £100 can claim by requisition at their own expense to have notice of any resolution which is intended to be moved at the meeting and any statement of not more than 1,000 words with respect to the business to be dealt with at the meeting. A copy of the requisition signed by the requisitionists must be deposited at the registered office not less than six weeks before the meeting, where it requires notice of a resolution, and in other cases one week before the meeting. A reasonable sum for expenses must also be deposited.[57]

Quorum of General Meeting

In order to constitute a general meeting a quorum of members must be present. If there be no provision as to a quorum in the articles, two members, in the case of a private company, and in other cases, three members, personally present are requisite for a quorum (**s. 134** (c)).

At common law one member prima facie cannot constitute a meeting.[58] But a single person may constitute a 'meeting' where that word has a special signification given it by the articles[59] or by the Companies Act; and now by **s. 135** (re-enacting s. 6 of the Act of 1947), where the Board of Trade or the court call a meeting, directions may be given that one member present in person or by proxy shall constitute a meeting.

The regulations very commonly make three a quorum, as in **Table A, cl. 53,** but sometimes a scale is established for determining a quorum.

It is submitted that, if all the members are present, it is immaterial that the quorum required is more than the total number of shareholders.[60]

[52] *Re Espuela Land and Cattle Co.* (1900) 48 W.R. 684.
[53] *Campbell's Case* (1873) L.R. 9 Ch.App. 22; *Oakbank Oil Co.* v. *Crum* (1882) 8 App.Cas. 70.
[54] *Re Penarth Pontoon, etc., Co.* [1911] W.N. 240.
[55] *MacConnell* v. *E. Prill & Co., Ltd.* [1916] 2 Ch. 57.
[56] See *post*, p. 227.
[57] For further details of this provision see **s. 140**, Appendix 1, *post*.
[58] *Sharp* v. *Dawes* (1876) 2 Q.B.D. 26; *Re Sanitary Carbon Co.* [1877] W.N. 223.
[59] *East* v. *Bennett Brothers* [1911] 1 Ch. 163.
[60] *Re Express Engineering Works* [1920] 1 Ch. 466.

Where articles provide for a quorum 'present in person or by proxy', proxies can be counted. When the articles provide for a quorum 'present *in person*', *proxies cannot be counted: but a company present by its representative under* **s. 139** of the Act can be counted.[61] Sometimes there is a different quorum fixed for general meetings of shareholders and for meetings of particular classes of shareholders.[62]

If no quorum be present, then there is no meeting and the proceedings are invalid.[63] Sometimes the articles provide that for some particular class of business a smaller quorum shall be sufficient. Occasionally it is provided that if a quorum is not present the meeting is to stand adjourned, say, for a week, and that at the adjourned meeting those who are present shall be a quorum. This also is effective (see **Table A, cl. 54**).

Chairman of General Meeting

The articles generally provide for the directors electing a chairman of their meetings (conf. **Table A, cl. 101**); and the chairman so chosen is, as a rule, by the articles, to be entitled to preside at a general meeting (**see Table A, cl. 55**); or in his absence some other director. If no director is willing to act as chairman, then some person selected by the meeting is to act. In the absence of any such provisions the meeting will itself choose its own chairman from amongst the members present (**s. 134 (d)**). The duty of the chairman is to keep order and see that the business is properly conducted.[64] His decisions on points of order and upon any incidental questions that arise are to be taken prima facie to be correct.[65] If the articles so provide, the chairman's decision as to the validity of a vote is conclusive.[66] He may also, by the vote of a majority, stop a discussion on a resolution after it has been reasonably debated.[67]

Where the articles say that he 'may' adjourn, as in **Table A, cl. 57,** he has a discretion, and may decline to adjourn.[68] But if he departs from his duty, *e.g.*, by prematurely closing the meeting and purporting to adjourn it, his acts become irregular, and it is open to the meeting to select another chairman and proceed with the business.[69]

In the case of a special or extraordinary resolution, where no poll is duly demanded, the declaration by a chairman that a resolution has been carried, is, by **s. 141 (3)**, made '*conclusive* evidence of the fact, without proof of the number or proportion of votes'. It is now settled that 'conclusive' in this section means what it says, conclusive and not prima facie evidence.[70]

[61] *Re Kelantan Coco-Nut Estates, Ltd.* [1920] W.N. 274.
[62] See *Hemans* v. *Hotchkiss Ordnance Co.* [1899] 1 Ch. 115; *Company Precedents*, Part I, 15th ed., p. 636.
[63] *Re Cambrian, etc., Co.* (1875) 31 L.T. 773; *Re Romford Canal Co.* (1883) 24 Ch.D. 85.
[64] *Re Indian Zoedone Co.* (1884) 26 Ch.D. 70.
[65] *Ibid.*; and see *Wandsworth Gaslight Co.* v. *Wright* (1870) 22 L.T. 404.
[66] *Wall* v. *London and Northern Assets Corporation (No. 1)* [1898] 2 Ch. 469; *Wall* v. *Exchange Investment Corporation* [1926] Ch. 143.
[67] *Ibid.*
[68] *Salisbury Gold Mining Co.* v. *Hathorn* [1897] A.C. 268.
[69] *National Dwellings Co.* v. *Sykes* [1894] 3 Ch. 159. See further, *post*, p. 156.
[70] *Re Gold Co.* (1879) 11 Ch.D. 701, at p. 719; *Re Hadleigh Castle Gold Co.* [1900] 2 Ch. 419; followed and approved in *Arnot* v. *United African Lands* [1901] 1 Ch. 518, and, in effect, overruling *Young* v. *South African Syndicate* [1896] 2 Ch. 268.

But a chairman's declaration is not, it seems, conclusive where the declaration that the resolution is passed shows on the face of it that it was not passed by the requisite majority.[71]

The articles (see **Table A, cl. 58**) commonly contain similar provisions making the chairman's declaration conclusive as to the passing or not passing of a resolution by a specified majority, and should be construed accordingly.

The articles usually give the chairman, where the votes are equal, a casting vote, both on a show of hands and at a poll (see **Table A, cl. 60**), but in the absence of such provision he has no casting vote.

Votes at General Meeting

The articles generally determine how many votes a member is to have. Very commonly they provide that a member shall have one vote for every share held by him (see **Table A, cl. 62**). Sometimes they provide that the voting shall be in accordance with a scale. Sometimes one class of shares is given no votes or only a qualified right of voting. In the absence of any regulations as to votes, every member has one vote for every share or each £10 of stock, if the company originally had a share capital; if not, each member has one vote only, whether on a show of hands or at a poll (**s. 134 (e)**). The register is the only evidence of a member's right to vote at a general meeting.[72] So where a bankrupt remained on the register though he had mortgaged the shares, and his trustee had disclaimed, the bankrupt was held entitled to vote.[73] If the articles so provide, the chairman's decision as to the validity of a vote is, in the absence of fraud, conclusive.[74] A shareholder's vote is a right of property which he may use as he pleases. The propriety or impropriety of his motive is immaterial[75]; he is entirely free to exercise his own judgment as to how he shall vote[76]; and may, at any rate in some cases, bind himself by contract, which can be enforced by mandatory injunction,[77] to vote, or not to vote, in a particular way,[78] and the court has no power to go behind the vote and to invalidate it on the ground that the shareholder had a personal interest in the subject-matter different from, or opposed to, that of the company, and did not exercise his voting power for the best interests of the company.[79] In the absence of contract a person in whose name shares are registered (*e.g.*, a mortgagee) can vote as he pleases.[80] But a majority of the members will not be allowed by vote to commit a fraud on the minority, *e.g.*, by sanctioning a sale to themselves of the property of the company at an undervalue.[81]

[71] *Re Caratal (New) Mines, Ltd.* [1902] 2 Ch. 498, and see p. 226.
[72] *Pender* v. *Lushington* (1877) 6 Ch.D. 70.
[73] *Wise* v. *Lansdell* [1921] 1 Ch. 420.
[74] *Wall* v. *London and Northern Assets Corporation* [1898] 2 Ch. 469.
[75] *Pender* v. *Lushington* (1877) 6 Ch.D. 70.
[76] *North-West Transportation Co.* v. *Beatty* (1887) 12 App.Cas. 589; *Burland* v. *Earle* [1902] A.C. 83, but see *Cook* v. *Deeks* [1916] 1 A.C. 554.
[77] *Puddephatt* v. *Leith* [1916] 1 Ch. 200.
[78] *Greenwell* v. *Porter* [1902] 1 Ch. 530.
[79] *East Pant Mining Co.* v. *Merryweather* (1864) 2 H. & M. 254; *Burland* v. *Earle* (*supra*).
[80] *Siemens Bros.* v. *Burns* [1918] 2 Ch. 324, at p. 336.
[81] *Menier* v. *Hooper's Telegraph Works* (1874) L.R. 9 Ch.App. 350. See *post*, p. 229.

There is nothing to prevent a shareholder transferring some of his shares to nominees to increase, where there is a scale, his voting power.[82] An alien enemy cannot vote.[83] But the Public Trustee can vote, if the shares are vested in him.[84]

A provision in a company's articles that no objection shall be taken to any vote except at the meeting at which it is tendered, or any adjournment thereof, is binding, and votes not then disallowed cannot afterwards be challenged,[85] but such a provision is unusual.

By the Collecting Societies and Industrial Assurance Companies Act, 1896, restrictions are placed on the voting by 'collectors' who are members of an industrial assurance company.

The articles usually contain provisions as to the votes of joint holders. Joint holders are entitled to have their names entered in any order they like.[86]

Where the shareholder is a company, that company is by **s. 139** authorised to vote by its representative.

Resolutions

Questions for submission to a general meeting are generally expressed in the form of resolutions. A resolution, according to the ordinary practice of companies, may be proposed by the chairman or by some other member, and, in either case, is put by the chairman to the meeting, whereupon it is open to discussion; when the discussion has closed, the chairman puts the resolution formally to the vote by stating what the resolution is, and that it has been proposed by A and seconded by B, and he then calls for a show of hands: 'those who are in favour of the resolution, hold up one hand; those who are against the resolution, hold up one hand'—and having counted the number pro and con, he then states the result, *e.g.*, 'the resolution is carried', or 'the resolution is lost'. Thereupon a poll can be demanded if claimed by a sufficient number of members, see p. 152.

A resolution inconsistent with the articles is invalid, unless passed as a special resolution.[87]

Show of Hands

Unless the articles otherwise provide, questions arising at a general meeting are to be decided, in the first instance, by a show of hands. This is the common law rule which, unless excluded, applies automatically.[88] In taking a vote by show of hands, the duty of the chairman, unless the articles otherwise provide, is to count the hands held up and to declare the result accordingly, without regard to the number of votes that a member

[82] *Re Stranton Iron, etc., Co.* (1873) L.R. 16 Eq. 559; *Pender* v. *Lushington* (1877) 6 Ch.D. 70.
[83] *Robson* v. *Premier Oil, etc., Co.* [1915] 2 Ch. 124.
[84] *Re Pharaon (R.) et fils* [1916] 1 Ch. 1.
[85] *Wall* v. *London and Northern Assets Corporation (No. 2)* [1899] 1 Ch. 550.
[86] See *Burns* v. *Siemens Bros., etc.* [1919] 1 Ch. 225.
[87] *Quin and Axtens* v. *Salmon* [1909] A.C. 442.
[88] *Re Horbury, etc., Co.* (1879) 11 Ch.D. 109.

holding up the hand possesses; and without regard to the fact that some members hold proxies for some other members.[89]

Poll

A vote by show of hands is a rough and ready way of taking the sense of a meeting; but it is often a very inadequate means for arriving at the wishes of the whole constituency of the company. To ascertain these, the articles usually provide for the taking of a poll The right to demand a poll is a common law right, and, according to the common law, any one member may demand a poll. This rule could, before 1947, be excluded or qualified by express provision in the articles[90] but not altogether in case of special and extraordinary resolutions.[91] Section 4 of the Act of 1947 for the first time conferred a right to demand a poll notwithstanding any provisions in the articles, and now by **s. 137** of the Act of 1948 any provision in the articles is void which excludes the right to demand a poll on any question other than the election of a chairman or adjournment, or which makes a demand for a poll on such questions ineffective where it is made by not less than five members having the right to vote at the meeting, or by members representing not less than one-tenth of the total voting rights of all members entitled to vote at the meeting, or holding shares paid up to the extent of not less than one-tenth of the total sum paid up on all the shares conferring a right to vote at the meeting. An instrument appointing a proxy now confers authority to demand a poll (**s. 137 (2)**).

On a poll a member holding several shares may vote in one way in respect of some of these shares and in another way in respect of others (**s. 138**). In construing provisions in the articles as to how many members may demand a poll, two joint holders may count as two.[92] When a poll is duly demanded, it is the chairman's duty to grant it, and to fix the time and place for taking it; for if a poll is duly demanded, the show of hands is nullified.[93] If, by the regulations, the poll is to be taken 'in such manner as the chairman may direct', a poll may be taken then and there.[94] As to the manner of taking a poll, it is usual to require every person who desires to vote to sign a paper headed, as the case may be, 'For' or 'Against' the motion. The votes of each member are then inserted, and, these having been added up, the chairman declares the result. A meeting or the chairman has power to appoint scrutineers to examine and count the votes at a poll and to report the result to the chairman,[95] and this is often done. A member may vote at a poll, though not present when the poll was demanded.[96] If a poll is duly demanded, it must be taken, and in such case the meeting subsists in contemplation of law until the poll has been taken; and this is so, even though the

[89] *Ernest* v. *Loma, etc., Co.* [1897] 1 Ch. 1.
[90] *R.* v. *Wimbledon, etc.* (1882) 8 Q.B.D. 459.
[91] See s. 117 of the Act of 1929.
[92] See *Siemens Bros.* v. *Burns*, [1918] 2 Ch. 324, at p. 337.
[93] *Anthony* v. *Seger* (1789) 1 Hagg.Cas.Con. 9, at p. 13.
[94] *Re Chillington Iron Co.* (1885) 29 Ch.D. 159.
[95] *Wandsworth, etc., Co.* v. *Wright* (1870) 22 L.T. 404.
[96] *Campbell* v. *Maund* (1836) 5 Ad. & El. 865.

chairman refuses to grant the poll and there is no express adjournment of the meeting.[97] If a poll is not completed on the day on which it is commenced, it must be continued subsequently, for the chairman is not entitled to close the poll whilst voters are coming in.[98] To shut out and exclude a voter may invalidate a poll.[99] Upon taking a poll, the right to vote and the number of shares is to be determined, if any question arises, by a reference to the register of members.[1] To appoint a subsequent day for the taking of the poll is not an adjournment, although the meeting subsists till the poll is taken [2]; but it is not uncommon to adjourn to hear the result.

At a poll votes can as a rule only be given by persons present in person or by proxy at a meeting, and there is no power, in the absence of express provision in the articles, to take the poll by voting papers to be deposited at the office of the company.[3]

Proxies

The common law does not recognise voting by proxy, but the articles generally confer such a right, for it is extremely inconvenient that a member, especially when residing at a distance, should be obliged personally to attend every meeting. Before 1947 a member had no right to vote by proxy except so far as the articles gave him such a right. It was usual to provide that a member could appoint another member of the company as his proxy, but the proxy had as a rule no right to demand a poll or to speak at the meeting; but by s. 5 of the Act of 1947, now re-enacted in **s. 136** of the Act of 1948, any member entitled to attend and vote at a meeting is entitled to appoint another person, *whether a member or not*, as his proxy, and a proxy appointed to attend and vote instead of a member of a private company has the same right as the member to speak at the meeting; but a member of a private company cannot appoint more than one proxy to attend on the same occasion, and a proxy can only vote on a poll. Notices calling a meeting must contain a statement that a member can appoint a proxy and that a proxy need not also be a member. A proxy can demand a poll (**s. 137 (2)**).

Any provision in the articles is void which requires the instrument appointing a proxy to be received by the company more than forty-eight hours before the meeting (**s. 136 (3)**).

Invitations to appoint particular persons as proxies, if sent to some members at the company's expense, must be sent to all (**s. 136 (4)**).

The articles generally provide for a form of proxy. It commonly runs: 'I, A B, appoint C D to be my proxy to vote on my behalf at the general meeting of the company to be held on the —— day of ——'. (See **Table A, cl. 70, 71.**)

The articles also as a rule require the instrument of proxy to be signed by the appointor, or, in the case of a corporation, to be under its seal.

[97] *R.* v. *Wimbledon, etc.* (1882) 8 Q.B.D. 459.
[98] *R.* v. *St. Pancras* (1839) 11 Ad. & El. 15; *R.* v. *Graham* (1861) 9 W.R. 738.
[99] *R.* v. *Lambeth* (1838) 8 Ad. & El. 356.
[1] *Pender* v. *Lushington* (1877) 6 Ch.D. 70.
[2] *R.* v. *Chester* (1834) 1 Ad. & El. 342.
[3] *McMillan* v. *Le Roi Mining Co.* [1906] 1 Ch. 331.

In such a case a foreign or colonial corporation which has no seal, can nevertheless appoint proxies.[4] Sometimes it is provided that the instrument must be signed in the presence of a witness. In such case, signature in the presence of a witness is necessary.[5] A proxy cannot attest his own appointment.[6] A proxy paper for a single meeting only requires a penny stamp. If for several meetings it requires a 10s. stamp [7] To cancel an adhesive stamp the signatory should place his initials and the date on it or otherwise mark it so as to be incapable of subsequent use.[8]

A proxy paper signed in blank and handed over to someone with authority to fill up the blank, is effective if the blank has been properly filled up when the proxy paper is deposited or used.[9] The articles very commonly require instruments of proxy to be deposited with the company a certain number of hours before the meeting. If so (subject to **s. 136 (3)**, *supra*), further proxies cannot be deposited after the date of the meeting for the purpose of a poll taken subsequently [10]; even if deposited the specified time before the adjourned meeting, unless there is an express provision giving such a right.[11]

The directors, acting in good faith in the interests of the company, may do what they consider requisite to get the members to vote against or in favour of a particular resolution, *e.g.*, they may at the expense of the company send out stamped proxy forms [12]; but if sent to one, they must be sent to all.[13]

Revocation of proxy.

The appointment of a proxy, unless made irrevocable for valuable consideration, can be revoked. The revocation must, however, conform to any provisions in the articles.[14]

If the shareholder, after appointing a proxy, himself attends the meeting, he can vote in person.[15] The right of the shareholder to vote in person is paramount to the right of the proxy. The presence of the shareholder does not avoid the instrument of proxy; but if he votes before his proxy has voted for him, he impliedly revokes the proxy.[16]

The death of a shareholder who has appointed a proxy, in the absence of provisions in the articles, revokes the authority of the proxy.[17]

A corporation which holds shares in a company may by resolution of

[4] *Colonial Gold Reefs, Ltd.* v. *Free State Rand, Ltd.* [1914] 1 Ch. 382.
[5] *Harben* v. *Phillips* (1883) 23 Ch.D. 14, at p. 32
[6] *Ex p. Cullen* [1891] 2 Q.B. 151.
[7] S. 80, Stamp Act, 1891; *Re English, Scottish, etc., Bank* [1893] 3 Ch. 385; *Isaacs* v. *Chapman* [1916] W.N. 28; 32 T.L.R. 237.
[8] *McMullen* v. *Sir Alfred Hickman Steamship, Ltd.* (1902) 71 L.J.Ch. 766.
[9] *Sadgrove* v *Bryden* [1907] 1 Ch. 318; *Ernest* v. *Loma Gold Mines* [1897] 1 Ch. 1.
[10] *Shaw* v. *Tati Concessions* [1913] 1 Ch. 292.
[11] *McLaren* v. *Thomson* [1917] 2 Ch. 41, 261 (C.A.).
[12] *Peel* v. *L. & N. W. Ry.* [1907] 1 Ch. 5.
[13] See **s. 136 (4)**, Appendix 1, *post*. This overrules *Wilson* v. *L.M.S. Ry.* [1940] Ch. 393.
[14] *Spiller* v. *Mayo (Rhodesia), etc., Co.* [1926] W.N. 78.
[15] *Cousins* v. *International Brick Co.* [1931] 2 Ch. 90.
[16] *Knight* v. *Bulkeley* (1859) 5 Jur. (N.S.) 817.
[17] *Company Precedents*, Part. I, 15th ed., p. 657.

its directors or governing body appoint any person to act as its representative at a meeting (**s. 139**).

Speeches—Defamation

A speech by a shareholder at a meeting defamatory of the directors, but on a matter affecting the interests of the shareholders, is privileged,[18] and the presence of reporters does not in itself destroy the privilege[19]; but the privilege is gone if the public or the press are present at the meeting at the express invitation of the shareholder publishing the defamatory matter.[20] And a report to the public press of the proceedings of a general meeting, if containing libellous matter, is not privileged.[21] But a report sent to the members is prima facie privileged.[22]

Amendments

Where a resolution is proposed, there is prima facie a right to propose any relevant amendment coming within the scope of the notice. Thus, if the notice is ' to increase the capital of the company to £20,000 ', an amendment can be proposed to increase to £10,000 or to £15,000, but an amendment to alter the articles or remove the directors would be irregular, and the chairman should not allow such an amendment to be put to the meeting, for it does not come within the scope of the notice. So, too, if the notice is ' to increase the capital by £20,000 ', or ' to increase the directors' remuneration by £100 ', an amendment to increase the capital to £50,000, or the remuneration by £500, would be irregular; for it is not fair to call the members together for an apparently limited and small object, and then to spring on them a much larger proposal. Those who are absent may have stayed away because they are content with what is proposed in the notice, and those who are present by proxy are presumed to have given the proxy on the basis of the notice.[23] Similarly, if the notice of meeting is to ratify a particular agreement, it would seem permissible to ratify the agreement subject to modifications or conditions, provided they do not make the agreement more onerous as regards the company.[24] Where the notice is in general terms, *e.g.*, ' to increase the directors' remuneration ', there is a wide scope for amendment.[25] Where the notice stated that the business was to pass with such amendments as should be determined, a resolution re-electing three directors, it was held that an amendment to elect two extra directors was competent.[26]

[18] *Parsons* v. *Surgey* (1864) 4 Fost. & Fin. N.P Cas. 247.
[19] *Pittard* v. *Oliver* [1891] 1 Q.B. 474.
[20] *Ibid.*
[21] *Popham* v. *Pickburn* (1862) 7 H. & N. 891; *Davison* v. *Duncan* (1857) 7 E. & B. 229.
[22] *Laughton* v. *Bishop of Sodor and Man* (1872) L.R. 4 P.C. 495; *Waller* v. *Loch* (1881) 7 Q.B.D. 619.
[23] *Re Teede & Bishop, Ltd.* [1901] W.N. 52; *Clinch* v. *Financial Corporation* (1868) L.R. 5 Eq. 450, at p. 461; *Wall* v. *London and Northern Assets Corporation (No. 1)* [1898] 2 Ch. 469, 484; *Stroud* v. *Royal Aquarium, etc., Society* (1903) 89 L.T. 243.
[24] *Wright's Case* (1871) L.R. 12 Eq. 335, n., 341, n.
[25] *Baillie* v. *Oriental Telephone, etc., Co.* [1915] 1 Ch. 503.
[26] *Betts & Co.* v. *Macnaghten* (1910) 25 T.L.R. 552; *Henderson* v. *Bank of Australasia* (1890) 45 Ch.D. 330.

A notice of meeting to pass a resolution to wind up and to appoint a particular person liquidator is sufficient to cover a resolution to appoint as liquidator a person other than the person named; for as soon as a resolution for the voluntary winding up of a company has been passed, a liquidator can be appointed without any previous notice.[27]

If a chairman refuses to allow a proper amendment to a proposed resolution to be put, even under a mistaken idea that the amendment is *ultra vires*, the resolution may be irregular. The mover of the amendment not challenging the chairman's ruling is not a waiver of his right to impeach the resolution.[28] Unless the regulations otherwise provide, an amendment at a meeting need not be seconded if it is put and voted on.[29]

Adjournment of General Meeting

The articles commonly confer on the chairman power, with the consent of the meeting, to adjourn. This gives the chairman a discretion. The meeting may resolve to adjourn, but it is for the chairman to determine whether he will exercise the power vested in him.[30] The articles often provide for a poll being taken—on the spot—on the question of adjournment. If the chairman improperly adjourns or stops the meeting, the meeting can choose another chairman and go on with the business.[31] On the other hand, if the meeting is duly adjourned or dissolved, members who remain behind cannot continue the business.[32] As regards notice, an adjourned meeting is regarded in law as a continuance of the original meeting[33]; and accordingly a fresh notice thereof need not be given[34]; and resolutions passed at an adjourned meeting have for some purposes been treated as resolutions passed at the original meeting.[35] But a resolution passed at an adjourned meeting is now to be treated as having been passed on the day on which it is in fact passed (**s. 144**). Directors, in the absence of express provisions in the articles, have no power to postpone a meeting which has been duly convened.[36]

Irregularities, etc.

The rule in *Foss* v. *Harbottle*[37] is applicable to general meetings, and accordingly the court declines to interfere, at the instance of a minority, in respect of domestic irregularities[38]; the principle being that it is within the power of the persons who have committed the irregularity at once to set the matter right by calling a fresh meeting and dealing with the matter with all due formalities.[39]

[27] *Re Trench Tubeless Tyre Co.* [1900] 1 Ch. 408.
[28] *Henderson* v. *Bank of Australasia* (1890) 45 Ch.D. 330.
[29] *Re Horbury Bridge, etc., Co.* (1879) 11 Ch.D. 109, at p. 118.
[30] *Salisbury Gold Mining Co.* v. *Hathorn* [1897] A.C. 268.
[31] *National Dwellings Society* v. *Sykes* [1894] 3 Ch. 159.
[32] *R.* v. *Gaborian* (1809) 11 East 77.
[33] *Scadding* v *Lorant* (1851) 3 H.L.C. 418.
[34] *Wills* v. *Murray* (1850) 4 Ex. 843.
[35] *Neuschild* v. *British Equatorial Oil Co.* [1925] Ch. 346.
[36] *Smith* v. *Paringa Mines* [1906] 2 Ch. 193.
[37] (1843) 2 Ha. 461 (*post*, p. 229).
[38] *Macdougall* v. *Gardiner* (1875) 1 Ch.D. 13.
[39] *Browne* v. *La Trinidad* (1887) 37 Ch.D. 1.

CHAPTER 16

DIRECTORS

Company only acts by agents.

A company cannot act in its own person, for it has no person.[1] Accordingly it must act by agents, and usually these persons, by whom it acts, by whom the business of the company is carried on or superintended, are termed directors. Under the Act of 1929 every company had to have two directors, but there was no provision as to the directors of a private company.[2] The Act of 1947[3] provided that every company should have a director and a secretary, and this and the other provisions of s. 26 are now re-enacted in **ss. 176 to 179** of the Act of 1948, which provide that: A private company must have a director, and any other company, if registered on or after November 1, 1929, must have at least two directors. Every company must also have a secretary, and a sole director cannot also be secretary. This provision cannot be evaded by appointing as secretary a company the sole director of which is the sole director of the company, nor by appointing as sole director of the company a company of which the secretary of the company is sole director.[4]

Subject to this the Act leaves the members free to determine how and by whom the business shall be managed, and accordingly, in some cases, the regulations provide that instead of directors there shall be a ' council ' or a ' managing committee ', or that the business shall be carried on by ' managers '. In private companies, it is not uncommon to provide that the business shall be managed by ' governing directors ' or by ' permanent directors ', or by a sole ' governing director '. In all these matters the articles can be framed as may seem expedient. The rules which apply to directors apply also to the members of a council or committee, or other persons, who, in substance, stand in the position of directors. The definition of ' director ' in **s. 455** of the Companies Act, 1948, ' includes any person occupying the position of director by whatever name called '. Subject as above, a limited company may be a director or the sole director of another private company.[5]

Directors, Agents of Company

Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors. Hence (1) where directors make a contract in the name of or purporting to bind the company, it is the company—the principal—which is liable on it, not the directors; they are not personally liable unless it appears

[1] *Per* Lord Cairns, *Ferguson* v. *Wilson* (1866) L.R. 2 Ch.App. 77 at p. 89.
[2] See s. 139 of 1929.
[3] S. 26.
[4] See **ss. 176 to 179**, Appendix 1, *post*.
[5] *Re Bulawayo Market, etc., Co.* [1907] 2 Ch. 458.

that they undertook personal liability,[6] *e.g., by contracting in their own* names or by contracting for the company without using the word '*limited*' as part of the name.[7] (2) Where directors contract in their own names but really on behalf of the company, the other party to the contract can, generally, on discovering that the company is the real principal, sue the company on the contract. (3) Where directors enter into a contract which is within the power of the company but is beyond the powers of the directors, the company, like any other principal, can ratify the contract.[8]

Cases establishing position of directors as agents.

That directors are agents is established by a long series of decisions. It will be sufficient to refer to one of these, *Ferguson* v. *Wilson*,[9] in which it was held by Turner and Cairns L.JJ. that directors were not liable in respect of a contract of the company on the ground that they were agents. Cairns L.J. said in that case:—

'What is the position of the directors of a public company? They are merely agents of the company. The company itself cannot act in its own person, for it has no person, it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent, for wherever an agent is liable those directors would be liable. Where the liability would attach to the principal, and the principal only, the liability is the liability of the company.'

Directors Trustees, in what sense

Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees. No doubt their position differs considerably from that of the trustees of a marriage settlement or will, and it is well settled that the strict rules applicable to such trustees do not apply in all respects to directors.[10] Their conduct is to be measured with reference to the character of the undertaking which they are appointed to manage and conduct.

Nevertheless, it is impossible now to dispute the proposition that they are in some sense trustees, that proposition having been established by a long series of cases.

Thus in *Charitable Corporation* v. *Sutton*,[11] Lord Hardwicke L.C. held that committeemen or directors of a chartered corporation who had misapplied its funds and committed breaches of its bye-laws, were liable as trustees for '*breach of trust*'. So, in *York, etc., Ry.* v. *Hudson*.[12] directors who had improperly dealt with funds of the company were held liable as *trustees*. Romilly M.R. there said, 'the directors are persons selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust which, if they undertake, it is their duty to perform fully and entirely'.

So, in *Ferguson* v. *Wilson*,[13] Lord Cairns, whilst holding directors to be agents and, therefore, not liable on a contract made on behalf of the

[6] *Lindus* v. *Melrose* (1858) 3 H. & N. 177; *McCollin* v. *Gilpin* (1880) 5 Q.B.D. 390
[7] See **s. 108 (5)** of the Act, Appendix 1, *post*.
[8] *Grant* v. *United Kingdom Switchback Ry.* (1888) 40 Ch.D. 135.
[9] (1866) L.R. 2 Ch.App. 77.
[10] *Smith* v. *Anderson* (1879–80) 15 Ch.D. at p. 275.
[11] (1742) 2 Atk. 400.
[12] (1853) 16 Beav. 485
[13] (1866) L.R. 2 Ch.App. 77, at p. 90.

company, said that 'the case was to be distinguished from proceedings by shareholders against directors treating the directors as trustees—which in point of law they are—and seeking redress against them for a breach of trust, . . . There, the directors, being *in the position of trustees*, are, of course, liable in this court'.

This twofold character of directors is, perhaps, best expressed in Lord Selborne's words in *G. E. Ry.* v. *Turner*[14] where he said: 'The directors are the mere trustees or agents of the company—trustees of the company's money and property; agents in the transactions which they enter into on behalf of the company'. And this is the way in which it is put by Sir George Jessel in the case of *Re Forest of Dean, etc., Co.*[15]: 'Directors are called trustees They are no doubt trustees of assets which have come into their hands, or which are under their control'.

So, in *Joint Stock Discount Co.* v. *Brown*,[16] where directors had misapplied funds of the company, it was declared that they had 'committed a breach of trust and were jointly and separately liable' accordingly. See also *Flitcroft's Case*,[17] *Ex p. Pelly*,[18] *Re Faure Electric Co.*,[19] *Re Oxford Benefit, etc., Society*,[20] *Leeds Estate, etc., Co.* v. *Shepherd*,[21] and *Masonic and General Life, etc., Co.* v. *Sharpe*[22]: in all which cases directors were held liable as trustees. It was as being trustees that directors were held, before the Trustee Act, 1888, disentitled to claim the benefit of the Statutes of Limitation[23]; and it is as trustees that they have since that Act been held entitled to the benefit of the qualified provisions for limitation of actions contained in s. 8 of the Act of 1888, now s. 19 of the Limitation Act, 1939. This was decided in *Re Lands Allotment Co.*,[24] where Lindley L.J. said:—

'Although directors are not, properly speaking, trustees, yet they have always been considered and treated as trustees of moneys which come to their hands, or which is actually under their control, and ever since joint stock companies were invented directors have been held liable to make good moneys which they have misapplied, upon the same footing as if they were trustees.'

Fiduciary position.

For most purposes it is sufficient to say that directors occupy a fiduciary position. The effect of this fiduciary position on sales by them to the company and the company's remedies was considered in *Jacobus Marler Estates* v. *Marler*,[25] where Lord Parker said that the equities governing the relationship between principal and agent apply also to other fiduciary relationships, that a sale by agent to principal is voidable until the principal with full knowledge of the material facts and free from undue

[14] (1872) L.R. 8 Ch.App. 149, at p. 152.
[15] (1878) 10 Ch.D. 450.
[16] (1869) L.R. 8 Eq. 381.
[17] (1882) 21 Ch.D. 519.
[18] *Ibid.*, p. 492.
[19] (1888) 40 Ch.D. 141, at p. 150.
[20] (1886) 35 Ch.D. 502.
[21] (1887) 36 Ch.D. 787.
[22] [1892] 1 Ch. 154.
[23] See *Flitcroft's Case* (1882) 21 Ch.D. 519
[24] [1894] 1 Ch. 616.
[25] (1916) 85 L.J.P.C. 167.

influence ratifies the transaction, provided that the principal can restore the agent to his original position, and that if this cannot be done, the principal may still have a remedy in damages.

But this fiduciary position does not extend to directors as shareholders in their individual capacity; there is nothing for instance, to prevent directors purchasing on their own account shares in the company from the executors of a deceased shareholder; although as directors they have information in their possession which is not available for the other shareholders. But directors must not exercise their powers as directors so as to benefit themselves as individuals at the expense of the other shareholders.[26]

As throwing some light on the process of reasoning by which directors are regarded as trustees, it is to be borne in mind that the funds of a company are by statute made applicable only to specific purposes, and are in that way impressed with the qualities of a trust fund.[27] Thus they may be followed into the hands of any alienee who takes with notice of their ultra vires application.[28]

Appointment of Directors

First directors.

First directors are usually named in the articles of association, if there are any, but not uncommonly the articles, instead of naming them, contain a power for the subscribers, or the majority of them, by writing, to appoint them, as in **Table A, cl. 75.** Where directors are to be named in the articles, **s. 181** of the Companies Act, 1948, as to delivering to the registrar consents and contracts for share qualifications,[29] must be borne in mind. Their qualification must be stated in any prospectus.[30] If there are no articles, or there is no such provision, then **Table A, cl. 75,** prescribes that it shall rest with the majority of the subscribers of the memorandum to appoint in writing. In such case the signatures of a majority to the appointment will be sufficient. Where the power is given to the subscribers and nothing is said about the majority, the subscribers should all sign the appointment,[31] or a meeting of the subscribers may be called, and a resolution passed thereat, which is another way of effecting the appointment; and if the meeting is duly constituted, the majority are competent to appoint.[32] It was held in *Re London and Southern, etc., Co.*[33] that a majority of the subscribers must concur; but this is doubtful.[34]

[26] See *post*, p. 172; *Percival* v. *Wright* [1902] 2 Ch. 421; *Allen* v. *Hyatt* (1914) 30 T.L.R. 444.
[27] *Ernest* v. *Croysdill* (1860) 2 De G.F. & J. 175; *Great Eastern Ry.* v. *Turner* (1872) L.R. 8 Ch.App. 149; *Ashbury Ry., etc., Co.* v. *Riche* (1875) L.R. 7 H.L. 653, at p. 689; *Russell* v. *Wakefield Waterworks* (1875) L.R. 20 Eq. 474.
[28] *Moxham* v. *Grant* [1900] 1 Q.B. 88.
[29] See Appendix 1, *post.*
[30] See *post*, p. 338.
[31] *Re Great Northern Salt, etc., Co.* (1890) 44 Ch.D. 472.
[32] *York Tramways* v. *Willows* (1882) 8 Q.B.D. 685; *John Morley Building Society* v. *Barras* [1891] 2 Ch. 386.
[33] (1885) 31 Ch.D. 223.
[34] See *per* Brett L.J., *York Tramways, ubi supra*, at p. 698.

Subsequent directors.

If there are no directors and no provision in the regulations for the appointment of the first directors,, and **Table A** is excluded, they can be appointed under **s. 134** (**b**) of the Act, by which two members holding one-tenth of the share capital may convene a meeting.

Under the Act of 1929 the method of election was governed entirely by the Articles, but s. 28 of the Act of 1947, re-enacted in **s. 183** of the Act of 1948, provides that except in the case of a private company, a motion for appointment of two or more persons as directors by a single resolution, must not be made at a general meeting, unless a resolution that it shall be so made has been agreed to by the meeting without any dissentient vote. A resolution moved in contravention of this section is void; but this does not exclude the operation of **s. 180** of the Act of 1948, which validates acts where defects are afterwards discovered.[35] The articles may give power to a vendor or other outsider to appoint one or more directors. If so, the company cannot alter its articles so as to destroy this power, but the court will not grant an injunction to enforce the appointment of any particular director who is objectionable to the company on personal grounds.[36] Where power to nominate only is given by outside agreement, an injunction will not be granted. *Plantations Trusts* v. *Bila (Sumatra) Rubber Lands*,[37] in which case also the question was left open whether the court will in any circumstances grant specific performance of a contract to elect the nominees of an outside body as directors of a company.

Where the articles delegate to the directors exclusively the power of appointing additional directors, a general meeting has no power to do so.[38]

But if only a limited power is conferred on the directors or if the directors cannot agree or are unable to appoint, the company retains power to appoint new directors.[39]

Casual vacancy.

Where directors have power to fill a casual vacancy, this appears to include any vacancy other than one caused by effluxion of time or a director retiring by rotation.[40]

Where the articles provide for notice of intention to propose a new director being given at some time before the ' day of election ', the ' day of election ' for the purpose of such article, if the meeting is adjourned, is the date of such adjourned meeting.[41]

Assignment of office.

If any director is given power by the articles or by agreement to asisgn his office to another person, any such assignment is ineffective until

[35] For other details of **s. 183**, see Appendix 1, *post.*
[36] *British Murac Syndicate, Ltd.* v. *The Alperton Rubber Co.* [1915] 2 Ch. 186.
[37] [1916] 85 L.J.Ch. 801.
[38] *Blair Open Hearth Furnace* v. *Reigart* (1913) 108 L.T. 665.
[39] *Barron* v. *Potter* [1914] 1 Ch. 895; *Isaacs* v. *Chapman* [1916] W.N. 28; 32 T.L.R. 237; *Foster* v. *Foster* [1916] 1 Ch. 532; *Worcester Corsetry, Ltd.* v. *Witting* [1926] Ch. 640.
[40] *Munster* v. *Cammell Co.* (1882) 21 Ch.D. at pp. 187, 188; *York Tramways* v. *Willows* (1882) 8 Q.B.D. at p. 694.
[41] *Catesby* v. *Burnett* [1916] 2 Ch. 325.

approved by special resolution of the company (**s. 204**). This provision probably does not apply to a director of a private company nominating his successor under a power in the articles.

Names to appear in notepaper, etc.

The names and nationality (if not British) of the directors must be stated in all trade catalogues and circulars, show cards and business letters in which the name of the company appears. Since 1947 'director' includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act (**s. 201**).[42]

Register of Directors

By **s. 200** of the Act of 1948[43] it is provided that every company shall keep at its registered office a register of its directors or managers, containing their names and any former names and their nationality and business occupation and other directorates, with exceptions in case of subsidiary companies and (in companies where the age limit of directors applies) their ages.[44] Where a director is a company, the name and registered office must be stated. A return must be sent to the Registrar of Companies within the period mentioned in the section, and any change in the directors or in the particulars required by the Act must be notified from time to time to the Registrar. The register must during business hours be open to inspection by members free and other persons on payment of a small charge.[45] As to the secretary, see *post*, p. 250.

Provisions of Act as to naming Directors in Articles

Section 181 of the Companies Act, 1948,[46] provides as follows:—

181.—(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 a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(*b*) either—

(*i*) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

[42] Re-enacting s. 105 (3) of 1947.
[43] Replacing s. 144 of the Act of 1929, with amendments.
[44] Other directorates and ages were first required by the Act of 1947, s. 27.
[45] For details of **s. 200**, see Appendix 1, *post*.
[46] Replacing s. 140 of the Act of 1929.

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

[By subs. (3) 'Qualification' refers to qualification required on or within a period determined by reference to time of appointment.]

(4) 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.

(5) This section shall not apply to—

(*a*) a company not having a share capital; or

(*b*) a private company; or

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Where an agent signs the consent he must produce his authority.

An intended director who subscribes the memorandum for his qualification becomes bound on incorporation to take the shares even though the company never commences business.

Maximum and minimum number of Directors

Every company registered after November 1, 1929, must now have at least two directors and private companies must have at least one.[47]

The regulations usually fix what is to be the maximum and minimum number of the directors. As a general rule, a large board is not desirable, for it weakens the sense of individual responsibility. Where a minimum number is fixed, and the number of the directors falls below the minimum number, the remaining directors prima facie cannot act[48] unless the articles contain the ordinary provision enabling the directors to act notwithstanding vacancies. This provision does not make their acts valid if the minimum number never was appointed.[49] Nevertheless, their acts may be valid in favour of a person who has no notice of the irregularity.[50]

Qualification

The general law requires no share qualification for a director, nor does **Table A**, 1948, unless fixed by the Articles.[50a] But the articles of a company nearly always contain a provision that 'the qualification of a director shall be the holding of [a specified number of] shares in the company'; it being thought desirable in most companies to require a qualification, as

[47] See *ante*, p. 157.

[48] *Re Alma Spinning Co.* (1880) 16 Ch.D. 681.

[49] *Sly, Spink & Co.* [1911] 2 Ch. 430; *Re Scottish Petroleum Co.* (1883) 23 Ch.D. 413, at p. 431; *Re Bank of Syria, Owen and Ashworth's claim, Whitworth's claim* [1901] 1 Ch. 115.

[50] *British Asbestos Co.* v. *Boyd* [1903] 2 Ch. 439.

[50a] Cl. 77.

giving a director a personal interest in the undertaking.[51] The amount is commonly fixed at £100 or £200, but sometimes at £1,000 or £5,000, and occasionally—in the case of important private companies—at £10,000 or £50,000. There is, however, in the case of an ordinary company, no particular advantage in requiring a large qualification; on the contrary, it is detrimental as restricting the class of persons eligible for office, and possibly depriving the company of the services of an eminently suitable director, simply because he has not got sufficient funds to take up his qualification. Many questions have arisen in regard to qualification clauses, and more particularly as to the liability of a director to take up his qualification shares. Where the clause is framed in the terms above mentioned, it has long since been settled that it does not compel the director to take shares from the company. The meaning of such a clause is, that the director is under an obligation to acquire the requisite qualification in some way or other, whether from the company, or by transfer from a friend, or by purchase in the market; but that he is to have a reasonable time—now two months (**s. 182**, below)—within which to do so.[52] After the two months have expired he is disqualified from acting as a director, but the mere acting as a director does not import any agreement to take the shares *from the company*.[53] Nevertheless, if in such circumstances he is put on the register by the officers of the company after the time limited for qualifying has expired, he cannot repudiate the shares; he is estopped by his conduct.[54] The law so laid down is supplemented by **s. 182** of the Act of 1948. The section runs as follows:—

182.—(1) Without prejudice to the restrictions imposed by the last foregoing section,[55] it shall be the duty of every director who is by the articles 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 articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) 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 articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) 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 or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

This section leaves it optional to have a qualification clause or not.

[51] *Archer's Case* [1892] 1 Ch. 322.
[52] *Brown's Case* (1873) L.R. 9 Ch.App. 102.
[53] *Brown's Case*, *supra*.
[54] *Brown's Case*, *supra*; *Lord Inchiquin's Case* [1891] 3 Ch. 28.
[55] See *ante*, p. 162.

If a director by inadvertence acts without possessing his qualification, the court can relieve him from liability.[56]

Salary paid to an unqualified managing director can be recovered by the company.[57]

A joint holding may qualify a director.[58]

Where the articles provide that if a director does not qualify within, say, one month 'he is to be deemed to have agreed to take the shares from the company', it has been held that the clause is effective, and that where, after the month was up, the director was still in office, and did not hold the requisite qualification, the contract was complete, and the company or its liquidator might place his name on the register for the qualification shares.[59] If, however, the director resigned within the month, he escaped even under such a clause.[60] As under **s. 182 (3)** of the Act, a director vacates office at the expiration of the time limited, it is doubtful whether *Isaacs' Case*[61] now operates. See *Company Precedents*, Part I, 15th ed., p. 675 *et seq.*

A special resolution raising the share qualification, *e.g.*, from 50 to 250 shares, does not make the directors 'cease' to hold their qualification, or necessarily vacate their offices under **s. 182 (3)**, though if they act without obtaining the new qualification, they may be put on the register for the necessary number of shares.[62]

Occasionally a clause says that no person shall be *eligible* as a director unless he holds a specified qualification. This makes the possession of the qualification a condition precedent to election, and if the person elected does not possess the qualification, he does not become a director *de jure*.[63]

A person is not a 'qualified person' unless he is the registered holder of shares of the required amount.[64]

Sometimes the form runs that a director's qualification shall be the holding of so many shares 'in his own right'. To the unsophisticated layman these words might seem to mean, holding beneficially and not as a mere trustee for some third party; but it has been decided that this is not so, and that, if the director holds the shares as trustee, he is none the less duly qualified,[65] a construction which goes far to defeat the object of the clause, that the director shall have a substantial stake in the company.[66] The court has, however, in several later cases sought to restrict the application of this decision. Thus it has been held that if a person is entered on the register as holding shares as liquidator of some other company, he does not hold 'in his own right'[67]; see *Sutton* v.

[56] *Re Barry and Staines Linoleum* [1934] Ch. 227.
[57] *Brown & Green, Ltd.* v. *Hays* (1920) 36 T.L.R. 330.
[58] *Re Glory Paper Mills* [1894] 3 Ch. 473; *Grundy* v. *Briggs* [1910] 1 Ch. 444.
[59] *Isaacs' Case* [1892] 2 Ch. 158.
[60] *Salisbury Jones' Case* [1894] 3 Ch. 356.
[61] *Supra.*
[62] *Molineaux* v. *London, Birmingham and Manchester Insurance Co.* [1902] 2 K.B. 589.
[63] *Jenner's Case* (1877) 7 Ch.D. 132.
[64] *Spencer* v. *Kennedy* [1926] Ch. 125.
[65] *Pulbrook* v. *Richmond, etc., Mining Co.* (1878) 9 Ch.D. 610.
[66] *Archer's Case* [1892] 1 Ch. 322.
[67] *Boschoek Proprietary Co.* v. *Fuke* [1906] 1 Ch. 148.

English and Colonial Produce Co.,[68] where the director was a bankrupt and the trustee in bankruptcy gave notice to the company that he claimed the shares. The words ' in his own right ' were held to apply only to cases where the company can safely deal with the director as the owner of the shares.

Present of qualification shares from promoter, vendor, etc.

It has too often happened in the history of companies that a director has accepted a present of his qualification from a promoter or vendor, being assured that it is quite the usual thing. Such a transaction constitutes a gross breach of trust on the part of the director. It amounts to accepting a retaining fee from the promoter or vendor; the director is liable to account to the company for any damages sustained by such breach of trust,[69] and there is no right of set-off.[70] The same principle applies if he takes up and pays for his qualification, receiving at the same time an indemnity from the promoter; in such case the indemnity is a thing of value, and the director must account to the company for it [71]; or if he holds his shares as a bare trustee for the promoters It has been held that the damages may be the highest value of the shares.[72]

The mere fact that the director of a company holds his qualification shares as trustee for another company does not render him liable to account to that company for the director's fees which he earns.[73]

Remuneration

Prima facie, directors of a company cannot claim remuneration.[74] But the articles usually provide expressly for payment of remuneration. **Table A, cl. 76** so provides. And where this is the case, the provision operates as an authority to the directors to pay such remuneration out of the funds of the company; and there is no rule to the effect that the remuneration can only be paid out of profits.[75]

The amount of remuneration to be paid to directors is a matter of internal management.[76]

A director can sue for remuneration agreed to be paid him by the company,[77] and prove in the winding up like an ordinary creditor.[78] The Statute of Limitations runs against the director though the arrears of

[68] [1902] 2 Ch. 502.
[69] *Hay's Case* (1875) L.R. 10 Ch.App. 593, at p. 604; *Pearson's Case* (1877) 5 Ch.D. 336; *Re London & S.W. Canal Co.* [1911] 1 Ch. 346.
[70] *Re Carriage Co-operative Supply Association* (1884) 27 Ch.D. 322.
[71] *Archer's Case* [1892] 1 Ch. 322.
[72] *Re London and South Western Canal* [1911] 1 Ch. 346.
[73] *Re Dover Coalfields Extension, Ltd.* [1908] 1 Ch. 65.
[74] *Dunston* v. *Imperial, etc., Co.* (1832) 3 Bar. & Ad. 125; *Hutton* v. *West Cork Ry.* (1883) 23 Ch.D. 654, at p. 672; *Stroud* v. *Royal Aquarium, etc., Society* (1903) 89 L.T. 243.
[75] *Harvey Lewis's Case* (1872) 26 L.T. 673.
[76] *Burland* v. *Earle* [1902] A.C. 83; *Normandy* v. *Ind, Coope & Co.* [1908] 1 Ch. 84.
[77] *Orton* v. *Cleveland, etc., Co.* (1865) 3 H. & C. 868; *Nell* v. *Atlanta, etc., Mines* (1895) 11 T.L.R. 407, C.A.
[78] *Ex p. Beckwith* [1898] 1 Ch. 324; *A 1 Biscuit Co.* [1899] W.N. 115; *Re Dale and Plant* (1889) 43 Ch.D. 255. *Re Leicester Club, etc., Co., Cannon's Case* (1885) 30 Ch.D. 629—which was a decision to the contrary—cannot be relied on. *Re Cinnamond Park & Co.* [1930] N.I. 47.

director's remuneration appear from time to time in the balance sheets.[79] Where a decision of the Board as to the mode of division is required, there is no right of action till a resolution is passed.[80] Whether the articles do or do not constitute a contract for this purpose between the company and the directors,[81] they operate, it has been held, as an offer accepted by the director, and thus give the terms on which the director is serving the company.[82] But it is open to directors by a resolution to renounce the right to future remuneration under such implied contracts.[83] An agreement by all the directors with the company to renounce the right to remuneration is binding on each director.[84]

To take remuneration in excess of what is payable under the regulations is a misfeasance; and directors who are parties to such payments are jointly and severally liable to make good the amount.[85] Extra remuneration may be voted to the directors as a gratuity while the company is a going concern, provided the vote is consistent with the articles; but this cannot be done in a winding up,[86] and if the remuneration is fixed by the articles, it cannot be altered without a special resolution.[87] If all the shareholders concur, they may assent to payments not authorised by the articles[88] but even then not as against creditors.[89] Where the articles provide that the remuneration of directors is to be fixed by the company in general meeting, a director has no right of action for remuneration allotted to him by a resolution of the board alone.[90] Directors must not pay the income tax on their remuneration out of the company's funds,[91] unless the articles provide for payment of remuneration clear of income tax.[92] And now by **s. 189** of the Act of 1948[93] it is not lawful for a company to pay a director remuneration free of income tax except under a contract which was in force on July 18, 1945, and provides expressly for such payment. Except as to these contracts, any provision for payment of remuneration free of income tax is to take effect as if it provided for payment as a gross sum, subject to income tax and surtax, of the net sum for which it actually provides.

The accounts, which under **s. 148** of the Act of 1948 are to be laid before the company in general meeting, must show all sums paid to the directors by way of remuneration, and the amount received by the

[79] *Re The Coliseum (Barrow), Ltd.* [1930] 2 Ch. 44.
[80] *Morrell* v. *Oxford Portland Cement Co.* (1910) 26 T.L.R. 682; *Joseph* v. *Sonora (Mexico) Land Co.* (1918) 34 T.L.R. 220.
[81] See *ante*, p. 31.
[82] *Swabey* v. *Port Darwin Gold Mining Co.* (1889) 1 Meg. 385; *Isaacs' Case* [1892] 2 Ch. 158 *Peruvian Guano Co.* [1894] 3 Ch. 690.
[83] *McConnell's claim, Re London and Northern Bank* [1901] 1 Ch. 728.
[84] *West Yorkshire Darracq Agency* v. *Coleridge* [1911] 2 K.B. 326.
[85] *Re Oxford, etc., Society* (1886) 35 Ch.D. 502; *Leeds Estate, etc., Co.* v. *Shepherd* (1887) 36 Ch.D. 787, at p. 809; *Re Whitehall Court* (1887) 56 L.T. 280.
[86] *Hutton* v. *West Cork Ry.* (1883) 23 Ch.D. 654, at p. 668.
[87] *Boschoek Proprietary Co.* v. *Fuke* [1906] 1 Ch. 148, at p. 163.
[88] *Re George Newman* [1895] 1 Ch. 674.
[89] *Ibid.*
[90] *Kerr* v. *Marine Products, Ltd.* (1928) 44 T.L.R. 292.
[91] *Boschoek Proprietary Co.* v. *Fuke* [1906] 1 Ch. 148.
[92] See *Company Precedents*, Part I, 15th ed., pp. 676, 678.
[93] Re-enacting **s. 34 of 1947.**

directors by way of emolument from all sources, and pensions of past directors and compensation, paid for loss of office.[94]

Apportionment.

Where, under the articles, a director is to be paid so much per annum, and he vacates office before the end of a current year, the question whether he can maintain a claim for an apportioned part of the remuneration for that year, has given rise to considerable difference of opinion. In *Swabey* v. *Port Darwin Gold Mining Co., Ltd.*,[95] the question was considered by the Court of Appeal. There the clause in the articles provided that 'the directors shall each receive by way of remuneration out of the funds of the company in each year the sum of £200, and the chairman in addition £100 per annum'. A director resigned in the course of a current year, and he was held entitled to an apportioned part of the remuneration for that year. In that case Lord Halsbury L.C. said: 'There was . . . a reciprocal right to put an end to the service at an earlier period than the end of the year. It follows from that, as a necessary consequence, that both parties must have contemplated that, as this was a service for hire and reward, a proportionate part of the remuneration agreed upon should be paid if the service was determined at an earlier period than the full year'. On the other hand, in *Salton* v. *New Beeston Cycle Co.*,[96] Cozens-Hardy J. held that where the article provided that 'the directors shall be entitled to receive by way of remuneration in each year £5,000', a director who vacated office in a current year was *not* entitled to any apportionment: and this was followed by Wright J. in *McConnell's Claim*,[97] where the words were 'each director shall be paid . . . the sum of £300 per annum'; and by the Court of Appeal in *Inman* v. *Ackroyd and Best*,[98] where the words were 'the sum of £300 per annum per director.'[99] But in most of these cases the court proceeded on the erroneous assumption that, in *Swabey* v. *Port Darwin Gold Mining Co., Ltd.*,[1] the Court of Appeal was dealing with a case in which the articles provided that the remuneration to be paid to the directors should be AT THE RATE of £200 per annum as stated in the headnote to that case. But on this point the headnote in *Swabey* v. *Port Darwin Gold Mining Co.* is incorrect. The remuneration clause did not contain the words 'at the rate'. The terms of the clause taken from the articles registered at Somerset House are set forth above, and the above decisions, grounded on this inaccuracy, require therefore reconsideration, as noted in the appeal in *Inman* v. *Ackroyd*.[3]

Furthermore, it is not easy to see why the Apportionment Act, 1870, does not apply. That Act expressly provides that all rents, annuities

[94] See s. 196 and *post*, p 211 *et seq.*
[95] (1889) 1 Meg. 385.
[96] [1899] 1 Ch. 775.
[97] [1901] 1 Ch. 728.
[98] [1901] 1 K.B. 613.
[99] See also *Central de Kaap Gold Mines* (1899) 69 L.J.Ch 18.
[1] (1889) 1 Meg. 385.
[3] [1901] 1 K.B. 618.

(including salaries and pensions), and other periodical payments in the nature of income shall be apportionable, and provides for the recovery in due course of an apportioned part of an annuity determined by *death* or otherwise. In *Salton* v. *New Beeston Cycle Co.*,[4] it was argued that the Act applied, and on the other hand the case of *Lowndes* v. *Earl Stamford*[5] (decided on the Apportionment Act, 1834, which was very differently expressed), was apparently relied on; but in his judgment, Cozens-Hardy J. made no reference to the Apportionment Act. However, in *Inman* v. *Ackroyd and Best*,[6] Bruce J. considered that the Apportionment Act, 1870, must have been taken into consideration by Cozens-Hardy J. and Wright J. and held to be inapplicable. The Apportionment Act was applied by the Divisional Court in *Moriarty* v. *Regent's Garage, etc., Co.*,[7] but the decision was overruled on technical grounds, and the Court of Appeal left the question of apportionment open.[8]

Where the plaintiff was entitled to salary at the rate of £500 per annum, and a percentage of profits, the latter was held to be apportionable[9]; and where the company went into liquidation a few days before the expiration of a year, and the director's work for the year was completed, he was held entitled to remuneration for the year.[10]

If the remuneration is to be paid 'at such a time as the directors determine', a director has no right until such determination.[11] A director may in some cases be entitled to remuneration although not qualified.[12] But where a director vacates office by ceasing to hold his qualification, or on failure to be re-elected, remuneration ceases as from the time when he ought to have vacated office under the provisions of the articles.[13] If, however, the company has made use of his services, he may sue on a *quantum meruit*.[14] A salaried director is not, in the absence of a clear provision to the contrary, entitled to his travelling expenses in attending board meetings. They are covered, prima facie, by his remuneration.[15]

Loans to Directors

By the Act of 1929 loans to directors had to be disclosed in the company's accounts,[16] but loans to directors were not prohibited. Such loans were, however, with certain exceptions prohibited by s. 35 of the Act of 1947. These provisions now appear in **s. 190** of the Act of 1948 by which loans to a director of a company or of its holding company are prohibited, as

[4] [1899] 1 Ch. 775.
[5] (1852) 18 Q.B. 425
[6] [1901] 1 K.B. 613.
[7] [1921] 1 K.B. 423.
[8] [1921] 2 K.B. 766.
[9] *Diamond* v. *English Sewing Cotton Co.* [1922] W.N. 237.
[10] *Shaws, Bryant & Co.* [1901] W.N. 124.
[11] *Caridad Copper Mining Co.* v. *Swallow* [1902] 2 K.B. 44 (C.A.); *Inman* v. *Ackroyd and Best* [1901] 1 K.B. 613.
[12] *Salton* v. *New Beeston Cycle Co.* [1899] 1 Ch. 775, at p. 779; *Re International Cable Co.* (1892) 66 L.T. 253.
[13] *Re Consolidated Nickel Mines* [1914] 1 Ch. 883.
[14] *Craven-Ellis* v. *Canons, Ltd.* [1936] 2 K.B. 403.
[15] *Young* v. *Naval and Military Co-operative Society* [1905] 1 K.B. 687.
[16] S. 128.

also are guarantees or securities in connection with such loans. But this does not apply to an exempt private company or to loans made with the approval of the company in general meeting to provide such a director with funds to meet expenditure for the benefit of the company or to enable him to perform his duties to the company, provided the loan is disclosed to the members before approval is given, or to loans made in the ordinary course of business by a company whose ordinary business includes lending money.[17] Loans to all officers of the company and to persons who become officers within a year after a loan must now be shown in the accounts.[18]

Resignation

Prima facie, a director, like any other agent, can at any time resign his office, and usually the regulations make express provision accordingly. It seems enough if he gives notice to the company in the manner provided by **s. 437** of the Act of 1948.[19] That he must give notice to the company in general meeting appears to be unsound. And there is nothing to prevent a director from parting with his qualification shares, and so vacating office by disqualification.[20] A resignation once made is irrevocable.[21]

A verbal resignation accepted at a meeting of the company is effective, though the articles provide that a director shall vacate office if by notice in writing he resigns his office.[22]

Where a director who was both a permanent and an ordinary director resigned, it was held that the resignation applied to both offices.[23]

Disqualification

The regulations commonly provide for special cases in which a director is to vacate office by reason of disqualification, *e.g.*, if he accepts any other office under the company, becomes bankrupt, or lunatic, or ceases to hold his qualification shares, or absents himself or is absent from meetings of the directors for a lengthened period (**Table A, cl. 88**).[24]

In such a case the director, upon the event happening, vacates his office automatically.[25]

Even apart from such provision, it is well settled that the acceptance by a director of an incompatible office vacates his directorship,[26] or acceptance of the office of director vacates the other office,[27] and acceptance of an office incompatible with that already held vacates that

[17] For details of **s. 190**, see Appendix 1, *post*.
[18] See **s. 197**, Appendix 1, *post*.
[19] See, however, *Municipal Freehold Land Co.* v. *Pollington* (1890) 63 L.T. 238.
[20] *Gilbert's Case* (1870) L.R. 5 Ch.App. 559, at p. 565.
[21] *R.* v. *Mayor, etc., of Wigan* (1885) 14 Q.B.D. 908; *Glossop* v. *Glossop* [1907] 2 Ch. 370.
[22] *Latchford Premier Cinema* v. *Ermion* [1931] 2 Ch. 409.
[23] *Moseley* v. *Koffyfontein, etc.* [1910] 2 Ch. 382; [1911] A.C. 409.
[24] See *Company Precedents*, Part I, 15th ed., p. 682.
[25] *Re Bodega Co., Limited* [1904] 1 Ch. 276.
[26] *Milward* v. *Thatcher* (1787) 2 T.R. 81; *Eales* v. *Cumberland Black Lead, etc., Co.* (1861) 6 H. & N. 481.
[27] *Iron Ship, etc., Co.* v. *Blunt* (1868) L.R. 3 C.P. 484.

already held.[28] The trusteeship of a debenture holders' trust deed, if paid, is a 'place of profit' disqualifying within the meaning of such a regulation.[29] An 'office under the company' may, but will not usually, include the appointment of one of the directors to be solicitor of the company.[30]

'Becomes bankrupt' means becomes such after election. It does not preclude the election as a director of a person who at the time is an undischarged bankrupt.[31] But an undischarged bankrupt cannot now act as a director (**s. 187**).

'Becomes insolvent' does not necessarily imply any definite act such as compounding with creditors; a person may be 'insolvent' for the purpose of such a clause, if he is clearly unable to pay his debts as they fall due.[32]

'Cease to hold': a director does not 'cease to hold' shares where he has never acquired them.[33] Nor does he 'cease to hold' by the qualification being raised from, *e.g.*, 50 to 250 shares.[34] 'Absenting himself' means being absent voluntarily,[35] but a director may be treated as absenting himself if ill-health obliges him to go abroad.[36] A director may be 'concerned in any contract with the company', where a firm in which he is interested enters into contracts with the company.[37] A director is not 'convicted of an indictable offence' when he is convicted and fined by a court of summary jurisdiction for an offence for which he might have been imprisoned if convicted on indictment.[38]

As to disqualification by order of the court, see **s. 188** of 1948 and, *post*, p. 184.

Powers of Directors

The articles sometimes give to the directors a number of specific powers, but in addition to these specific powers, there is almost always inserted a general clause on the lines of **Table A, cl. 80,** providing that the directors may exercise all the powers of the company not by the articles or by statute required to be exercised by the company in general meeting. If such a general power is inserted, the insertion of particular specified powers is unnecessary and sometimes give rise to a doubt in respect of powers not particularly specified. A general vesting of powers in the directors is valid and effective, and all that has to be done, in considering whether any particular transaction is within the powers conferred by such a clause on the directors, is to search the articles and the Acts to see whether there is any express provision requiring, for that transaction,

[28] *R.* v. *Tizzard* (1829) 9 B. & C. 418. [29] *Astley* v. *New Tivoli Co.* [1899] 1 Ch. 151.
[30] *Re Harpe s Ticket Issuing, etc., Machine, Ltd.* [1912] W.N. 263; 29 T.L.R. 63.
[31] *Dawson* v. *African, etc., Co.* [1898] 1 Ch. 6.
[32] *R.* v. *Saddlers Co.* (1863) 10 H.L.C. 404; *Harold Sissons & Co.* v. *S.* (1910) 54 S.J. 802; *James* v. *Rockwood Colliery Co.* (1912) 106 L.T. 128; *London & Counties Assets Co.* v. *Brighton Grand Concert Hall, etc., Ltd.* [1915] 2 K.B. 493.
[33] *Forbes' Case* (1873) L.R. 8 Ch. 772, at p. 775.
[34] *Molineaux* v. *London, Birmingham and Manchester Insurance Co.* [1902] 2 K.B. 589.
[35] *Mack's Claim* [1900] W.N. 114.
[36] *McConnell's claim, Re London and Northern Bank* [1901] 1 Ch. 728.
[37] *Star Steam Laundry Co.* v. *Dukas* [1913] W.N. 39; 108 L.T. 367.
[38] *Hastings and Folkestone Glassworks, Ltd.* v. *Kalson* [1948] 1 All E.R. 711.

the authority of the company in general meeting, and, if there is no such provision, the directors must be treated as competent to carry out the transaction. ' The articles ', said Mellish L.J. in *Re Patent File Co.*,[39] ' give to the directors the whole powers of the company, subject to the provisions [of the articles and] of the Companies Act, 1862, and I cannot find anything either in the Act or in the articles to prohibit their making a mortgage by deposit '. So, in *Re Anglo-Danubian, etc., Co.*,[40] where it was a question of directors' power to issue debentures at a discount, Jessel M.R. said: ' Looking to the 66th clause, I cannot have any possible doubt. The directors can do anything the company can do '.[41] Where the articles contained a clause similar to **clause 80** of **Table A** of 1948, a resolution of the company in general meeting for payment of preference dividends in advance by instalments was held to be invalid as interfering with the management, which had been delegated to the directors by the articles.[42]

In exercising their powers, whether general or special, directors must always bear in mind that they are in a fiduciary position, and must exercise their powers for the benefit of the company, and for that alone. The Court has intervened to prevent the abuse of a power to forfeit shares[43]; to make calls[44]; to refuse to register transfers[45]; to issue shares[46]; to increase capital to secure voting power.[47] See also *Clark* v. *Workman*,[48] where directors holding 55 per cent. of the shareholding, exercised their powers as directors to select, as transferee of their shares, a rival company. But directors, when acting in their personal capacity as purchasers of shares or property are not trustees for individual shareholders.[49]

Where directors have a discretion and are bona fide acting in the exercise of it, it is not the habit of the court to interfere with them.[50]

Control of powers of directors by general meeting.

Where the articles vest the power of carrying on the business of the company in the directors ' subject to such regulations not being inconsistent with the provisions aforesaid ' as may be prescribed by the company in general meeting, the company in general meeting cannot override the directors' powers of carrying on the business by prescribing

[39] (1870) L.R. 6 Ch.App. 83, at p. 88.
[40] (1875) L.R. 20 Eq. 339.
[41] See, also, *Pyle Works* (No. 2) [1891] 1 Ch. 173; *Hampson* v. *Price's Patent Candle Co.* (1876) 45 L.J.Ch. 437; *Re a Debtor* [1917] 2 K.B. 808 (authorising presentation of a bankruptcy petition).
[42] *Scott* v. *Scott* [1943] W.N. 16.
[43] *Richmond's Case* (1858) 4 K. & J. 305, at p. 325.
[44] *Gilbert's Case* (1870) L.R. 5 Ch.App. 559; *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 56.
[45] *Re Gresham Life Assurance Society, ex p. Penney* (1872) L.R. 8 Ch.App. 446 at p. 449.
[46] *Punt* v. *Symons & Co.* [1903] 2 Ch. 506.
[47] *Piercy* v. *S. Mills & Co.* [1920] 1 Ch. 77.
[48] [1920] 1 Ir.R. 107.
[49] See *Percival* v. *Wright* [1902] 2 Ch. 421, and *ante*, p. 158.
[50] *Re Gresham Life* (1872) L.R. 8 Ch.App. 446, at p. 449.

a regulation or passing a resolution inconsistent with the articles.[51] But the company in general meeting may determine whether or not an action shall be commenced in the name of the company.[52]

Acts of directors in excess of authority.

Directors who act in excess of their authority—*e.g.*, borrow beyond the limit of their borrowing powers—are, in some cases, held liable to those with whom they deal, on the footing that they are to be taken to warrant their authority.[53]

Defective Appointments and Acting after Disqualification

A person who has not been duly appointed is not a director,[54] and his purporting to act as such does not give the company any right of action against him unless it can show damage.[55] But the company may bring an action to restrain a de facto director from acting as director or representing himself as such. This right, however, is confined to the company; an individual member has no right to bring such an action where a director is disqualified or improperly appointed. For the matter is one for the company to determine, that is, for the majority, and if the majority choose not to interfere, the individual member must conform to the will of the majority.[56]

Undischarged bankrupts.

If an undischarged bankrupt acts as a director without leave of the court, he may expose himself to imprisonment or fine (**s. 187**).

Outsiders.

As regards persons dealing with the company—outsiders, that is—**s. 145 (3)** of the Act to some extent prevents the inconvenience which may arise from directors being irregularly appointed, for it provides that until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been 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. And **s. 180** provides that the acts of a director or manager shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification; but these provisions are in some respects inadequate, and it is therefore usual to insert in the articles a clause supplementing them. See, for example, **Table A, cl. 105.** It is

[51] *Automatic Self-Cleansing, etc., Co.* v. *Cuninghame* [1906] 2 Ch. 34; *Gramophone and Typewriter* v. *Stanley* [1908] 2 K.B. 89; *Salmon* v. *Quin and Axtens* [1909] 1 Ch. 311 (C.A.); on appeal [1909] A.C. 442.

[52] *Marshall's Valve Gear Co.* v. *Manning, Wardle & Co.* [1909] 1 Ch. 267.

[53] *Collen* v. *Wright* (1857) 8 El. & Bl. 647; *Weeks* v. *Propert* (1873) L.R. 8 C.P. 427; *Chapleo* v. *Brunswick, etc., Society* (1881) 6 Q.B.D. 696, at p. 715; *Firbank's Executors* v. *Humphreys* (1886) 18 Q.B.D. 54; *Oliver* v. *Bank of England* [1902] 1 Ch. 610, affirmed *sub nom. Starkey* v. *Bank of England* [1903] A.C. 114.

[54] *Jenner's Case* (1877) 7 Ch.D. 132.

[55] *Coventry's Case* (1880) 14 Ch.D. 660.

[56] See rule in *Foss* v. *Harbottle*, *post*, p. 229.

to be observed that there is a distinction between the words of **s. 145 (3)** and the words of the clause, for the words of the section are qualified by the introduction of the words 'until the contrary is proved'. The provisions above referred to are effective not only as regards members, but as regards outsiders, for, as we have seen,[57] outsiders, even more than members, are entitled to presume that the proceedings of the company have been conducted with due regularity. *Mahony* v. *East Holyford Mining Co.*[58] is an instance. There de facto directors had not been duly appointed, but the company was held bound by their acts as against an outsider, and Lord Cairns relied, amongst other things, on a clause in the regulations similar to **Table A, cl. 105.** The protection enures for the benefit of a director who has taken over the rights of the outsider.[59] In *Dawson* v. *African, etc. Co.*[60] it was held that a call made by directors, who had not been duly appointed or were disqualified, was valid; and in the *British Asbestos Co.*[61] the combined effect of an article analogous to **Table A, cl. 105**, and of s. 67 of the Act of 1862 (for which **s. 145 (3)** is now substituted), was held to validate the acts of a person who had vacated his directorship by becoming secretary, but had gone on innocently acting as director.[62]

A director who takes part in irregular proceedings may be estopped from setting up the irregularity.[63]

The clause will not protect a person who knows of the invalidity[64]; a director, for instance, making a *mala fide* transfer of his shares, accepted collusively by the other directors.[65] A person who does not know of the irregularity cannot take advantage of **s. 180** if he knows that the regularity of the appointment has been challenged and takes no steps to ascertain the facts.[66] The facts of *Kanssen* v. *Rialto (West End), Ltd.*,[67] were as follows: Kanssen and Cromie were the two first directors of the company and held all the shares. Cromie alleged that at a board meeting, Strelitz was appointed a director. This meeting never took place and the minute recording it was a forgery. At another meeting Cromie and Strelitz, without Kanssen's knowledge, purported to appoint Morris a director and allotted shares to Morris. Morris knew that Kanssen was contending that Strelitz was not a director and that the issue of shares was invalid; but he made no inquiries. The Court of Appeal held that Morris was put on

[57] *Ante*, pp. 32, 33.
[58] (1875) L.R. 7 H.L. 869, at p. 887.
[59] *Re Bank of Syria* [1900] 2 Ch. 272; *Newhaven Local Board* v. *Newhaven School Board* (1885) 30 Ch.D. 350, at p. 363; *Briton Medical, etc., Association* v. *Jones* (1889) 61 L.T. 384; *Dawson* v. *African, etc., Co.* [1898] 1 Ch. 6; *Howbeach Coal Co.* v. *Teague* (1860) 5 H. & N. 151; and *British Asbestos Co.* v. *Boyd* [1903] 2 Ch. 439.
[60] *Supra.*
[61] *Supra.*
[62] And see *Transport* v. *Schonberg* (1905) 21 T.L.R. 305
[63] *Faure, etc.* v. *Phillipart* (1888) 58 L.T. 525, at p. 527; *York Tramways* v. *Willows* (1882) 8 Q.B.D. 685.
[64] *Re Staffordshire Gas, etc., Co.* (1892) 66 L.T. 413; *Tyne Mutual Steamship, etc., Association* v. *Brown* (1896) 74 L.T. 283.
[65] *Murray* v. *Bush* (1872–73) L.R. 6 H.L. 37, at p. 77.
[66] See *Kanssen* v. *Rialto (West End), Ltd.* [1944] Ch 346.
[67] *Supra.*

inquiry and could not rely on the section. Lord Greene M.R. laid down the following propositions as having been established by the authorities:—

(1) A party to the transaction may be able to rely on the section, if he does not know of an irregularity, even though other parties know that the appointment was irregular.

(2) The section may apply though the parties concerned know the facts, if the defect is not present to their minds at the time.

(3) Where a person is put on inquiry and makes no inquiries, it is no answer for him to contend that, if he had made inquiries, he would have had false statements made to him.

(4) A person who takes an interest as transferee from one of the parties to the transaction is not protected by the section; and, if the transferor could not rely on the section, the transferee is in no better position.

When this case came before the House of Lords [68] these propositions were neither affirmed nor rejected. The House of Lords held that the appointment of Strelitz and Morris and the allotment of shares to Morris were completely bad, and were not covered by s 143 (now **s. 180**). Lord Simonds said: 'There is a vital distinction between (a) an appointment in which there is a defect or, in other words, a defective appointment, and (b) no appointment at all'.[69]

A de facto director is as much in a fiduciary position as a de jure director, and liable accordingly.[70]

Contracts by Directors with Company: Bribes

Contracts by company with directors or in which they are interested.

Unless the articles confer on a director express powers of contracting with the company, a director's powers of so contracting are extremely limited. He may take up shares in the company (though he cannot vote in respect of allotments to himself) [71]; he may subscribe for debentures in the ordinary course of business [72]; but otherwise he is, like a trustee, disqualified from contracting with the company,[73] and for a good reason The company is entitled to the collective wisdom of its directors, and if all or any of such directors are interested in a contract, the company loses the benefit of its directors' unbiased judgment [74]; for on any such contract being entered into, a conflict of interest and duty must or may arise, and in this conflict the interests of those whom the director is bound to protect run a great risk of being sacrificed. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of the contract in question.[75] If, for example, the directors (there being

[68] *Sub nom.*, *Morris* v. *Kanssen* [1946] A.C. 459.
[69] *Ibid.*, at p. 471.
[70] *Coventry's Case* (1880) 14 Ch.D. 660, at p. 670.
[71] *Neal* v. *Quinn* [1916] W.N. 223.
[72] *Campbell's Case* (1876) 4 Ch.D. 470; *Re London and Colonial Fin. Corp.* (1897) 77 L.T. 146 (C.A.).
[73] *Albion, etc., Co.* v. *Martin* (1875) 1 Ch.D. 580.
[74] *Imperial Mercantile Credit Association* v. *Coleman* (1871) L.R. 6 Ch.App. 558; and see *Costa Rica Ry. Co.* v. *Forwood* [1901] 1 Ch. 746.
[75] *Aberdeen, etc., Co.* v. *Blaikie* (1854) 1 Macq. 461; *Parker* v. *McKenna* (1874) L.R. 10 Ch.App. 96, at p. 118; *Bray* v. *Ford* [1896] A.C. 44, at p. 50.

no relaxation of the rule in the articles) agree to sell to one of themselves part of the property of the company, the company is entitled to have the sale set aside, or, at its option, to sue the directors for breach of duty. So, too, if a director, concealing his interest, sells, through a third party, his property to the company, the company is entitled to reject the property and claim repayment of the purchase-money,[76] or to retain the property and claim damages for any loss sustained by the non-disclosure.[77] And the same rule applies to contracts with any company in which a director holds shares. And if that company has notice of the facts, the contract may be set aside.[78] But this right the shareholders may waive to any extent by provisions in the articles as below mentioned. Even in the absence of such a provision they can, by resolution of a general meeting, duly convened, confirm a contract in which the directors or some of them are interested.[79]

Compensation for loss of office.

Compensation for loss of office or consideration paid for retirement from office now come under very special restrictions, some of which were enacted by s. 150 of the the Act of 1929 and some by s. 36 of the Act of 1947.

Section 191 of the Act of 1948[80] provides as follows:—

191. It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

Section 192[81] provides as follows:—

192.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

Section 193[82] enacts as follows:—

193.—(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(*a*) an offer made to the general body of shareholders;

[76] *Re Cape Breton Co.* (1885) 29 Ch.D. 795; *Chesterfield and Boythorpe Colliery* v. *Black* (1877) 26 W.R. 207.

[77] *Re Leeds and Hanley, etc., Co.* [1902] 2 Ch. 809.

[78] *Transvaal Land Co.* v. *New Belgium, etc., Co.* [1914] 2 Ch. 488.

[79] *Grant* v. *United Switchback Rys. Co.* (1888) 40 Ch.D. 135; *Kaye* v. *Croydon Tramways Co.* [1898] 1 Ch. 358; *Imperial Mercantile Credit Association* v. *Coleman* (1873) L.R. 6 H.L. 189; *Costa Rica Ry. Co.* v. *Forwood* [1901] 1 Ch. 746 (C.A.).

[80] Re-enacting s. 36 (1) of 1947.

[81] Re-enacting s. 150 of 1929.

[82] Re-enacting s. 150 of 1929 with the addition of clauses (*b*) (*c*) and (*d*) from s. 36 (2) of 1947.

(*b*) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

(*c*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or

(*d*) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

The rest of this section and **s. 194** provide for penalties and other details.[83]

In case of non-disclosure, the company is the proper person to sue. Neither the individual shareholders of the vendor company nor the purchasing company can sue.[84]

Secret benefits of directors.

Directors, as we have seen, are agents of the company, and it is a well-settled rule that an agent cannot, without the knowledge and consent of his principal be allowed to make any profit out of the matter of his agency beyond his proper remuneration. 'No man', said Lord Cairns L.C., 'can in this court, acting as an agent, be allowed to put himself in a position in which his interest and duty will be in conflict.'[85] And this rule applies with peculiar stringency to the directors of a joint stock company. Hence any *secret* benefit obtained by a director by reason of his position, or in the course of the company's business, whether it takes the form of a commission, or of qualification shares, or a sum of cash, is regarded as a bribe, and the director is accountable to the company for the amount[86]; and if the bribe has not been paid, the company can sue the briber for the excess of price caused by the bribe.[87] Where a director has been promised a present of this kind, he cannot enforce payment. The consideration is corrupt, and the law will render no assistance to him.[88]

In the alternative the company may, if it chooses, rescind the contract; for where one party to a contract bribes or has any underhand dealing with the agent of the other party, the latter on discovery may repudiate the contract.[89]

[83] See Appendix 1, *post*.
[84] *Clarkson* v. *Davies* [1923] A.C. 100.
[85] *Parker* v. *McKenna* (1874) L.R. 10 Ch.App. 96, at p. 118; see also *Bray* v. *Ford* [1896] A.C. 44, at p. 50.
[86] See *Eden* v. *Ridsdale, etc., Co.* (1889) 23 Q.B.D. 368; *Boston, etc., Co.* v. *Ansell* (1888) 39 Ch.D. 339; *Parker* v. *Lewis* (1873) L.R. 8 Ch.App. 1035.
[87] *Mayor of Salford* v. *Lever* [1891] 1 Q.B. 168; *Whaley Bridge, etc., Co.* v. *Green* (1879) 5 Q.B.D. 109; *Grant* v. *Gold Exploration, etc., Syndicate* [1900] 1 Q.B. 233.
[88] *Harrington* v. *Victoria Graving Dock Co.* (1878) 3 Q.B.D. 549; *Shipway* v. *Broadwood* [1899] 1 Q.B. 369.
[89] *Panama and Pacific Co.* v. *Indiarubber Co.* (1875) L.R. 10 Ch.App. 515; *Shipway* v. *Broadwood* [1899] 1 Q.B. 369. And see the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34).

So, too, a company acting as manager must rest satisfied with the agreed remuneration, and cannot charge extra for services rendered by its employees.[90]

Where the secret profits consisted of shares which had been issued before the statement in lieu of prospectus was filed, but which had been disposed of by the promoter at a profit, the promoter was held liable.[91]

Relaxation of the above rules.

These are the rules prima facie applicable to such transactions, but a company is at liberty to waive the benefit of such rules, and to allow a director to make a contract, or to be interested in a contract, with the company, and the articles very commonly make provision accordingly. The usual form which such a provision takes is that a director may make contracts, or be interested in contracts, with the company; but he is to disclose the nature of his interest to the board, and is not to vote in regard to the matter. Experience has shown that, as a general rule, such provisions are desirable; for it often happens that a company may be largely benefited by being able to deal with one of its own directors. All that is required is that the other directors should have such knowledge as will enable them to scrutinise the terms of the contract with more than usual care.[92]

Interest to be declared.

Section 149 of the Act of 1929, now re-enacted in **s. 199** of the Act of 1948, provided that a director who is directly or indirectly interested in a contract or proposed contract with the company must declare the nature of his interest at a meeting of the directors. **Subsection (2)** of **s. 199**[93] specifies the meeting at which the disclosure must be made, and **subs. (3)** allows a general notice to be given to the effect that a director is a member of a specified firm or company and is to be taken as interested in any contract with that firm or company. Section 41 (5) of the Act of 1947 added the proviso (now in **s. 199 (3)**) that this general notice must be given at a meeting of directors or that the director must see that it is read at the next meeting of directors.

Directors are 'interested' in the issue of debentures to a bank to secure an overdraft which the directors have guaranteed.[94]

Register of shareholdings.

By **s. 195** of the Act of 1948, re-enacting s. 37 of the Act of 1947, every company is to keep a register showing as respects each director details of the shares or debentures of the company or its subsidiary or holding company which are held by or in trust for him or of which he

[90] *Bath* v. *Standard Land Co.* [1910] 2 Ch. 408.
[91] *Jubilee Cotton Mills* v. *Lewis* [1924] A.C. 958; and see *Regal (Hastings), Ltd.* v. *Gulliver* [1942] 1 All E.R. 378.
[92] *Imperial, etc., Association* v. *Coleman* (1873) L.R. 6 H.L. 189; *Southall* v. *British Mutual, etc.* (1871) L.R. 6 Ch.App. 614, at p. 619; *Adamson's Case* (1874) L.R. 18 Eq. 670; *Costa Rica Ry. Co.* v. *Forwood* [1901] 1 Ch. 746; and see *Wilson* v. *L. M. S. Ry. Co.* [1910] Ch. 393 (director of a company with which the railway company contracts).
[93] Following the Act of 1929.
[94] *Victors, Ltd.* v. *Lingard* [1927] 1 Ch. 323.

is entitled to become the holder (with certain exceptions as to shares in subsidiary companies), and, when such shares or debentures cease to be held by the director, the date and price or other consideration for every transaction with respect to such shares or debentures. The register must be kept at the office and be open for inspection at certain specified times and must be produced at the annual general meeting. The Board of Trade may require a copy. If necessary, the court can order an immediate inspection of the register.[95]

Proceedings of Directors

The directors of a company must, as a general rule, act at board meetings unless the regulations otherwise provide.[96] Nevertheless, it does not follow that a transaction can be invalidated as against an outsider who has dealt with the company bona fide merely because the directors acted without meeting.[97] And the articles not uncommonly negative the rule, and expressly declare that a resolution in writing signed by all the directors shall be as effective as if passed at a board meeting, and there are cases in which this is found extremely convenient. Prima facie one director alone has no power to act on behalf of the company.[98] He is only one of a body of directors in whom collectively the management is vested; but the articles may give power to the directors to delegate their powers, p. 181, *post*. An offer to a board of directors cannot be accepted by the survivors after the death of some of the directors.[99]

The articles usually provide that the directors may conduct their proceedings as they think fit. Sometimes proxies are allowed.

Notice of Board Meeting

Prima facie due notice must be given convening a meeting of directors, and in default the meeting is irregular[1]; but this is not always necessary, for by the articles, or by the determination of the directors, meetings may be held at fixed times, and it may be arranged that in such cases no notice need be given. Where notice has to be given, it must be given a reasonable time before the meeting.[2] Otherwise it will be invalid, unless, indeed, all the directors are present at the meeting. The notice need not specify, unless the articles otherwise provide, the nature of the business to be transacted.[3] As regards directors abroad, the regulations commonly provide that no notice need be given, and even in the absence of such a provision it appears that notice need not be given to a director abroad, unless, indeed, he is within easy reach.[4] Sometimes by an accidental

[95] For further details of **s. 195** see Appendix 1, *post*.
[96] *Re Haycraft Gold, etc., Co.* [1900] 2 Ch. 230.
[97] *County of Gloucester Bank* v. *Rudry, etc., Co.* [1895] 1 Ch. 629; *Re Bank of Syria, Owen & Ashworth's Claim* [1901] 1 Ch. 115.
[98] *Re R. N. Cunningham & Co.* (1887) 58 L.T. 16.
[99] *Reynolds* v. *Atherton* (1922) 127 L.T. 189.
[1] *Harben* v. *Phillips* (1883) 23 Ch.D. 14, at p. 34; *Young* v. *Ladies' Imperial Club* [1920] 2 K.B. 523.
[2] *Browne* v. *La Trinidad* (1887) 37 Ch.D. 1.
[3] *La Compagnie de Mayville* v. *Whitley* [1896] 1 Ch. 788.
[4] *Halifax Sugar, etc., Co.* v. *Francklyn* (1890) 59 L.J.Ch. 591, at p. 593.

omission to give due notice to some one director, a meeting of directors is rendered irregular, but the directors nevertheless transact business on behalf of the company, *e g.*, allot shares, make contracts, etc. In such a case, the rule in *Royal British Bank* v. *Turquand*[5] applies, and outsiders will not, as a general rule, be prejudiced by such irregularities They are not concerned to see to the internal regularity of the company's proceedings—its ' indoor management ' as Lord Hatherley termed it—and are entitled to assume that everything has been properly done. Where there has been any such irregularity, a subsequent regularly constituted board meeting can always ratify and confirm what was done irregularly, and it will then be valid ab initio[6]

Quorum of Directors

The articles generally fix, or enable the directors to fix, the quorum for a board meeting, that is to say, what number of directors must be present to enable them to act as a board, and exercise the powers vested in the directors collectively. The quorum may be one.[7] Prima facie, a power to fix a quorum cannot be exercised by less than a majority of the directors at a board meeting A director must not be counted in a quorum for the consideration of matters on which he is not entitled to vote.[8]

The rule is the same if two directors are interested in a combined transaction and each votes on the part of it that concerns the other,[9] and also if the quorum is reduced simply for the purpose of enabling an interest in the property of the company to be conferred on one of the directors.[10]

If the requisite quorum is not present, the meeting is irregular and cannot transact business: so, too, if the number of directors of the company is less in the whole than the required minimum board, no effective board meeting can be held,[11] unless the articles give power to act notwithstanding vacancies.[12] If no quorum has been fixed, the number who usually act will do.[13] It must be borne in mind that a provision for a quorum does not dispense with the due convening of a meeting. The directors must all be summoned. If they have been, or such of them as can be reached by notice, and if all the directors or a quorum be present, the meeting can proceed to business.

The quorum clause in **Table A** is **cl. 99.**

[5] See *ante*, p. 32.
[6] *Re Portuguese Consol. Copper Mines Co.* (1890) 45 Ch.D. 16, at p. 26; *Re Land Credit, etc., Co.* (1869) L.R. 4 Ch.App. 460, at p. 473; *Hooper* v. *Kerr Stuart & Co* (1900) 83 L.T. 729; 45 S.J. 139; *Re State of Wyoming Syndicate* [1901] 2 Ch. 431, 437.
[7] *Re Fireproof Doors* [1916] 2 Ch. 142.
[8] *Re Greymouth Point Elizabeth Ry., etc., Co.*; *Yuill* v. *Same* [1904] 1 Ch. 32: *Neal* v. *Quinn* [1916] W.N. 223.
[9] *Re North Eastern Insurance Co.* [1919] 1 Ch. 198.
[10] *Ibid.*, at p. 207.
[11] *Faure Electric, etc., Co.* v. *Phillipart* (1888) 58 L.T. 525.
[12] *Re Scottish Petroleum* (1883) 23 Ch.D. 413; *Re Bank of Syria* [1900] 2 Ch. 272.
[13] *Lyster's Case* (1867) L.R. 4 Eq. 233.

Resolutions of Directors

The directors exercise their powers by resolutions passed at board meetings. Thus a call is made by passing a resolution—

Examples

'That a call of £—— per share be made on the members of the company, such call to be payable to, etc., on, etc., at, etc.'

The following are other examples:—

'That the shares numbered, etc., of A be hereby forfeited'.

'That Messrs. —— and —— be hereby appointed a committee with power to arrange with Mr. —— the terms on which he shall supply, etc., and make a contract with him accordingly for a period not exceeding twelve months'.

'That the sum of £—— be raised for the purposes of the company by the issue of mortgage debentures to that amount, and that the solicitor be requested to furnish a draft debenture for the approval of the board'.

'That the seal of the company be affixed to a contract, etc.'

'That Mr. ——'s offer to supply the company with —— be hereby accepted, and that the secretary do give Mr. —— notice of this resolution'.

'That an offer be made to Mr. —— on behalf of the company to, etc.'

It is not, however, essential to the validity of a director's resolution that the determination should be embodied in a formal resolution, and the minutes in recording it often, in fact, enter only the substance, *e.g.*, 'a contract with A B for the supply of, was submitted and approved'.

In order to carry a resolution in regard to external matters into effect, it is sometimes necessary to do some further act in the name of the company, *e.g.*, where a resolution has been passed to borrow money, it will be necessary to apply to some person or persons to lend the same, or to issue a prospectus, and when a lender has been found and the security agreed on, the directors will pass a resolution approving thereof and directing the seal to be affixed and the contract to be signed by two directors on behalf of the company. Hence, a matter may come before the board several times before it is completed. So, too, a mechanical act may be necessary, *e.g.*, to sign or seal a document, etc.

Delegation by Directors

The maxim '*delegatus non potest delegare*' applies to directors, and they cannot, therefore, prima facie delegate their powers[14]; but this rule may be controlled by an express or implied authority to delegate, and usually the articles expressly provide that the directors may appoint servants and agents and determine their duties and powers, and further that the directors may delegate to any one or more of themselves any of their powers. (Conf. **Table A, cl. 102.**) A delegation thus authorised is good[15]

[14] *Cobb* v. *Becke* (1845) 6 Q.B. 930, at p. 936.
[15] *Re Taurine Co.* (1883) 25 Ch.D. 118; *Leeds Estate, etc., Co.* v. *Shepherd* (1887) 36 Ch.D. 787.

Where the articles authorise delegation, delegation may sometimes be presumed.[16]

Delegation does not prevent the directors from still acting in regard to the matter delegated.[17]

If directors delegate their powers to a committee without fixing a quorum, whatever the committee does must, unless the articles otherwise provide, be done in the presence of all its members; but they need not be unanimous.[18]

Committees of Directors

The delegation to a committee is usually effected by resolution passed at a meeting of the board, *e.g.*—

> 'That Messrs. —— and —— be hereby appointed a committee, with power on behalf of the company to, etc.'
>
> 'That Mr. —— be hereby appointed a committee for the purpose of, etc.; and that the following powers and authorities be delegated to him, (1) power to, etc.; (2) power to, etc.'
>
> 'That Messrs. —— and —— be hereby appointed a committee for the purpose of settling with Mr. —— the terms of an agreement for, etc., and that they be authorised to execute on behalf of the company an agreement in writing embodying such terms'.

Rotation of Retirement of Directors

The articles of a company usually provide that a proportion of the directors, usually one-third, shall retire by rotation year by year, but in the case of private companies these provisions are often omitted or considerably qualified. (See **Table A, cll. 89–97.**)

Where the articles provide that the number nearest to, but not exceeding, one-third, shall retire, and the number of directors is reduced to two, neither need retire.[19] Where the articles provided that one-third of the whole number of directors should retire, it was held that temporary directors who must retire at the next general meeting, should not be counted.[20] In the same case it was held that a provision for determining the director to retire 'by ballot' meant by lot.

The provisions of clause 82 of Table A of 1908 requiring the meeting to stand adjourned until the same day in the next week if the place of a retiring director is not filled up, did not prevent the meeting being adjourned to some other date.[21]

The articles frequently provide that if the place of the retiring director is not filled up, he shall 'be deemed to be re-elected' or shall 'continue in office' until the next annual general meeting. If so, the director continues in office even though a resolution to re-elect him is proposed at

[16] *Totterdell* v. *Fareham Blue Brick, etc., Co.* (1866) L.R. 1 C.P. 674; *Lyster's Case* (1867) L.R. 4 Eq. 233; *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869; *Dey* v. *Pullinger Engineering Co.* [1921] 1 K.B. 77; and see *ante*, p. 33.

[17] *Huth* v. *Clarke* (1890) 25 Q.B.D. 391.

[18] *Re Liverpool Household Stores Association* (1890) 59 L.J.Ch. 616, at p. 624; and see *post*, p. 228.

[19] *Re Moseley & Sons, Ltd.* [1939] Ch. 719.

[20] *Eyre* v. *Milton Proprietary* [1936] Ch. 244.

[21] *Spencer* v. *Kennedy* [1926] Ch. 125.

the meeting and is lost on a show of hands or on a poll. An article in this form is not confined to cases of failure to elect by inadvertence.[22]

The new **clause 92** of **Table A** of 1948 is intended to meet the difficulties disclosed by these cases.[22]

Removal of Directors

The articles have generally contained power to remove a director by extraordinary resolution; but now by **s. 184** of the Act [23] a company may, notwithstanding anything in the articles or any agreement, remove a director by ordinary resolution. This section creates a new power of removal. It does not apply to a director of a private company who held office for life on July 18, 1945. A vacancy so created may be filled as a casual vacancy (**subs. (4)**). A director so removed may be entitled to compensation or damages if the articles or his agreement so provide (**subs. (6)**). The section contains provisions for special notice [24] to be given to the director concerned and opportunities for the director to make representations to the shareholders.[25]

Application to court.

The court will not enforce specifically a contract of service either at the instance of employer or employed. Hence, if a director refuses to act, the court will not force him to act, and if, on the other hand, a company, by resolution of a general meeting, refuses to employ a director, the court will not force it to do so.[26] It is a different thing, however, when a board of directors excludes one of their body from acting. The court does not regard such exclusion as the act of the company (even though the directors have, under the articles, the general powers of the company), and it will accordingly, on the application of the aggrieved director, grant an injunction restraining the other directors from excluding him from office.[27] It will not, however, restrain the company, and if, after the grant of the injunction, the shareholders, by a resolution in general meeting, declare that they do not wish the particular director to act any longer, the court will discharge the injunction and decline to assist him any further, at least, by injunction.[28] For any other redress he may claim he must proceed by action for damages.

Where the power to remove is only for reasonable cause, it is for the meeting to decide what is reasonable cause, and the court will not interfere with their decision.[29] If, owing to the irremovability of a director, there is a deadlock, a winding-up order may be obtained.[30]

[22] *Grundt* v. *Great Boulder Proprietary Gold Mines* [1947] 1 All E.R. 21, following *Holt* v. *Catterall* (1931) 47 T.L.R. 332, and practically overruling *Robert Batcheller & Sons* v. *Batcheller* [1945] Ch. 169.
[23] Re-enacting s. 29 of the Act of 1947.
[24] See *ante*, p. 146.
[25] For further details of **s. 184** see Appendix 1, *post*.
[26] *Harben* v. *Phillips* (1883) 23 Ch.D. 14; *Bainbridge* v. *Smith* (1889) 41 Ch.D. 462.
[27] *Pulbrook* v. *Richmond, etc., Co.* (1878) 9 Ch.D. 610.
[28] *Bainbridge* v. *Smith* (1889) 41 Ch.D. 462, at p. 475.
[29] *Inderuick* v. *Snell* (1850) 2 M. & G. 216; *Re Gresham Life* (1872) L.R. 8 Ch.App. 446, at p. 449; *Osgood* v. *Nelson* (1872) L.R. 5 H.L. 636.
[30] *Re Sailing Ship 'Kentmere'* [1897] W.N. 88.

Age Limit

The Act of 1947 for the first time imposed an age limit for directors. The proposal met with considerable opposition, and the new provision is now modified by so many saving clauses that it does not seem likely to have much practical effect, except by necessitating notice to the members of the age of some of the older directors. **Section 185** of the Act of 1948[31] now provides that (subject to exemptions) no person is to be capable of being appointed a director who has attained the age of seventy, and a director is to vacate office at the conclusion of the annual general meeting held next after he attains that age, and is not to be automatically re-elected as a retiring director. The appointment of a director already in office is not to be so terminated until the third annual general meeting after the Act.

The section is not to apply if his appointment is made or approved by the company in general meeting, but special notice[32] must be given of the resolution, and the age of the director must be stated

The provision is also subject to any provisions which are contained or may be made in the articles. It does not apply to private companies except in special cases (see **sub-s.** (8)).

By **s. 186** a person proposed to be appointed a director who is affected by the age limit provisions must give notice of his age to the company; but this does not apply to re-appointment.[33]

Disqualification by Court Order

By **s. 188** of the Act of 1948,[34] where a person has been convicted of an offence in connection with the promotion, formation or management of a company or has been guilty of fraudulent trading or of any fraud in relation to the company, the court may make an order that such person shall not without leave of the court be a director or be concerned in the management of a company for any period up to five years. This provision was first introduced in 1947.[35]

Liabilities of Directors

AS TO CONTRACTS

Contracts by directors for company.

Directors being agents (see above, p. 159), are not liable on contracts purporting to bind their company. If, having authority, they make a contract professedly for the company, then the company, their principal, and the company only, is liable on it; if they have not authority to make the contract, still they are not personally liable on the contract,[36] although they may be liable to an action for damages for breach of implied warranty

[31] Re-enacting ss. 30 and 31 of the Act of 1947.
[32] See *ante*, p. 146.
[33] For details and penalties see **ss. 185** and **186**, Appendix 1, *post*.
[34] Re-enacting s. 33 of the Act of 1947.
[35] For further details, procedure and penalties, see **s. 188**, Appendix 1, *post*.
[36] *Ferguson* v. *Wilson* (1866) L.R. 2 Ch.App. 77.

of authority.[37] The general rule is thus stated by Lord Cairns in *Ferguson* v. *Wilson*[38]: 'Whenever an agent is liable, those directors would be liable. Where the liability would attach to the principal and the principal only, the liability is the liability of the company'.

Thus, if the directors order goods for, or on behalf of, their company, or if they enter into an agreement for, or on behalf or on account of, the company, the company is liable and not the directors, whether the contract be in writing or verbal.

Directors may bind themselves personally.

But the directors of a company may, of course, if they choose, contract, so as to bind themselves personally: whether they have done so depends on the terms of the contract. If, for example, they contract in their own names, without disclosing that they are acting for the company, they are, without doubt, personally liable; or, if they contract, disclosing the fact that they are directors, but without using words sufficient to bind the company, *e.g.*, the word 'Limited', they are personally liable on the contract. The test of liability is, does it appear from the terms of the contract that the directors were contracting on behalf of the company? If it does, they are protected. 'Ltd.' may be used as an abbreviation for 'limited'.[39]

Thus, if the directors contract in their own name, but expressly on behalf of the company or for the company, that is sufficient, and it matters not whether the words appear in the description of the parties, or in the body of the contract, or are added by way of qualification to the signature.[40] On the other hand, if the directors contract without purporting to bind the company, *e.g.*, where they say: 'We, the directors of the —— Company, Limited, hereby agree,' etc., the contract does not bind the company, and the directors are liable.[41]

As to acceptances of bills of exchange in the name of the company, see *post*, p. 255.

AS TO FRAUDS AND OTHER TORTS

Frauds and torts of directors.

Any director who is a party to a fraud, such as the issuing of a fraudulent prospectus, or to the commission of any tort, is personally liable. This is on the principle that whoever commits a wrong is liable for it himself, and none the less so that he was acting as an agent or servant on behalf, and for the benefit, of another; for the contract of agency or service cannot impose any obligation on the agent or servant to commit, or assist in the committing of, fraud or any other wrong.[42] The company may also be liable (*supra*, p. 56), but that does not

[37] *Collen* v. *Wright* (1857) 7 E. & B. 301; 8 E. & B. 647; *Coventry's Case* [1891] 1 Ch. 202.
[38] *Supra*.
[39] *F. Stacey & Co.* v. *Wallis* (1912) 106 L.T. 544. See also s. 108 of the Act of 1948, and *Civil Service Society, etc.* v. *Chapman* [1914] W.N. 369.
[40] *Gadd* v. *Houghton* (1876) 1 Ex.D. 357.
[41] *Iggs* v. *Nicholson* (1856) 1 H. & N. 165; *McCollin* v. *Gilpin* (1880) 5 Q.B.D. 390; *Dermatine Co.* v. *Ashworth* (1905) 21 T.L.R. 510.
[42] *Cullen* v. *Thompson's Trustees* (1862) 4 Macq. 424, 432.

exonerate the director, nor ought it in reason to do so, for though the company is an artificial person in law, it is in fact the directors who set the company in motion. So, too, if, by the order of the directors, a trespass is committed, a patent infringed, or other wrongful act committed, the directors who are parties to it are personally liable. If more than one person is concerned in the commission of a wrong, the person wronged has his remedy against all, or any one or more of them, at his choice; for every wrongdoer is liable for the whole damage, and it does not matter whether they acted as between themselves as equals, or one of them as agent or servant of another

But a director is not to be held responsible for the fraud of his co-directors, unless he has expressly or impliedly authorised it [43] 'A director', as Lord Hatherley said, 'cannot be held liable for being defrauded. To do so would make his position intolerable' [44]

Negligence of Directors

A director is negligent if he fails to perform his duty to the company The measure of his duty, and therefore of his liability, was fully and carefully considered by Romer J. in *Re The City Equitable Fire Insurance Co* [45] where, after considering the earlier authorities, he said

'In order to ascertain the duties that a person appointed to the board of an established company undertakes to perform, it is necessary to consider not only the nature of the company's business, but also the manner in which the work of the company is in fact distributed between the directors and the other officials of the company, provided always that this distribution is a reasonable one in the circumstances and is not inconsistent with any express provisions of the articles of association. In discharging the duties of his position thus ascertained, a director must, of course, act honestly, but he must also exercise some degree of both skill and diligence To the question of what is the particular degree of skill and diligence required of him, the authorities do not, I think, give any very clear answer. It has been laid down that so long as a director acts honestly he cannot be made responsible in damages unless guilty of gross or culpable negligence in a business sense. But, as pointed out by Neville J. in *Re Brazilian Rubber Plantations and Estates, Ltd*, one cannot say whether a man has been guilty of negligence, gross or otherwise, unless one can determine what is the extent of the duty which he is alleged to have neglected For myself, I confess to feeling some difficulty in understanding the difference between negligence and gross negligence, except in so far as the expressions are used for the purpose of a distinction between the duty that is owed in one case and the duty that is owed in another. If two men owe the same duty to a third person and neglect to perform that duty, they are both guilty of negligence, and it is not altogether easy to understand how one can be guilty of gross negligence and the other of negligence only. But if it be said that of two men one is only liable to a third person for gross negligence and the other is liable for mere negligence, this, I think, means no more than that the duties of the two men are different. The one owes a duty to take a greater degree of care than does the other: see the observations of Willes J. in *Grill* v. *General Iron Screw Collier Co.* If, therefore, a director is only liable for gross or culpable negligence, this means that he does

[43] *Cargill* v. *Bower* (1878) 10 Ch.D. 502.
[44] *Land Credit Company of Ireland* v. *Lord Fermoy* (1870) L.R. 5 Ch.App. 763, at p. 772; *Re Denham (Charles) & Co.* (1883) 25 Ch.D. 752; *Dovey* v. *Cory* [1901] A.C. 477; *Prefontaine* v. *Grenier* [1907] A.C. 101
[45] [1925] Ch. 407.

not owe a duty to his company to take all possible care. It is some degree of care less than that. The care that he is bound to take has been described by Neville J., in the case referred to above, as "reasonable care" to be measured by the care an ordinary man might be expected to take in the circumstances on his own behalf. In saying this, Neville J. was only following what was laid down in *Overend and Gurney Co.* v. *Gibb*, as being the proper test to apply, namely: "Whether or not the directors exceeded the powers entrusted to them, or whether, if they did not so exceed their powers, they were cognisant of circumstances of such a character, so plain, so manifest and so simple of appreciation that no men with any ordinary degree of prudence, acting on their own behalf would have entered into such a transaction as they entered into?"

'There are, in addition, one or two other general propositions that seem to be warranted by the reported cases: (1) A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. A director of a life insurance company, for instance, does not guarantee that he has the skill of an actuary or of a physician. In the words of Lindley M.R.: "If directors act within their powers, if they act with such care as is reasonably to be expected from them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as their legal duty to the company".[46] It is perhaps only another way of stating the same proposition to say that directors are not liable for mere errors of judgment. (2) A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and at meetings of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings, though he ought to attend whenever in the circumstances he is reasonably able to do so. (3) In respect of all duties that, having regard to the exigencies of business and the articles of association, may properly be left to some other official, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.'

Some of the directors were held to have been negligent in not properly considering or checking the balance sheets or ascertaining how the funds of the company were invested, and in leaving the control of the company almost entirely in the hands of one director without taking proper steps to delegate any of these duties to properly qualified persons. They escaped liability, however, by reason of special provisions in the articles, which, as the law stood before the Act of 1929, protected them, except in case of wilful default.

The following are the more important of the earlier authorities on this subject:—

In *Re Forest of Dean, etc. Co.*[47] Jessel M.R said: 'Directors are bound to use fair and reasonable diligence in the discharge of their duties, and to act honestly'.

In *Turquand* v. *Marshall*[48] it was sought to make directors liable on the ground, amongst other things, that they had made an improvident loan to one of themselves; but relief was refused, and Lord Hatherley L.C. said: 'They were intrusted with full powers of lending the money, and it was part of the business of the concern to trust people with money, and their trust to an undue extent was not a matter with which they could be

[46] *Lagunas Nitrate Co.* v. *Lagunas Syndicate* [1899] 2 Ch. 392.
[47] (1878) 10 Ch.D. 450, at p. 452.
[48] (1869) L.R. 4 Ch.App. 376.

fixed, unless there was something more alleged, as, for instance, that it was done fraudulently and improperly, and not merely by a default of judgment '.

In *Overend, Gurney & Co.* v. *Gibb*,[49] Lord Hatherley said: ' I should like to say one word as regards the case of *Turquand* v. *Marshall*. . . . I certainly never intended to lay down the strong proposition that a person, acting for another as his agent, is not bound to use all the ordinary prudence that can be properly and legitimately expected from any person in the conduct of the affairs of the world, *viz.*, the same amount of prudence which in the same circumstances he would exercise on his own behalf '.

In *Lagunas Nitrate Co.* v. *Lagunas Syndicate*,[50] and in *Re National Bank of Wales*[51] Lindley L.J. said: ' Their negligence must be not the omission to take all possible care; it must be much more blameable than that; it must be in a business sense culpable or gross '; but in other cases doubts have been expressed as to the meaning of ' gross negligence '. ' Gross negligence ', remarked Rolfe B. in *Wilson* v. *Brett*,[52] ' is the same thing as " negligence " with the addition of a vituperative epithet ', and this epigram was cited with approval by Willes J. in *Grill* v. *General, etc. Co.*[53] Erle C.J., referring to this expression,[54] said: ' I advisedly abstained from using a word to which I can attach no definite meaning; and no one, as far as I know, ever was able to do so '.

In *Dovey* v. *Cory*[55] a bank had sustained heavy losses by the issue of fraudulent balance sheets and the improper advance of money to customers of the bank. The frauds were the work of the manager and the chairman, and the question arose whether a co-director, though, in fact, innocent of any complicity, was liable to the company for negligence in not having discovered the frauds. The House of Lords in the result entirely exonerated him from liability, on the ground that the directors may properly delegate to trusted subordinates the details of management.

' It is obvious ', said Halsbury L.C.,[56] ' that if there is such a duty (of detecting frauds) it must render anything like an intelligent devolution of labour impossible. Was Cory to turn himself into an auditor, a managing director, a chairman, and find out whether auditors, managing directors, and chairmen were all alike deceiving him? That the letters of the auditors were kept from him is clear. That he was assured that provision had been made for bad debts and that he believed such assurances is involved in the admission that he was guilty of no moral fraud: so that it comes to this—that he ought to have discovered a network of conspiracy and fraud by which he was surrounded, and found out that his own brother and the managing director . . . were inducing him to make representations as to the prospects of the concern and the dividends properly payable which have turned out to be improper and false. I cannot think it can be expected of a director that he should be watching either the inferior offices of the bank or verifying the calculations of the auditor himself.

[49] (1872) L.R. 5 H.L. 480.
[50] [1899] 2 Ch. 392.
[51] [1899] 2 Ch. 629, 672.
[52] (1843) 11 M. & W. 113, at pp. 115, 116.
[53] (1866) L.R. 3 C.P. 476.
[54] 35 L.J.C.P. 321, at pp. 324, 325.
[55] [1901] A.C. 477.
[56] *Ib.* at p. 485.

The business of life could not go on if people could not trust those who are put in a position of trust for the express purpose of attending to details of management': and Lord Davey added [57]: 'I think the respondent Cory was bound to give his attention to and exercise his judgment as a man of business on the matters which were brought before the board at the meetings which he attended, and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information, and advice of the chairman and general manager, as to whose integrity, skill and competence he had no reason for suspicion'.

In determining whether a director has been guilty of negligence, the court will, as *Dovey v. Cory*,[58] and other cases show, take into account the character of the business, the number of the directors, the provisions of the articles, the ordinary course of management and practice of directors, the extent of their knowledge and experience, and, in a word, all the special circumstances of the particular case. A director is not necessarily affected with constructive notice of the facts which appear in the books of the company in the absence of actual knowledge.[59]

The burden of proving that the non-performance of any particular act is equivalent to negligence rests on those who allege such negligence,[60] for directors have a large discretion, and while acting honestly within it, cannot be charged with misfeasance. Thus directors will not be held liable for misfeasance because, in the exercise of their discretion, they allow calls to remain unpaid,[61] or because they rely on subordinates doing their duty,[62] or do not sue for a debt of the company.[63] It may in some cases be the best policy for the company not to press for payment. Even if it is not, mere errors of judgment and imprudence on the part of directors do not constitute either negligence or misfeasance.[64] As Lord Justice Cotton said:

'Trustees are liable, whatever trouble they take, if the fund in their care goes not according to the trust. Opinions of counsel, bona fides, or care, do not protect them. Directors are confidential agents with the liabilities of trustees; but they have a large discretion, and if they act bona fide they are relieved, and are not liable for want of judgment or error if they make a payment which is not, in fact, for the purposes of the company'.[65]

But it is one thing to make a payment injudiciously, and another to make it without inquiry. Thus, if a director signs a cheque for the company, he is bound to inform himself of the purposes for which the cheques are being given. He cannot be allowed to say that the signing

[57] *Ibid.* at p. 492.
[58] *Supra.*
[59] *Re Coasters, Ltd.* (1911) 103 L.T. 632.
[60] *Re Liverpool Household Stores* (1890) 59 L.J.Ch. 616, at p. 618.
[61] *Re Liverpool Household Stores, supra.*
[62] *Dovey* v. *Cory, supra*
[63] *Re Forest of Dean Coal Mining Co.* (1878) 10 Ch.D. 450.
[64] *Marzetti's Case* (1880) 28 W.R. 541.
[65] *Re Faure Accumulator Co.* (1888) 40 Ch.D. 141, at p. 150; *Sheffield and South Yorkshire, etc., Society* v. *Aizlewood* (1889) 44 Ch.D. 412; and (as to imprudence), *Turquand* v. *Marshall* (1869) L.R. 4 Ch.App. 376; *Overend, Gurney* v. *Gibb* (1872) L.R. 5 H.L. 480; *London Financial Association* v. *Kelk* (1884) 26 Ch.D. 107; *Grimwade* v. *Mutual Society* (1885) 52 L.T. 409.

was a ministerial act—a mere matter of form. If he neglects inquiry, trusting to his co-directors, he does so at his own risk.[66]

And if directors do not really exercise their judgment, they may be liable.[67]

Negligence by Non-Attendance at Board Meetings

If some persons are guilty of continuous non-attendance and leave the management to others, they may be guilty, by this means, of the breaches of trust which are committed by others.[68] But it is not necessary for a director to attend every board meeting unless the articles otherwise provide. This was laid down long since in *Perry's Case*,[69] in which Bacon V.-C. said that a director 'is not bound to attend every meeting of the directors. It is not part of the duty of a director to take part in every transaction which is considered at a board meeting'. And Jessel M.R. recognised this qualification[70]:

> 'They [directors] are bound, no doubt', said the learned judge, 'to use all reasonable diligence, having regard to their position, though probably an ordinary director, who only attends at the board occasionally, cannot be expected to devote as much time and attention to the business as the sole managing partner of an ordinary partnership; but they are bound to use fair and reasonable diligence in the management of their company's affairs, and to act honestly'.

In the case of *Re Denham & Co*,[71] a director who for four years had attended no board meetings was held not to be personally answerable for fraudulent reports and balance-sheets issued and passed by his co-directors, or for dividends paid by them. But there the articles were in special terms. In *Marquis of Bute's Case*,[72] non-attendance by a trustee of a savings bank for a long period was excused, but there were fifty trustees. In that case Stirling J. said[73]: 'Neglect or omission to attend meetings is not, in my opinion, the same thing as neglect or omission of a duty which ought to be performed at those meetings'.[74]

Misfeasance and Breach of Trust

Besides negligence, directors, as agents and trustees, may be held liable for various other kinds of misconduct and delinquency. These are generally grouped together under the head of what is known as 'misfeasance', or breach of trust, the term 'breach of trust' being generally confined to some misapplication of the funds of the company,[75]

[66] *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 381; *Coats* v. *Crossland* (1904) 20 T.L.R. 800.
[67] *New Mashonaland, etc., Co.* [1892] 3 Ch. 577; *Leeds, etc., Co.* v. *Shepherd* (1887) 36 Ch.D. 787.
[68] *Per* Lord Hardwicke, *Charitable Corporation* v. *Sutton* (1742) 2 Atk. 400, at p. 405.
[69] (1876) 34 L.T. 716.
[70] *Re Forest of Dean Co.* (1878) 10 Ch.D. 450, at p. 452.
[71] (1883) 25 Ch.D. 752.
[72] [1892] 2 Ch. 100.
[73] *Ibid.*, at p. 109.
[74] *Exploring Land and Minerals Co.* v. *Kolckmann* (1905) 94 L.T. 234; *Re City Equitable Fire Insurance Co.* [1925] Ch. at p. 429.
[75] See *ante*, p. 159.

and the term 'misfeasance' to other breaches of duty which did not involve such misapplication. For instance, to apply the funds of the company to ultra vires purposes,[76] or to pay dividends out of capital,[77] is a breach of trust; to allot shares knowingly to an infant,[78] or to take a bribe[79]; to give a creditor a fraudulent preference, or to commit a breach of the articles resulting in loss to the company—these are acts of misfeasance.

Examples of misfeasance and breach of trust.

The following are some instances in which directors have been charged with or made liable for misfeasance or breach of trust: claim against directors to repay dividend declared and paid under delusive balance sheet[80]; director ordered to repay bonus improperly paid to him[81]; directors ordered to repay dividends improperly paid to shareholders out of capital[82]; orders against directors who had improperly obtained their qualification shares from promoters or vendors[83]; order to compel director who had obtained from promoter a secret advantage—an indemnity against loss on his qualification—to account to company[84]; order against director who held his qualification shares as trustee for and at will of promoter[85]; directors ordered to account for gift of shares by vendor[86]; directors ordered to make good sum paid to promoter for preliminary expenses, out of which directors' qualification provided[87]; director ordered to repay sums nominally paid for preliminary expenses, but really for rigging the market[88]; director held liable for present made to himself without the sanction of the company's articles[89]; directors held liable for illegitimate profits made by dealings with the company's shares[90] managing director held liable for secret commission[91]; director selling his own property to the company without disclosure.[92] 'The misfeasance in such a case is not selling, but in not disclosing'[93]; directors held liable for not making calls on themselves[94]; director held liable for having by fraudulent misrepresentations induced his co-directors to advance him

[76] *Cullerne* v. *London, etc., Society* (1890) 25 Q.B.D. 485.
[77] *Flitcroft's Case* (1882) 21 Ch.D. 519.
[78] *Ex p. Wilson* (1878) 8 Ch.App. 45.
[79] *Pearson's Case* (1877) 5 Ch.D. 336.
[80] *Stringer's Case* (1869) L.R. 4 Ch.App. 475.
[81] *Rance's Case* (1870) L.R. 6 Ch.App. 104.
[82] *Re National Funds Assurance Co.* (1878) 10 Ch.D. 118; *Re Alexandra Palace Co.* (1882) 21 Ch.D. 149; *Flitcroft's Case* (1882) 21 Ch.D. 519; *Re Denham & Co.* (1883) 25 Ch.D. 752; *Re Sharpe* [1892] 1 Ch. 154; *Re London and General Bank (No. 2)* [1895] 2 Ch. 673.
[83] *De Ruvigne's Case* (1877) 5 Ch.D. 306; *Pearson's Case* (1877) 5 Ch.D. 336; *Mitcalfe's Case* (1879) 13 Ch.D. 169; *Re Carriage Co-operative Association* (1884) 27 Ch.D. 322.
[84] *Archer's Case* [1892] 1 Ch. 322.
[85] *Re London and S.W. Canal* [1911] 1 Ch. 346.
[86] *Re Postage Stamp, etc., Co.* [1892] 3 Ch. 566.
[87] *Re Englefield, etc., Co.* (1877-8) 8 Ch.D. 388.
[88] *Marzetti's Case* (1880) 28 W.R. 541.
[89] *Re Geo. Newman & Co.* [1895] 1 Ch. 674.
[90] *Parker* v. *McKenna* (1874) L.R. 10 Ch.App. 96.
[91] *Boston Deep Sea, etc., Co.* v. *Ansell* (1888) 39 Ch.D. 339.
[92] *Re Cape Breton Co.* (1885) 29 Ch.D. 795, *sub nom. Cavendish-Bentinck* v. *Fenn* (1887) 12 App.Cas. 652.
[93] *Per* Lord Herschell (1887) 12 App.Cas. at p. 661.
[94] *Alexander* v. *Automatic Telephone Co.* [1900] 2 Ch. 56.

moneys of the company on an insufficient security. See this case also as to measure of damages.[95]

Directors who purposely abstain from making inquiries, in pursuance of an understanding between them to that effect, into the price paid to each other for properties sold to the company, are guilty of a gross dereliction of duty.[96]

In cases of misfeasance or breach of trust the delinquent director has no right of set-off,[97] and he cannot rely on a release in general terms.[98]

Exemption Clauses in Articles

It has for many years been usual to insert a clause in the articles of association protecting the directors and auditors from liability for losses to the company except in the case of their ' wilful default ', or except in the case of their dishonesty. Directors were held to be protected by such a clause in *Re Brazilian Rubber Estates, Ltd.*,[99] and directors and auditors were protected in *Re City Equitable Fire Insurance Co.*[1] A different result, however, followed where the words were ' act or default '.[2] This protection was removed by the Companies Act, 1929, s. 152, now replaced by **s. 205** of 1948, which provides as follows:—

205. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that—

(*a*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(*b*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under s. 448 of this Act in which relief is granted to him by the court.

Statutory Relief of Directors

By **s. 448** of the Companies Act, 1948, special provision is now made for the relief of directors. Thus:—

448.—(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against an *officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company)* it appears to the

[95] *Exploring Land and Minerals Co.* v. *Kolckmann* (1905) 94 L.T. 234.
[96] *Coats* v. *Crossland* (1904) 20 T.L.R. 800.
[97] *Re Anglo-French Co-operative Society* (1882) 21 Ch.D. 492; *Re Carriage Supply Association* (1884) 27 Ch.D. 322; *Flitcroft's Case* (1882) 21 Ch.D. 519.
[98] *Re Joint Stock Trust, etc.* (1912) 56 S.J. 272.
[99] [1911] 1 Ch. 425.
[1] [1925] Ch. 407.
[2] *Re City of London Insurance Co.* (1925) 41 T.L.R. 521.

court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

Section 372 of the Act of 1929 set out in subs. (4)[3] the persons to whom the section applied. This subs. is omitted and the words in italics are inserted in **subs. (1)**. The alteration appears to be merely a drafting alteration since 'officers' include directors, managers and secretaries,[4] except possibly that it makes it clear that the secretary is an officer covered by the section.

It is not enough to prove that a director acted reasonably and honestly. It must, in addition, be proved that he ought fairly to be excused.[5]

The section applies to ultra vires acts.[6]

Where directors were summoned before a court of summary jurisdiction for having served as directors without the requisite qualification shares, the magistrate adjourned the hearing to enable the directors to petition for relief under **s. 448.**

It was, however, held that the only court which can give relief is the court before which proceedings are brought, and that, though they could be relieved from future liability, the relief could not extend to the proceedings which had already been commenced against them.[7]

Dispositions pending Winding Up

Directors who expend the company's money pending a winding-up petition are prima facie liable, on a winding up, for all such moneys not expended by them in the ordinary course of business (**s. 227**).[8] Where

[3] Sub-s. 4.
[4] See **s. 455**, Appendix 1, *post*.
[5] Cf. *National Trustee Co. of Australasia* v. *General Finance, etc., Co.* [1905] A.C. 373; *Re Smith, Smith* v. *Thompson* (1902) 71 L.J.Ch. 411; *Re Turner, Barker* v. *Ivimey* [1897] 1 Ch. 536; *Re Second Dulwich 745th Starr-Bowkett Building Society* (1899) 68 L.J.Ch. 196; *Re Grindey, Clews* v. *Grindey* [1898] 2 Ch. 593; *Perrins* v. *Bellamy* [1899] 1 Ch. 797; *Re Lord de Clifford* [1900] 2 Ch. 707.
[6] *Re Claridges' Patent Asphalte* [1921] 1 Ch. 543 (where directors acted upon an opinion of counsel that the act was intra vires).
[7] *Re Gilt Edge Safety Glass, Ltd.* [1940] Ch. 495.
[8] *Re Neath Harbour Works* (1887) 35 W.R. 827.

such payments are honestly made and in the ordinary course of business, it is usual for the court to allow them, as where a charge on calls is given to prevent the ruin of an insurance company,[9] or a contract for sale of goods is completed by sale and delivery.[10] In sanctioning dispositions the court is guided by the same principles as those applied by the court in bankruptcy to 'protected transactions'.[11] Directors should, however, be on their guard what they do after petition presented.[12]

The acceptance of a bill of exchange in the ordinary course of business by a director after commencement of a voluntary winding up is not capable of being sanctioned under the section, the directors being *functi officio* (**ss. 285, 296**).

Statutory Penalties

The Act of 1908 imposed a number of penalties for breach of its provisions. The Acts of 1929 and 1947 added many further provisions for penalties, and it may now fairly be said that there are very few requirements of the Act which are not fortified with penalties in case of default. Fines are in many cases imposed on the company and upon any 'officer who is in default', and, in some cases, imprisonment is mentioned. The meaning of 'officer who is in default' is explained in **s. 440**, which provides as follows:—

440.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression 'officer who is in default' means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Application of Funds ultra vires the Company

If directors apply funds of the company to purposes which are ultra vires the company, they are liable to replace them, however honestly they may have acted.[13] In *Cullerne* v. *London, etc., Society*, Lindley L.J. said:—[14]

'If a director, acting ultra vires, that is, not only beyond his own power, but also beyond any power the company can confer on him, parts with money of the company, I fail to see on what principle the fact that he acted bona fide and with the approval of the majority of the shareholders can avail him as a defence to an action by the company to compel him to replace the money'.

This is a hard saying in cases where directors have honestly misinterpreted their powers under an ambiguous memorandum[15]; but it is the

[9] *Re International Life Assurance Society* (1870) L.R. 10 Eq. 312.
[10] *Re Wiltshire Iron Co.* (1868) L.R. 3 Ch.App. 443.
[11] *Re Repertoire Opera Co.* (1895) 2 Manson 314.
[12] *Ibid.*; and see *Re Park, Ward & Co.* [1926] Ch. 828, *post*, p. 386.
[13] *Cullerne* v. *London, etc., Society* (1890) 25 Q.B.D. 485.
[14] *Ibid.* at p. 490.
[15] *London Financial Association* v. *Kelk* (1884) 26 Ch.D. 107.

inexorable logic of the law. Such a case would be an eminently proper one for relief under s. 448.[16]

Remedies against Directors

The civil remedy of a company against a delinquent director, whether for negligence, fraud, misfeasance, or breach of trust, is, whilst the company is a going concern, by action.[17] If the company is being wound up, the remedy is, except where the parties are not amenable to the winding-up jurisdiction, under **s. 333** of the Act, commonly known as the ' misfeasance section ', which gives power to the court, in a summary way, to order any director or officer of the company who has been guilty of misfeasance to replace the moneys misapplied or to pay compensation.

An application under the section may be made by either the official receiver or the liquidator or a creditor or contributory.

Criminal Liability for Fraud

By the Larceny Act, 1861, s. 84:—

' Whosoever being a manager, director or public officer of any body corporate or public company shall make, circulate or publish or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court may award as hereinbefore last mentioned '.

The punishments ' hereinbefore last mentioned ' were ' To be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement '.

Criminal liability of directors for fraud.

A prospectus is a ' written statement ' within this section. It was under this section that the directors of Overend, Gurney & Co. were prosecuted[18]; and in *R. v. Kylsant*,[19] it was held that a prospectus may be false in a ' material particular ' within this section, though it contains no specific false statement, if the prospectus as a whole is misleading. By **s. 334** of the Act of 1948 the court may direct the liquidator of a company in winding up by the court to institute a prosecution against the directors, managers or officers, or members, for criminal offences committed by them, or to refer the matter to the Director of Public Prosecutions, and the liquidator in a voluntary winding up is required to report such matters to the Director of Public Prosecutions with power, if the Director does not take up the matter, to prosecute the delinquents

[16] *Re Claridges' Patent Asphalte Co.* [1921] 1 Ch. 543.
[17] *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 381; *Nant-y-glo, etc., Co.* v. *Grave* (1878) 12 Ch.D. 738.
[18] *Queen* v. *Gurney* (1870) Finlason 254.
[19] [1932] 1 K.B. 442.

with the sanction of the court. The difficulty of working these sections lies in the fact that the costs of the proceedings come out of the assets, in other words, out of the pockets of creditors or shareholders, who are naturally indisposed to have public justice vindicated at their expense. The question was very carefully considered by Buckley J. in *Re London and Globe Finance Corp.*,[20] and the test he there adopted was what would a good citizen feel to be his duty in the matter—if to prosecute, then a prosecution ought to be directed by the court, even against the wishes of the persons entitled to the assets.

By **s. 44** of the Act of 1948,[21] where a prospectus includes any untrue statement, any person who issued the prospectus is to be liable to imprisonment or a fine or both, unless he proves that the statement was immaterial or that he had reasonable ground to believe and did believe the statement. By **ss. 46** (**a**) and **30** (**5**)[22] a statement in a prospectus or statement in lieu of prospectus is to be deemed untrue if it is misleading in the form and context in which it is included. This seems to confirm the principles laid down in *R.* v. *Kylsant*[23] and other cases.

Directors who pay dividends out of capital are not only civilly liable but may be liable in some cases for conspiracy.[24]

The Act of 1948 also contains several penal sections. By **s. 329**[25] if any officer or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company, with intent to defraud or deceive any person, he is to be guilty of a misdemeanour, and liable to two years' imprisonment with or without hard labour. By **s. 438**, where any person in any return, report, certificate, balance sheet or other document required by or for the purposes of any of the provisions of the Act specified in the **Fifteenth Schedule** wilfully makes a statement false in any material particular knowing it to be false, he is to be guilty of a misdemeanour. And by **s. 441**[26] if, on application to a Judge in Chambers there is shown to be reasonable cause to believe that any person has, while an officer of the company, committed an offence in connection with its affairs, an order may be made for the inspection of books or papers.

Indemnity to Directors

Directors, as agents, are by law entitled to indemnity in respect of all liabilities properly incurred by them in the management of the company's business.[27] This extends to costs incurred by an agent in defending a libel action in connection with a report made by him for the company[28]; and no express provision for that purpose is necessary; but the articles

[20] [1903] 1 Ch. 728.
[21] Re-enacting s. 66 of the Act of 1947.
[22] Re-enacting s. 68 (3) of the Act of 1947.
[23] [1932] 1 K.B. 442.
[24] *Burnes* v. *Pennell* (1849) 2 H.L.C. 497; *R.* v. *Esdaile* (1858) 1 F. & F. 213.
[25] Re-enacting s. 272 of the Act of 1929.
[26] Re-enacting s. 102 of the Act of 1947.
[27] *Re German Mining Co.* (1853) 4 De G.M. & G. 19; *James* v. *May* (1873) L.R. 6 H.L. 328.
[28] *Re Famatina Development Corporation* [1914] 2 Ch. 271.

commonly contain express provision on the subject, and where this is the case a right of indemnity may be and often is given more extensive than that implied by law.[29] The right does not, of course, extend to indemnity for wrongful or ultra vires acts of the agent.[30]

Directors who pay a dividend representing that it is paid out of profits cannot claim indemnity, but where directors pay a dividend to members who know that it is paid out of capital, they may have a right of indemnity as against such members[31]; yet the directors will primarily be ordered to make good the amount to the company.[32]

Directors are not entitled, unless the articles so provide, to be paid by the company their travelling expenses in attending board meetings.[33] Such expenses are not expenses incurred in the execution of their office within an indemnity clause.[34]

A person whose name has been inserted in a prospectus without his consent is entitled to be indemnified by the directors or other persons who authorised the issue of the prospectus (see **s. 43 (4)**).

Contribution of Directors for Liability

Where directors incur liability, *e.g.*, by engaging in some ultra vires transaction, they are all liable to contribute to meet the consequent liability; that is to say, if one is sued and has to pay the damages, he is entitled to call on the others, who are equally blameable, to contribute rateably to discharge the amount, for all directors who join in a misapplication of the company's property are jointly and severally liable, and the liability is in the nature of a breach of trust to which the equitable rule of contribution applies, thus excluding the old rule of common law which prevailed before the Law Reform, etc., Act, 1935, which by s. 6 made tortfeasors liable to contribution, inter se, that there is no contribution among tortfeasors.[35] But a director who has received the whole benefit of an unauthorised payment cannot claim contribution.[36]

S. 37 (3) of 1929 which provided that a director who became liable to pay compensation for misrepresentation in a prospectus could recover compensation 'as in cases of contract' from any other person who if sued separately would have been liable to pay, unless the director who had so become liable was and the other person was not, guilty of fraudulent misrepresentation, is repealed. Even before the Law Reform Act of 1935 it excluded the rule against contribution among tortfeasors.[37] Contribution can be claimed against the executors of a deceased director.[38]

[29] *Re Pyle Works (No. 2)* [1891] 1 Ch. 173, at p. 184.
[30] *Smith* v. *Duke of Manchester* (1883) 24 Ch.D. 611.
[31] *Worham* v. *Grant* [1900] 1 Q.B. 88.
[32] *Re Alexandra Palace Co.* (1882) 21 Ch.D. 149; *Re National Funds* (1878) 10 Ch.D. 118.
[33] *Young* v. *Naval and Military, etc., Society* [1905] 1 K.B. 687.
[34] *Marmor, Ltd.* v. *Alexander* [1908] S.C. 78 (Ct. of Sess.); *Re Brazilian Rubber, etc.* (1911) 27 T.L.R. 109.
[35] *Ashurst* v. *Mason* (1875) L.R. 20 Eq. 225; *Ramskill* v. *Edwards* (1885) 31 Ch.D. 100; *Re Engleficld Colliery Co.* (1877–8) 8 Ch.D. 388; *Re Anglo-French, etc., Society* (1882) 21 Ch.D. 501; and see R.S.C., Ord. XVIA.
[36] *Walsh* v. *Bardsley* (1931) 47 T.L.R. 564.
[37] *Gerson* v. *Simpson* [1903] 2 K.B. 197.
[38] *Shepheard* v. *Bray* [1906] 2 Ch. 235; [1907] 2 Ch. 571.

CHAPTER 17

DIVIDENDS AND PROFITS

Dividend paying incident to Trading

THE Companies Acts, except in Table A, where applicable, have never contained any express provisions as to the payment of dividends; and although the powers of a company are limited by its objects, the Act treats the power to pay dividends as an object of every company so obvious and inherent as not to need mention in the memorandum, but properly left to be dealt with and defined by the articles (Companies Act, 1948, **s. 59 (c)**, and **Table A, cl. 114**), and this is consonant with common sense, for the main object of the Acts was, and is, to enable people to trade with limited liability, and the chief incentive to all such trading is the profits derived from such trading **Table A**—which is to apply to all companies limited by shares, unless excluded—provides, by **cll. 114–116** for the payment of dividends out of profits. Where Table A does not apply, the articles generally contain specific provisions as to the payment of dividends.

But there is no principle which compels a company while a going concern to divide the whole of its profits among the shareholders. How the company shall deal with such profits is a matter of management and internal economy.

Power to declare Dividends

In framing these provisions the usual plan is to provide that 'the company in general meeting' (see **Table A, cl. 114**), or 'the directors with the sanction of a general meeting', may declare a dividend. Occasionally, however, the power to declare dividends is vested in the directors alone, and in many cases they are given the power to pay interim dividends.

Proportion in which Dividends payable

One of the most important points which the articles have to determine in reference to dividends is in what proportion the dividends are to be made payable as between the members. The provision as to this, contained in Table A (of 1862), was that the dividend was to be paid 'to the members in proportion to their shares'. This means in proportion to the nominal amount of the capital held by them respectively. And the result of such a provision is to give the same dividend per share to shares of the same amount, even where more is paid up on some than on others.[1]

Some persons consider this principle of distribution inequitable, and not without reason, and it is consequently very common, in the articles.

[1] *Oakbank Oil Co.* v. *Crum* (1882) 8 App.Cas. 65.

to provide that the dividend shall be distributed among the members ' according to the amounts paid or credited as paid on the shares ' (**Table A, cl. 118**). This gives a rateable dividend on the paid up capital; but this again fails to satisfy ideal justice, because it does not take account of the outstanding liability on the shares. Thus, if there are 10,000 fully paid up shares of £1 each, and 10,000 £1 shares on which only 5s. per share has been called and paid up, here the holders of the part-paid shares undoubtedly confer a substantial benefit on the company by enabling it to trade on the credit of the uncalled capital represented by their names. And yet for this they get no corresponding advantage. They take only the same dividend as if their shares were 5s. shares.

To meet this unfairness it is sometimes provided that the profits shall be applied, first in paying a dividend at the rate of—say—5 per cent. per annum on the paid up capital, and that the surplus shall be divided among the members in proportion to their shares. This seems, in a great measure, to do justice all round.

If the articles do not specify in what proportion dividends are to be paid, they must be paid in proportion to the nominal amount of the shares, for members are prima facie entitled to participate in the profits of a company in proportion to their respective interests therein, and the nominal amount of capital held by each is the measure of such interest.[2] A condition in a resolution declaring a dividend that enemy shareholders are to be paid out of enemy assets only, is void.[3]

When the articles expressly or impliedly provide for payment of dividends in proportion to the shares, provision can, if desired, be made for paying dividend in proportion to the capital paid up by altering the articles. **Section 59** of the Act authorises such payment, and the decision in *Andrews* v *Gas Meter Co.*,[4] makes it clear that such an alteration can be made.

Dividends on Preference or other Special Shares

The dividend on preference shares depends on the terms of issue. Such terms may be found in the memorandum,[5] or in the articles of association, or in the resolution creating the shares, or in some prospectus or other document offering them for subscription.[6]

The dividend on preference shares is usually at a fixed rate, *e.g.*, 5 per cent per annum on the capital paid up thereon. In some cases, as appears above,[7] it is cumulative; in other cases it is non-cumulative.

Preference shares sometimes confer a right to participate also in surplus profits. They are then called ' participating preference shares '.

Besides preference shares there may be other classes of shares with special dividend rights attached thereto.

In declaring a dividend, the rights of all these different classes must

[2] *Re Bridgwater, etc., Co.* (1889) 14 App.Cas. 525; *Oakbank Oil Co.* v. *Crum*, *supra*.
[3] *Aramayo Francke Mines* v. *Public Trustee* [1922] 2 A.C. 406.
[4] [1897] 1 Ch. 361.
[5] *Ashbury* v. *Watson* (1885) 30 Ch.D. 376.
[6] *Webb* v. *Earle* (1875) 20 Eq. 556.
[7] *Ante*, p. 64.

be observed. Any infringement, or attempted infringement of their respective rights will give to the members who are prejudiced, the right to apply for an injunction or other relief.

Payment out of Profits

Points to be observed in declaring dividends.

In declaring dividends certain important points have to be borne in mind, *viz.*:—

1. Dividends are only to be paid out of profits, not out of capital.[8] Except as permitted under **s. 65** of the Act.[9]
2. Payment out of capital is ultra vires, for it amounts to a reduction of the paid up capital, and no such reduction is allowable.
3. Even if such payment is expressly authorised by the memorandum of association, or by the articles of association, or by special resolution, it is, except as aforesaid, equally ultra vires, for these documents cannot repeal the Act.[10]
4. Much less can the sanction of a general meeting justify it [11]
5. Directors who are parties to the payment of a dividend out of capital, except as aforesaid, are prima facie jointly and severally liable to repay the amount.[12]
6. Directors who are parties to the payment of a fictitious dividend in order to raise the price of the company's shares, may be criminally liable for conspiracy.[13]

Modern decided cases militating against above rule.

The rule prohibiting payment of dividend out of capital as formerly understood was very much modified by some far-reaching decisions of the Court of Appeal, of which the following are the most important:— *Lee* v. *Neuchatel Asphalte Co.*[14]; *Verner* v. *General Commercial Trust*[15]; and *Wilmer* v. *Macnamara*[16]; below referred to as the *Lee* v. *Neuchatel* series of decisions. These decisions were very strongly criticised by the author at the time; but they have remained unaltered for many years and were followed and applied in *Ammonia Soda Co.* v. *Chamberlain*,[17] and *Lawrence* v. *West Somerset Ry.*,[18] and the principles based upon them and now generally accepted may be stated as follows:—

1. Dividend pre-supposes profit of some kind; but it is for the company to determine, by its articles or by resolution, what sort of profits are available for dividends, and if they do so, the court will not,

[8] *Flitcroft's Case* (1882) 21 Ch.D. 519; *Leeds Estate, etc.* v. *Shepherd* (1887) 36 Ch.D. 787; *Re Sharpe* [1892] 1 Ch. 154.
[9] *Foster* v. *New Trinidad Lake Asphalt Co.* [1901] 1 Ch. 208; *Fisher* v. *Black and White Publishing Co.* [1901] 1 Ch. 174.
[10] *Trevor* v. *Whitworth* (1887) 12 App.Cas. 409.
[11] *Flitcroft's Case* (1882) 21 Ch.D. 519.
[12] *Flitcroft's Case, supra.*
[13] See *per* Lord Campbell L.C., *Burnes* v. *Pennell* (1849) 2 H.L.C. 497, at p. 525, and *R.* v. *Esdaile* (1858) 1 F. & F. 213.
[14] (1889) 41 Ch.D. 1.
[15] [1894] 2 Ch. 239.
[16] [1895] 2 Ch. 245
[17] [1918] 1 Ch. 266 (C.A.).
[18] [1918] 2 Ch. 250.

subject to what follows, interfere, however illusory or unsound the principle adopted for arriving at profits may be.

2. In determining what sort of profit is to be divisible, the company must conform to the rule that dividends must not be paid out of capital or out of borrowed money; but 'capital' in this proposition means the capital paid up on the shares, and the capital assets acquired therewith.
3. To divide the net income arising from a company's property is not to be regarded as in any sense a return of capital, even when the income arises from a wasting property acquired by an expenditure of capital, for instance, from a lease of ten acres of coal, one acre of which is worked out each year.
4. Therefore, though an express power in the memorandum to return capital to shareholders can only be exercised with the sanction of the court, a power in the articles to apply the proceeds arising from a wasting property in paying dividends, is free from objection, although the result is much the same [19]
5. Loss or depreciation of 'fixed' capital does not affect the profits available for dividend, or render it necessary to make good the same out of income. 'Fixed capital' here is used in the sense in which the economists use the expression, and is not confined to property physically fixed. Thus, the ships of a shipping company and the rolling stock of a railway company are fixed capital [20]
6. But in ascertaining profit for a particular period, loss or depreciation of 'circulating' capital must be taken *into account*. Circulating capital means here capital which performs its whole office by a single use, *e.g.*, the goods which the merchant has for sale, he sells out-and-out and gets the money in exchange; the goods which the tradesman uses up in doing repairs for a customer; the horses of a horse-dealer.
7. Accretions to capital, *when realised*, may be brought into the profit and loss account and dealt with accordingly,[21] and see *Re Spanish Prospecting Co.*[22] where the meaning of the term 'profits' is discussed; and *Evling* v. *Israel and Oppenheimer, Ltd.*,[23] where the distinction is drawn between profits in the wider sense and profits available for dividend. On the principle of these cases accretions to capital not realised but immediately realisable and proved to exist can apparently be brought in as profits, but this seems never to have been expressly authorised and is subject to the risk of the valuation, which is relied upon as proving the accretions to capital values, proving mistaken.

[19] *Lee* v. *Neuchatel, etc., Co.* (1889) 41 Ch.D. 1.
[20] See *Company Precedents*, Pt. I, 15th ed., pp. 819 *et seq.*; *Verner* v. *General and Commercial, etc., Trust* [1894] 2 Ch. 239, at p. 268.
[21] *Lubbock* v. *British Bank of S.A.* [1892] 2 Ch. 198; *Foster* v. *New Trinidad Co.* [1901] 1 Ch. 208.
[22] [1911] 1 Ch. 92.
[23] [1918] 1 Ch. 101.

8. A legal mode of ascertaining the profits of a particular period, if the articles so provide, is to take an account of the ordinary outgoings, and, in so far as the receipts exceed the outgoings and the loss of circulating capital during such period, the same may be treated as profit without making good previous losses even of circulating capital.[24]
9. A balance sheet need not state the actual value at the moment of all the company's assets. It may show what the particular assets cost and what has been written off for depreciation, but not necessarily what they are worth. Thus, if a company buys a property for £10,000 and the value has fallen to £1,000, it can still legally be entered in the balance sheet as property that cost £10,000. But the balance sheet must make it clear that the £10,000 represents the cost price, and the amount written off for depreciation must be shown and deducted. (See **s. 149** and the **Eighth Schedule, cl. 5** (1) and (3)).
10. Profits carried to reserve remain profits unless capitalised.[25]
11. Under the earlier Acts it was held that premiums on the issue of shares might be treated as profits,[26] but this was altered by s. 72 of the Act of 1947, and now by **s. 56** of the Act of 1948, where a company issues shares at a premium, the amount of the premium is to be transferred to 'The share premium account' and the provisions as to reduction of capital are to apply as if the share premium account were paid up share capital of the company.

    The account may, however, be used to pay up bonus shares as well as preliminary expenses and underwriting commission (**s. 56** (2)). The amount of the share premium account must be shown in the balance sheet.
12. Sums written off out of past profits as depreciation of fixed capital may be applied as profits, if owing to the real value of the fixed assets no depreciation has in fact taken place.[27] Profits written off against goodwill can be treated in the same way.[28]
13. Goodwill cannot be distributed as profit [29]
14. A profit resulting from the payment off by the company of its debentures at less than par cannot be distributed if there has been a corresponding depreciation in the value of the capital assets of the company.[30]

Observations on the above decided cases.

Cases earlier than the *Lee* v. *Neuchatel* series of decisions pointed to the conclusion, that a dividend can only be paid out of profits ascertained

[24] *Bosanquet* v. *St. John del Rey* (1897) 77 L.T. 206, *Re National Bank of Wales* [1899] 2 Ch. 629.
[25] *Re Hoare & Co., Ltd.* [1904] 2 Ch. 208.
[26] *Re Hoare & Co., Ltd., ubi sup.*, at pp. 212, 213; *Drown* v. *British Gaumont, etc* [1937] Ch. 402.
[27] *Bishop* v. *Smyrna Ry. Co.* [1895] 2 Ch. 596; *Ammonia Soda Co.* v. *Chamberlain* [1918] 1 Ch. 266, at pp. 288–290.
[28] *Stapley* v. *Read Bros., Ltd.* [1924] 2 Ch. 1.
[29] *Re Spanish Prospecting Co.* [1911] 1 Ch. 92, at p. 105.
[30] *Wall* v. *London and Provincial Trust* [1920] 2 Ch. 582.

by a proper profit and loss account and balance sheet, as commercial men generally ascertain profits, throughout the world. This was the view of Jessel M.R., as appears from the decision in *Re Ebbw Vale Co.*[31] And the Act of 1877 was undoubtedly passed with a view to enabling a company which had lost capital to write it off, and thereby to put itself in a position to resume payment of dividend. These views have been modified, but not entirely displaced, by the *Lee* v. *Neuchatel* series of decisions. See the dicta of the Law Lords in *Dovey* v. *Cory*,[32] and of Farwell J. in *Bond* v. *Barrow Hæmatite*.[33] In *Dovey* v. *Cory* it was sought to make a director responsible in respect of dividends paid out of capital. The Court of Appeal had decided in his favour on two grounds (1) that he had been deceived by those whom he was entitled to trust; and (2) that the dividends were not in fact paid out of capital; and in regard to the second ground of decision the court reiterated and to some extent expanded the propositions laid down in the *Lee* v. *Neuchatel* series of decisions. But the House of Lords, during the argument before it, showed a marked disinclination to agree to those propositions, and ultimately, whilst affirming the decision on the first ground, declined to express any opinion on the propositions laid down in the Court of Appeal

Bond v. *Barrow Hæmatite Co.*[33] was a case of a steel manufacturing company which for the purpose of making steel had bought collieries and mines and erected blast furnaces and cottages. By the surrender of the leases and otherwise a loss had been incurred, and it was contended for the plaintiff that, notwithstanding this loss, the company could apply its current income in paying dividends. But the learned judge held that the mines, blast furnaces and cottages were in the circumstances to be regarded as 'circulating capital', and that, as this at any rate must be made good before dividends could be paid, the company was not in a position to pay dividends. In referring to *Verner* v. *General and Commercial Investment Trust*[35] and to the propositions laid down therein by Lindley L.J. that fixed capital may be sunk and lost and yet that the excess of current receipts over current payments may be divided, he said: 'I do not understand his Lordship to be laying down a general and universal rule that in every company fixed capital may be sunk and lost, but that there are companies in which that may be the case. All the authorities, however, agree, I think, that circulating capital must be kept up'. And referring to the decision in *Lee* v. *Neuchatel Co.*,[36] which was cited as an authority for the proposition that no company owning wasting property need ever create a depreciation fund, his Lordship said: 'In my opinion that is not the true result of the decision; the company's assets were larger than at its formation, and the court decided nothing more than the particular proposition that some companies with wasting assets

[31] (1877) 4 Ch.D. 827. And see *per* Stirling J., *Verner* v. *General Commercial, etc., Trust* [1894] 2 Ch. 239, at p. 245, and *per* Kay L.J. in the same case, at p. 268, and *per* Chitty J. in *Lubbock* v. *British Bank of S.A.* [1892] 2 Ch. 198.
[32] [1901] A.C. 477.
[33] [1902] 1 Ch. 353.
[35] [1894] 2 Ch. 239.
[36] (1889) 41 Ch.D. 1.

need have no depreciation fund. For instance, I cannot think that it would be right for the defendant company to purchase out of capital the last two or three years of a valuable patent and distribute the whole of the receipts in respect thereof as profits without replacing capital expended in the purchase '.

Profits are usually ascertained on strict business principles.

Meanwhile, in practice, companies, as a general rule, ascertain their profit on sound business principles, and do not distribute in dividends the whole of the profits which, under the *Lee* v. *Neuchatel* series of decisions, they may be legally entitled to treat as such, without making at least reasonable provisions for meeting losses on capital.

Generally, where capital has been lost or is unrepresented by available assets, companies take steps to reduce their capital, and the court never insists that reduction is needless, having regard to the *Lee* v. *Neuchatel* series of decisions.

Shareholders who have, with full knowledge of the facts, received dividends paid out of capital cannot keep such dividends and at the same time take proceedings against the directors to compel them to replace the amount of the dividend. Such a course would obviously be most inequitable.[37]

But where dividends are paid on the representation of the directors that they are being paid out of profits, the shareholders are not accountable or precluded from suing.[38]

Guaranteed dividends.

An arrangement between a vendor and the company to guarantee certain dividends for a specified period may be valid if it involves merely the personal liability of the vendor.[39] But such an arrangement is void as against the creditors of the company if the dividends thus become payable directly or indirectly out of the purchase price.[40]

If the guarantor makes payments under his guarantee, he cannot, even under the express terms of his guarantee, claim to be repaid by the company, except out of profits which ultimately become available for the shareholders.[41]

Declaration of Dividends

The articles commonly provide for the directors, with the sanction of a general meeting, declaring dividends; but sometimes, as in Table A, the clause runs that ' the company in general meeting may declare dividends ' (see **cl. 114**). The company has power prima facie to set aside a reserve fund before declaring a dividend,[42] but such power may be negatived by the memorandum or articles.[43]

[37] *Towers* v. *African Tug Co.* [1904] 1 Ch. 558.
[38] *Flitcroft's Case* (1882) 21 Ch.D. 519.
[39] *Ex p. Jegon* (1879) 12 Ch.D. 503.
[40] *Re Menell et Cie* [1915] 1 Ch. 759.
[41] *Re Walters' Deed of Guarantee* [1933] Ch. 321.
[42] *Re Buenos Ayres Great Southern Ry.* [1947] Ch. 384.
[43] *R. Paterson & Sons, Ltd.* v. *Paterson* [1916] W.N. 352; *Evling* v. *Israel and Oppenheimer, Ltd.* [1918] 1 Ch. 101.

Where a dividend is declared and becomes payable, it is a debt, and each shareholder is entitled to sue the company for his proportion.[44] Until declaration, the shareholders' right to sue does not arise.[45]

Limitation of time for suing company.

The effect of the articles combined with the certificate, which is always under seal, is to constitute the right to the dividends a specialty debt, and accordingly the shareholder has twelve years in which to recover it.[46] The decision to this effect [46] proceeds on the footing that the dividends are specialty debts, because the certificates of title are under seal; but *quære* whether this is sound.

Forfeiture of unclaimed dividends.

Sometimes the articles of association (see clause 76 of Table A of 1862) fix a shorter period, and provide for forfeiture if not claimed within that period; but the London Stock Exchange Committee objects to such a clause, and the clause does not appear in **Table A** of 1948. Relief against forfeiture would probably be given in most cases. It has been held in an Irish case that such a clause will be strictly construed.[47] No relief appears to have been claimed in that case.

The person entitled to the dividend is prima facie the person on the register at the time of declaration.

Declared but unpaid dividend passing on transfer.

A transfer of shares, after dividend declared, does not, as against the company, carry the dividend, even where the transferee has expressly bought cum div.; but, as between a buyer and seller of shares, the buyer is entitled to all dividends declared after the date of the contract for sale, unless otherwise arranged.[48]

Apportionment of dividends between tenant for life and remainderman.

As between tenant for life and remainderman, dividends, whenever declared, are apportionable under the Apportionment Act, 1870[49]; unless apportionment is excluded by the terms of the settlement or will.[50] Cumulative dividends are dividends for the year in which they are declared, though they may include recoupment of arrears.[51] Where, under a scheme, funded certificates were issued in respect of arrears of preference dividend, the certificates were held to be income of the year in which they were issued.[52] But where the amount of the arrears differed owing to the different dates of issue of the shares, it was held that dividends ought to be declared in proportion to the amount of arrears

[44] *Re Severn, etc., Ry.* [1896] 1 Ch. 559.
[45] *Bond* v. *Barrow Hæmatite Steel Co.* [1902] 1 Ch. 353.
[46] *Re Artizans' Land and Mortgage Corp.* [1904] 1 Ch. 796; Limitation Act, 1939.
[47] *Ward* v. *Dublin North City Milling Co.* [1919] 1 Ir.R. 15.
[48] *Black* v. *Homersham* (1878) 4 Ex.D. 24; *Re Wimbush* [1940] Ch. 92 (a sale by trustees under the provisions of a will to a person to whom they were bound to offer them); and see *Re Kidner* [1929] 2 Ch. 121.
[49] *Re Oppenheimer* [1907] 1 Ch. 399; *Re Muirhead* [1916] 2 Ch. 181.
[50] *Re Edwards* [1918] 1 Ch. 142.
[51] *Re Wakley* [1920] 2 Ch. 205; *Re Marjoribanks* [1923] 2 Ch. 307.
[52] *Re Sandbach* [1933] 1 Ch. 505.

need have no depreciation fund. For instance, I cannot think that it would be right for the defendant company to purchase out of capital the last two or three years of a valuable patent and distribute the whole of the receipts in respect thereof as profits without replacing capital expended in the purchase '.

Profits are usually ascertained on strict business principles.

Meanwhile, in practice, companies, as a general rule, ascertain their profit on sound business principles, and do not distribute in dividends the whole of the profits which, under the *Lee* v. *Neuchatel* series of decisions, they may be legally entitled to treat as such, without making at least reasonable provisions for meeting losses on capital.

Generally, where capital has been lost or is unrepresented by available assets, companies take steps to reduce their capital, and the court never insists that reduction is needless, having regard to the *Lee* v. *Neuchatel* series of decisions.

Shareholders who have, with full knowledge of the facts, received dividends paid out of capital cannot keep such dividends and at the same time take proceedings against the directors to compel them to replace the amount of the dividend. Such a course would obviously be most inequitable.[37]

But where dividends are paid on the representation of the directors that they are being paid out of profits, the shareholders are not accountable or precluded from suing.[38]

Guaranteed dividends.

An arrangement between a vendor and the company to guarantee certain dividends for a specified period may be valid if it involves merely the personal liability of the vendor.[39] But such an arrangement is void as against the creditors of the company if the dividends thus become payable directly or indirectly out of the purchase price.[40]

If the guarantor makes payments under his guarantee, he cannot, even under the express terms of his guarantee, claim to be repaid by the company, except out of profits which ultimately become available for the shareholders.[41]

Declaration of Dividends

The articles commonly provide for the directors, with the sanction of a general meeting, declaring dividends; but sometimes, as in Table A, the clause runs that ' the company in general meeting may declare dividends ' (see **cl. 114**). The company has power prima facie to set aside a reserve fund before declaring a dividend,[42] but such power may be negatived by the memorandum or articles.[43]

[37] *Towers* v. *African Tug Co.* [1904] 1 Ch. 558.
[38] *Flitcroft's Case* (1882) 21 Ch.D. 519.
[39] *Ex p. Jegon* (1879) 12 Ch.D. 503.
[40] *Re Menell et Cie* [1915] 1 Ch. 759.
[41] *Re Walters' Deed of Guarantee* [1933] Ch. 321.
[42] *Re Buenos Ayres Great Southern Ry.* [1947] Ch. 384.
[43] *R. Paterson & Sons, Ltd.* v. *Paterson* [1916] W.N. 352; *Evling* v. *Israel and Oppenheimer, Ltd.* [1918] 1 Ch. 101.

Where a dividend is declared and becomes payable, it is a debt, and each shareholder is entitled to sue the company for his proportion [44] Until declaration, the shareholders' right to sue does not arise.[45]

Limitation of time for suing company.

The effect of the articles combined with the certificate, which is always under seal, is to constitute the right to the dividends a specialty debt, and accordingly the shareholder has twelve years in which to recover it.[46] The decision to this effect [46] proceeds on the footing that the dividends are specialty debts, because the certificates of title are under seal; but *quære* whether this is sound.

Forfeiture of unclaimed dividends.

Sometimes the articles of association (see clause 76 of Table A of 1862) fix a shorter period, and provide for forfeiture if not claimed within that period; but the London Stock Exchange Committee objects to such a clause, and the clause does not appear in **Table A** of 1948. Relief against forfeiture would probably be given in most cases. It has been held in an Irish case that such a clause will be strictly construed.[47] No relief appears to have been claimed in that case.

The person entitled to the dividend is prima facie the person on the register at the time of declaration.

Declared but unpaid dividend passing on transfer.

A transfer of shares, after dividend declared, does not, as against the company, carry the dividend, even where the transferee has expressly bought cum div.; but, as between a buyer and seller of shares, the buyer is entitled to all dividends declared after the date of the contract for sale, unless otherwise arranged.[48]

Apportionment of dividends between tenant for life and remainderman.

As between tenant for life and remainderman, dividends, whenever declared, are apportionable under the Apportionment Act, 1870 [49]; unless apportionment is excluded by the terms of the settlement or will.[50] Cumulative dividends are dividends for the year in which they are declared, though they may include recoupment of arrears.[51] Where, under a scheme, funded certificates were issued in respect of arrears of preference dividend, the certificates were held to be income of the year in which they were issued.[52] But where the amount of the arrears differed owing to the different dates of issue of the shares, it was held that dividends ought to be declared in proportion to the amount of arrears

[44] *Re Severn, etc., Ry.* [1896] 1 Ch. 559.
[45] *Bond* v. *Barrow Hæmatite Steel Co.* [1902] 1 Ch. 353.
[46] *Re Artizans' Land and Mortgage Corp.* [1904] 1 Ch. 796; Limitation Act, 1939.
[47] *Ward* v. *Dublin North City Milling Co.* [1919] 1 Ir.R. 15.
[48] *Black* v. *Homersham* (1878) 4 Ex.D. 24; *Re Wimbush* [1910] Ch. 92 (a sale by trustees under the provisions of a will to a person to whom they were bound to offer them); and see *Re Kidner* [1929] 2 Ch. 121.
[49] *Re Oppenheimer* [1907] 1 Ch. 399; *Re Muirhead* [1916] 2 Ch. 181.
[50] *Re Edwards* [1918] 1 Ch. 142.
[51] *Re Wakley* [1920] 2 Ch. 205; *Re Marjoribanks* [1923] 2 Ch. 307.
[52] *Re Sandbach* [1933] 1 Ch. 505.

outstanding.[53] If no dividend is declared by the company in respect of the period of the life of the tenant for life, nothing will be payable to him, even though the company has earned profits during that period.[54]

Interim dividends.

An interim dividend is a dividend declared at any time between two annual general meetings. The period in respect of which an interim dividend is declared depends on the wording of the resolution.[55]

Bonus.

When a company declares a bonus or special dividend, the question whether it is to be treated as capital or income depends on the manner in which the company has elected to treat it. Some or all has been held to be dividend in *Price* v. *Anderson*,[56] *Re Hopkins' Trusts*,[57] *Re Alsbury* [58] (where a cash payment was called a special bonus); and *Re Piercy* [59]; and even though paid in shares, in *Malam* v. *Hitchens*,[60] where the tenant for life was held entitled to the value of the dividend applied in acquiring the shares, the rest of the value of the shares being treated as capital. On an amalgamation of four companies, in addition to the shares in the new company allotted to the shareholders of one old company in exchange for shares in that company, further shares in the new company were allotted in respect of a reserve fund, and these were held to be income.[61]

Bonus shares have been treated as capital in *Re Barton's Trusts*,[62] *Bouch* v. *Sproule*,[63] *Jones* v. *Evans*,[64] *Re Ogilvie*,[65] where the articles had been altered so as to give power to capitalise; and *Re Hatton*,[66] where a bonus of 10s. was declared and a call of 10s. made on the same day; and see *Re Speir*,[67] where a gift in a will of ' dividends, bonuses and income ' was held not to include a capital bonus Where the company in fact retains the assets allocated to the bonus, the intention of the company to capitalise renders the bonus capital,[68] but the intention of the company cannot make a distribution capital, if it is not retained and capitalised but distributed in cash.[69]

Where a company had sold its business and distributed as dividend the whole balance in excess of its capital and liabilities, this was held to be capital.[70] The benefit of an option to take up new shares is capital.[71]

[53] *First Garden City* v. *Bonham-Carter* [1928] Ch. 53.
[54] *Re Armitage* [1898] 3 Ch. 337; *Re Sale* [1913] 2 Ch. 697.
[55] *Re Jowitt* [1922] 2 Ch. 442.
[56] (1847) 15 Sim. 473.
[57] (1874) L.R. 18 Eq. 696.
[58] (1890) 45 Ch.D. 237.
[59] [1907] 1 Ch. 289.
[60] [1894] 3 Ch. 578.
[61] *Re Thomas* [1916] 2 Ch. 331.
[62] (1868) L.R. 5 Eq. 238.
[63] (1887) 12 App.Cas. 385.
[64] [1913] 1 Ch. 23.
[65] [1919] W.N. 32.
[66] [1917] 1 Ch. 357.
[67] [1924] 1 Ch. 359.
[68] *Re Taylor* [1926] Ch. 923; *Inland Revenue Commissioners* v. *Wright* [1927] 1 K.B. 333.
[69] *Hill* v. *Permanent Trustee, etc., Ltd.* [1930] A.C. 720.
[70] *Davison* v. *King* [1927] N.I. 1, but it is difficult to reconcile this decision with *Re Bates* and *Hill* v. *Permanent Trustee Corporation*, *post*, p. 207.
[71] *Re Bromley* (1886) 55 L.T. 145; *Re Anson's Settlement* [1907] 2 Ch. 424.

By s. 60 of the Finance Act, 1947, a company must, on the issue of bonus shares, send a statement to the commissioners and the issue will be charged £10 per £100, ad valorem.

Dividends are prima facie payable in cash only.

In the absence of express authority in the articles, the company must pay dividends in cash It may not pay them by the distribution of, for example, shares in another company, or debentures.[72] But it is very common, now, for the regulations to contain a clause authorising the company to pay dividends in specie, *i.e.*, by the distribution of specific assets.[73]

Sending a dividend warrant by post will discharge the company, if payment by post is authorised.[74]

Dividends are payable in the currency of the country in which they are paid.[75]

Capitalising Profits

Cases often occur in which it is desired to capitalise undivided profits. If the issued shares are only part paid up, this can be done by declaring a bonus out of such profits and making a call payable at the same date. But more commonly what is desired is to issue paid-up bonus shares to the members and at the same time to carry from reserve to capital account a corresponding amount. Paid-up shares cannot strictly be issued unless they are paid up by someone other than the company, and accordingly it is usual to declare a bonus payable out of reserve (free of income tax), so that each member may have an individual right, and this can then be satisfied by the issue of paid-up shares.[76]

Many companies have, however, capitalised part of their assets without declaring a bonus, and this form of capitalisation has become the usual form, and is now sanctioned by **clause 128** of **Table A** of 1948. Strictly, it can only be justified, it is submitted, by holding that, though not called a dividend or bonus, it must have been so in fact, as the company could not otherwise have distributed it.[77] Whichever course is adopted, the liability for the purposes of taxation is apparently the same.[78] The bonus can only be paid out of profits available for distribution. Trustees who are authorised to postpone conversion may be authorised to retain bonus shares.[79] A bonus paid in cash, though declared by the company to be a capital distribution representing the sale of capital assets, is income.[80]

[72] *Hoole* v. *Great Western Ry.* (1867) L.R. 3 Ch.App. 262; *Wood* v. *Odessa, etc., Co.* (1889) 42 Ch.D. 636.
[73] See *Company Precedents*, Pt. I, 15th ed., p. 722.
[74] *Thairlwall* v. *Great Northern Ry.* [1910] 2 K.B. 509.
[75] *Adelaide Electric Co.* v. *Prudential Assurance Co.* [1934] A.C. 122.
[76] See, further, *Company Precedents*, Part I, 15th ed., pp. 722, 723.
[77] *Swan Brewery Co.* v. *The King* [1914] A.C. 231; *Inland Revenue Commissioners* v. *Wright* [1927] 1 K.B. at p. 348, *per* Scrutton L.J.
[78] *Swan Brewery* v. *The King* [1914] A.C. at p. 236.
[79] *Re Whitfield* [1920] W.N. 256.
[80] *Re Bates* [1928] Ch. 682; *Hill* v. *Permanent Trustee Corpn.* [1930] A.C. 720; *Re Doughty, Burridge* v. *Doughty* [1947] Ch. 263, disapproving, if not actually overruling, *Re Ward's Will Trusts* [1936] Ch. 704.

A bonus issued in the form of fully paid shares of the company is not income for the purpose of surtax.[81]

The capital redemption reserve fund arising from the redemption of redeemable preference shares can be applied in paying up bonus shares (**s. 56 (2)**).

Dividends during Construction

It was long since settled that the payment of interest out of capital during the construction of a company's works was within the principle that a company cannot pay dividends out of capital.[82] This rule occasioned great inconvenience; and in 1907 the Legislature, in s. 9 of the Companies Act, 1907, now **s. 65** of the Act of 1948, allowed interest to be paid subject to conditions designed to prevent any abuse. **Section 65** contains an amendment made by s. 120 (3) of the Act of 1947 whereby the Treasury can vary the rate of interest payable.[83]

Dividend Warrants

Every dividend warrant must show—

(a) the gross amount of the dividend;

(b) the rate and the amount of the income tax; and

(c) the net amount actually paid.[84]

Agreements for Remuneration by Share of Profits

Similar rules apply for the ascertainment of profits for this purpose as for the purpose of dividend.[85] But profits are limited to the profits made by the company while a going concern[86]; and income tax should not be deducted for the purpose of ascertaining the amount of the profits.[87] Excess profits duty, when payable, had to be deducted for the purpose of ascertaining 'net profits' or 'profits available for distribution as dividend',[88] and the same rule probably applies to the profits tax.[89]

Where the commission is 10 per cent. of the profits after payment of 12½ per cent. dividend, the 12½ per cent. dividend is a dividend subject to income tax measured on the capital in each year.[90]

'Profits available for dividend' have been held to mean the profits which the directors consider should be divided after making provision for past losses.[91]

[81] See *post*, pp. 452, 453.
[82] *Re Alexandra Palace Co.* (1882) 21 Ch.D. 149; *Flitcroft's Case*, *ante*, p. 200.
[83] See Appendix 1, *post*.
[84] Finance Act, 1924, s. 33.
[85] *Re Spanish Prospecting Co.* [1911] 1 Ch. 92.
[86] *Frames* v. *Bultfontein Mining Co.* [1891] 1 Ch. 140.
[87] *Johnston* v. *Chestergate Hat, etc., Co.* [1915] 2 Ch. 338.
[88] *Collins* v. *Sedgwick* [1917] 1 Ch. 179; *Re Condran* [1917] 1 Ch. 639; *Patent Castings Syndicate* v. *Etherington* [1919] 2 Ch. 254; *Vulcan Motor, etc., Co.* v. *Hampson* [1921] 3 K.B. 597.
[89] See *post*, p. 456.
[90] *Ramsden* v. *Sharratt & Sons* (1930) 35 Com.Cas. 314.
[91] *Long Acre Press, Ltd.* v. *Odhams Press* [1930] 2 Ch. 196; *Re Buenos Ayres Great Southern Ry.* [1947] Ch. 384.

CHAPTER 18

ACCOUNTS AND BALANCE SHEETS

Duty of Directors to Keep Accounts

DIRECTORS being agents, and in some sense trustees for the company (*ante*, p. 157), are under the clearest obligation to keep proper accounts of their receipts and payments, dealings and transactions on behalf of the company. It is one of the first duties of an agent to keep a clear account, and to communicate the contents of it to his principal.[1]

The Companies Acts down to and including the Act of 1908 contained no provisions requiring a company to keep accounts; but the Companies Act, 1929 (s. 122), introduced a statutory obligation to keep 'proper' accounts; and now **s. 147** of the Act of 1948, incorporating amendments introduced by s. 12 of the Act of 1947, provides as follows:—

Accounts and Audit.

147.—(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) For the purposes of the foregoing subsection, proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.[2]

The books must be kept at the registered office or at such other place as the directors think fit, and must be open to inspection by the directors; but they must not be kept outside Great Britain unless returns are sent to Great Britain every six months sufficient to enable the directors to prepare the next profit and loss account and balance sheet (**s. 147 (3)**).[3]

Directors' Report.

There must be attached to the balance sheet a report by the directors as to the state of the company's affairs and the amounts which they recommend to be paid as dividend or carried to reserve. It must deal, so far as material and not likely to prejudice the company, with any change in the nature of the company's business or its subsidiaries (**s. 157**).[4]

Balance sheets.

The directors must also lay before the company in general meeting at least once a year a profit and loss account and a balance sheet. A copy

[1] As Lord Eldon pointed out in *White* v. *Lincoln* (1803) 8 Ves. 363.
[2] Sub-s. (2) was added by s. 12 of the Act of 1947.
[3] Reproducing as to this last proviso s. 12 (2) of the Act of 1947.
[4] Reproducing s. 123 (2) of the Act of 1929, with some slight amendments.

of the balance sheet must be sent to all members entitled to attend and vote, twenty-one days before the meeting (**s. 158**).

The balance sheet must contain a summary of the capital (authorised and issued), liabilities and assets, showing how the values of the assets have been arrived at. The reserves, liabilities and fixed and current assets must be classified. Fixed assets must be distinguished from current assets and the method used to arrive at the amount of the fixed assets must be stated. The total amount paid to directors for their emoluments must also be shown. See p. 211, *post*.

Section 149 of the Act of 1948[5] also provides that every balance sheet must give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account must give a true and fair view of the profit or loss of the company for the financial year, and must comply with the **Eighth Schedule** to the Act. This schedule contains most elaborate provisions, many of which were introduced by the Act of 1947, as to the matters which must now appear in the balance sheets and profit and loss accounts They are quite impossible to summarise and must be studied in detail by anyone whose duty it is to prepare such documents.[6] Where the company is a holding company, there must be laid before the company in general meeting, with the balance sheet and profit and loss account, 'group accounts' being a consolidated balance sheet dealing with the state of affairs of the company and its subsidiaries, and a consolidated profit and loss account dealing with the profit or loss of the company and its subsidiaries (**s. 150**). The form and contents of these group accounts are set out in **ss. 151** and **152.**[7]

The balance sheet and profit and loss account of a holding and subsidiary company and the consolidated accounts of a holding company must comply with the requirements of **Part I** of the **Eighth Schedule** as modified by **Part II.**[8]

A holding company's directors must, except where they think there are good reasons to the contrary, see that the financial year of each subsidiary shall coincide with that of the holding company. The Board of Trade may approve of arrangements for facilitating this (**s. 153**).[9]

The Board of Trade has power to modify these requirements (**ss. 149** (**4**), **152** and **454**).

The balance sheet must be signed by two directors (**s. 155**) and the profit and loss account and consolidated accounts must be annexed to the balance sheet and approved by the directors before they sign the balance sheet (**s. 156**).

Subsidiary company defined.

The terms 'subsidiary company' and 'holding company' are defined by **s. 154** of the Act of 1948 A company is to be deemed to be a subsidiary company of another if the other (*i.e.*, the controlling company) is a member of it and controls the composition of its board of directors or

[5] Re-enacting s. 13 of the Act of 1947.
[6] See **Eighth Schedule**, Appendix 1, *post*.
[7] See Appendix 1, *post*
[8] See Appendix 1, *post*.
[9] Re-enacting s. 17 of the Act of 1947.

holds more than half in nominal value of its 'equity' share capital; or if it is a subsidiary of a third company which is a subsidiary of the controlling company.

'Equity' share capital is defined as meaning the issued share capital excluding shares which as regards both dividends and capital carry no right to participate beyond a specified amount in a distribution (**s. 154 (5)**).

The section contains complicated provisions for determining when the composition of a company's board of directors is controlled, and dealing with nominee shares and shares held in a fiduciary capacity.[10]

Directors' emoluments.

By **s. 196** of the Act of 1948 in any accounts laid before the company in general meeting, or in a statement annexed thereto, there must now be shown: (a) the aggregate amount of the directors' emoluments paid in respect of their services as directors of the company or of its subsidiary, or otherwise *in connection with the management of the affairs* of the company or any subsidiary thereof; (b) the aggregate amount of directors' or past directors' pensions, and (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office. 'Emoluments' includes fees and percentages and sums paid by way of expenses allowance.[11]

Loans to officers.

The accounts must also contain particulars of loans by the company or its subsidiary, or guaranteed or secured by them to any officer of the company or any person who became an officer within a year after the loan. The loans to be shown are loans made during the financial year or outstanding at the end of it. There are some exceptions in favour of loans made in the ordinary course of business and loans to employees. If any such loans are not disclosed, the auditors must deal with them in their report.[12]

If the company is wound up and it appears that proper accounts have not been kept for the preceding two years, directors or other officers may be liable to fine or imprisonment (**ss. 147, 148,** and **331**). The directors and auditors may also be liable for misfeasance.[13]

Where a balance sheet shows a debt due from a director, the company cannot sue the director on an account stated.[14]

Provisions of Articles

The articles usually provide for the keeping of proper books of account (cf **Table A. cll. 123–127**), and it is the duty of the directors to see that these books are kept; if they omit to do so, they commit a breach of duty, and are liable to the company in damages. The articles also usually

[10] See Appendix 1, *post*.
[11] For details as to how these items are to be calculated, see **s. 196 (3)–(9)**, Appendix 1, *post*.
[12] For further details see **s. 197**, Appendix 1, *post*.
[13] *Re Fulton & Co.* [1932] N.I. 35.
[14] *John Shaw & Sons (Salford)* v. *Shaw* [1935] 2 K.B. 113.

provide that no member is to have a right of inspecting any account, or book, or document, of the company 'except as conferred by statute, or authorised by the directors or by a resolution of the company in general meeting'. A provision of this kind will not disentitle a shareholder to claim production of copies of the balance sheets and auditors' reports (see **ss. 148** and **158**), or to inspect the register of members, or the register of mortgages; for a member has a statutory right to inspect these under the Act; but subject to these qualifications the provision is effective. Occasionally the articles give a wider right of inspection; but even where they provide that the books, wherein proceedings of the company are recorded, may be inspected, a member has no right to inspect the minute book of the proceedings of directors.[15]

The right of inspection includes a right to make extracts[16]; and it is not necessary for the shareholder seeking inspection to assign a reason[17]; but the right to take extracts is impliedly negatived where the Acts give a right to have copies on payment.[18] If need be, the shareholder can obtain an injunction to enforce his rights.

A director is entitled *virtute officii* to inspect[19]

A right of inspection given by the articles ceases on a voluntary winding up.[20]

On a winding up, compulsory or under supervision, the power of the court to order inspection of the register of members, or of the register of mortgages and charges, comes to an end[21]; but the court is invested by **s. 266** with a discretionary power to permit inspection by creditors or contributories.[22]

The articles generally provide that at the ordinary meeting in each year a profit and loss account for the past year, and a balance sheet, shall be submitted; and in the case of a public company, they generally go on to provide that copies of the account and balance sheet shall be sent to the members beforehand. In private companies it is sometimes provided that the documents are not to be printed or circulated; but such provisions are now overridden by the statutory provisions mentioned below.

The books of account are usually to be kept at the registered office of the company. This has the advantage of protecting them against a lien.[23] In *Re Rapid Road Transit Co.*[24] a solicitor's lien was preserved in a winding up.

[15] *R.* v. *Mariquita, etc., Co.* (1858) 1 E. & E. 289.
[16] *Mutter* v. *Eastern, etc., Co.* (1888) 38 Ch.D. 92; *Nelson* v. *Anglo-American Land, etc., Agency* [1897] 1 Ch. 130.
[17] *Holland* v. *Dickson* (1888) 37 Ch.D. 669.
[18] *Balaghat Mining Co.* [1901] 2 K.B. 665 (C.A.), overruling *Boord* v. *African Consolidated Co.* [1898] 1 Ch. 596.
[19] *Burn* v. *London and South Wales Coal Co.* [1890] W.N. 209; and see **s. 147 (3)**.
[20] *Re Yorkshire Fibre Co.* (1870) L.R. 9 Eq. 650; 18 W.R. 541, approved by Court of Appeal in *Re Kent Coalfields Syndicate* [1898] 1 Q.B. 754.
[21] *Re Kent Coalfields Syndicate, supra*; *Somerset* v. *Land Securities Co.* [1897] W.N. 29.
[22] *Re North Brazilian Sugar Factories* (1887) 37 Ch.D. 83.
[23] *Re Capital Fire Association* (1883) 24 Ch.D. 408; as to which see *Re Hawkes, Ackerman* v. *Lockhart* [1898] 2 Ch. 1.
[24] [1909] 1 Ch. 96.

Statutory Right to Copies

By **s. 158** of the Act of 1948, expanding the provisions of s. 130 of the Act of 1929, a copy of every balance sheet (with the documents required to be attached thereto) which is to be laid before the company in general meeting must be sent to every member of the company, whether or not he is entitled to receive notices of general meetings, and every debenture holder, at least twenty-one days before the meeting,[25] and this provision now applies to a private company except as to balance sheets laid before the company before July 1, 1948 (**s. 158 (4)**). There are exceptions in case of companies not having a share capital and of some joint holders. All the members entitled to attend and vote at the meeting can agree to accept documents sent less than twenty-one days before the meeting.[26]

Investigation by Inspectors

Under ss. 109 and 110 of the Act of 1908, provision was made for the appointment of inspectors by the Board of Trade or by a company to investigate the affairs of the company. By these sections, as amended by ss. 135 to 138 of the Act of 1929, the Board might appoint inspectors on the application of members holding one-third of the shares of a banking company or one-tenth of the shares of other companies or, if there was no share capital, one-fifth in number of the members. The Board might require security for costs, and necessary documents had to be produced. If the Board considered that a case had been made for a prosecution, they were to refer the matter to the Director of Public Prosecutions. Expenses were to be borne by the Board of Trade if a prosecution was instituted. Otherwise by the company, unless the Board directed the applicants to pay them. The company could also by special resolution appoint inspectors to operate in the same way.

This is a power which has been very rarely used, owing no doubt partly to the risk that the applicants may incur heavy expenses. The provisions of these sections have been amended and extended by **ss. 164** to **175** of the Act of 1948.

The powers of the Board of Trade to appoint inspectors are made exercisable in case of a banking company having a share capital in the same way as in the case of other companies and, in case of all companies having a share capital, on the application of 200 members, even if they hold less than one-tenth of the issued shares. Further, the Board *must* exercise this power if the company by special resolution or the court by order declares that the company's affairs ought to be investigated by an inspector appointed by the Board, and the Board *may* itself appoint inspectors, if it thinks that there are circumstances suggesting that the company's business is being conducted in such a manner as to defraud creditors, or oppressively or for a fraudulent or unlawful purpose, or that there has been fraud, misfeasance or misconduct by the officers, or ' that its members have not been given all the information with respect to its

[25] The period was seven days under the Act of 1929.
[26] See **s. 158**, Appendix 1, *post*.

affairs which they might reasonably expect'. This last provision meets a long-felt need in the case of some companies whose shareholders, or certain classes of them, have thought that they were being kept in the dark. The investigation may be extended to subsidiary companies (**s. 166**).

Other important new powers are conferred on the Board It may present a petition for winding up the company or for the protection of minorities under **s. 210** (**s. 169** (**3**)), or it may take proceedings in the name of the company for the recovery of property or damages in case of fraud, misfeasance or other misconduct (**s. 169** (**3**) and (**4**)) Expenses are now to be defrayed in the first instance by the Board, but the Board may recover them from any person convicted on a prosecution or out of money or property recovered by proceedings taken by the Board. If no prosecution is instituted, expenses may be recovered from the company or the applicants, but not where the investigation took place on the Board's own motion (**s. 170**).

This power is further made exercisable for the purpose of reporting on the membership of any company or for determining the persons who are or have been financially interested in the success or failure of the company.[27]

When an inspection takes place, an officer of the company is bound to answer questions put to him by the inspector.[28]

[27] See as to the procedure under these sections, **ss. 164** to **178**, Appendix 1, *post*
[28] *Re Gaumont-British Picture Corporation* [1940] Ch. 506.

CHAPTER 19

AUDIT

Appointment of Auditors

THE articles of a company usually provide for the appointment of auditors and a periodical audit of the accounts. But this matter is one of so much importance, both to the public and to shareholders, that it has, since the Act of 1900, been deemed advisable by the Legislature to regulate the matter by statute. The regulations dealing with this matter are now contained in **ss. 159** to **162** [1] of the Act. These provisions are sometimes incorporated by references in the articles.

By these sections, the first auditors may be appointed by the directors and a company must at each annual general meeting appoint an auditor or auditors, and they must be appointed to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting, and a retiring auditor is to be re-appointed without any resolution being passed unless he is not qualified or a resolution has been passed at the meeting that he should not be re-appointed or he has given notice in writing of his unwillingness to be re-appointed.

Where at an annual general meeting no auditor is appointed or re-appointed, the Board of Trade shall appoint a person to fill the vacancy.

When this arises the company must within one week send notices to the Board of Trade.

Special notice [2] of intention to nominate a person other than the retiring auditor must be given. A resolution that a retiring auditor shall not be re-appointed without the appointment of any other person requires the same notice.

The company must send a copy of the notice to the auditor forthwith.

Where such a notice has been given and the auditor makes representations in writing to the company and requests their notification to members of the company, the company shall in the notice of the resolution given to members state the fact of the representations having been made and send a copy of the representations to every member to whom notice of the meeting is sent, and, if not, the auditor may require the representations to be read out at the meeting.

Section 159 (7) of the Act of 1948 provides as follows:—

> (7) The remuneration of the auditors of a company—
>
> (*a*) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;
>
> (*b*) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

[1] See Appendix 1, *post*.
[2] See *ante*, p. 146.

For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression 'remuneration'.

By **s. 161** (embodying amendments introduced by the Act of 1947) a person cannot be appointed an auditor of a company unless he is a member of a body of accountants established in the United Kingdom and recognised for this purpose by the Board of Trade or authorised by the Board of Trade to be so appointed, and the following persons are disqualified from acting as auditors—

(a) an officer or servant of the company;

(b) a person who is a partner or in the employment of an officer or servant of the company. (This now applies to private companies except exempt private companies.);

(c) a body corporate;

(d) a person disqualified for appointment as auditor of a subsidiary or holding company.

An 'officer' in the Acts includes a director, manager or secretary (see **s. 455**).

Duties of Auditors

The auditors are bound to make a report *to the members* on the accounts examined by them and on every balance sheet laid before the company in general meeting. The duties of auditors as extended by s. 22 of the Act of 1947, are set out in **s. 162**.[3] They must report on every profit and loss account and on all group accounts, and the report must contain statements as to many matters, which are now set out in the **Ninth Schedule** to the Act. The **Ninth Schedule** provides as follows:—

MATTERS TO BE EXPRESSLY STATED IN AUDITORS' REPORT.

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.

2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3.—(1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(*a*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*b*) in the case of the profit and loss account, of the profit or loss for its financial year;

or, as the case may be, give a true and fair view thereof . . .

subject to modifications which appear in the **Schedule.**

The auditor must report 'to the members'; but he is not bound to send his report to every shareholder.[4] If, however, the auditor knows or

[3] Appendix 1, *post.*

[4] *Re Allen Craig & Co. (London), Ltd.* [1934] W.N. 68.

has reason to believe that his report when sent to the secretary or the directors is not laid before the shareholders, it may be doubted whether he can safely rest content without taking some steps to see that it is communicated to the members.

An auditor is bound to make himself acquainted with his duties under the Companies Acts.[5]

An auditor who accepts office pursuant to the articles of a company is bound to conform to the terms of such articles. Lindley L.J. in *Kingston Cotton Co.* (*No.* 2) said [6]:—

'Auditors are, in my opinion, bound to see what exceptional duties, if any, are cast upon them by the articles of the company whose accounts they are called upon to audit. Ignorance of the articles and of exceptional duties imposed by them would not afford any legal justification for not observing them.'

In another leading case on the subject, *Re London and General Bank* (*No.* 2),[7] the same learned judge made some important observations on the general duties of auditors:—

'It is no part of an auditor's duty', he said, 'to give advice either to directors or shareholders as to what they ought to do.

'An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit and his duty is confined to that. But then comes the question: How is he to ascertain that position? The answer is: By examining the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than an idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet showing that position according to the books, and to certify that the balance sheet presented is correct in that sense. But his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. This is quite in accordance with the decision of Stirling J. in *Leeds Estate Building and Investment Co.* v. *Shepherd*.[8] An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs; he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did, he would be responsible for an error on his part, even if he were himself deceived without any want of reasonable care on his part—say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this. Such I take to be the duty of the auditor: he must be honest—*i.e.*, he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient, and, in practice, I believe, business men select a few cases at haphazard,

[5] *Republic of Bolivia Exploration Syndicate* [1914] 1 Ch. 139.
[6] [1896] 2 Ch. 279, at p. 284 (C.A.).
[7] [1895] 2 Ch. 673, at pp. 682, 683.
[8] (1887) 36 Ch.D. 787.

see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously necessary; but, still, an auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required.'

But an auditor is not bound to be suspicious as distinguished from reasonably careful. And Lopes L.J. in *Re Kingston Cotton Mills Co. (No. 2)*[9] added:—

'Auditors must not be made liable for not tracking out ingenious and carefully laid schemes of fraud when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the company and are undetected for years by the directors. So to hold, would make the position of an auditor intolerable.'

In accordance with these principles, it was held that auditors who, without any ground for suspicion, had accepted and acted on the certificate of the manager of the company as to the amount and value of the company's stock, such manager having been long in the service of the company, and being a man of high character and unquestioned competence and trusted by everyone who knew him, was not under any liability, though the valuation proved to have been false to the knowledge of the manager. Lindley L.J. said[10]:—

'The question is whether, no suspicion of anything wrong being entertained, there was a want of reasonable care on the part of the auditors in relying on the returns made by a competent and trusted expert relating to matter on which information from such a person was essential. I cannot think there was. The manager had no apparent conflict between his interest and his duty. His position was not similar to that of a cashier who has to account for the cash which he receives, and whose own account of his receipts and payments could not reasonably be taken by an auditor without further inquiry.'

The principles set out in these cases were applied in *Re City Equitable Fire Insurance Co.*,[11] where the auditors were held to have failed in their duty, but were protected by a clause in the articles

Misfeasance.

An auditor who commits a breach of his duty may be sued by the company in an action,[12] or may be proceeded against in a winding up for misfeasance under **s. 333** of the Act.[13] But to be open to attack under the section an auditor must be an officer of the company. An auditor who is merely called in to audit the accounts *pro hac vice* is not an officer.[14] But an auditor cannot claim to be protected against liability for negligence, whether he is an officer of the company or not. (See **s. 205.**) An auditor may set up the Statute of Limitations.[15]

Directors are entitled to presume that auditors, like other officials of

[9] [1896] 2 Ch. 279, at p. 290.
[10] *Ibid.*, at p. 287.
[11] [1925] Ch. 407.
[12] *Leeds Estate, etc., Co.* v. *Shepherd* (1889) 36 Ch.D. 787.
[13] *Re London and General Bank* [1895] 2 Ch. 673 (C.A.); *Kingston Cotton Mills Co. (No. 2)* [1896] 2 Ch. 279 (C.A.).
[14] *Re Western Counties Steam Bakeries, etc.* [1897] 1 Ch. 617 (C.A.).
[15] *Leeds Estate Building Co.* v. *Shepherd, supra.*

the company, are doing their duty, and are not bound to supervise or test the auditor's work.[16]

An auditor may be ordered to deliver up books and papers to the liquidator without prejudice to his—the auditor's—lien.[17]

Though the auditors are agents of the company, constructive notice of facts coming to their knowledge is not imputed to the shareholders.[18]

Where the auditor's requirements are not complied with, the auditor should specify in his certificate in what respects they have not been complied with. But if the specification of the instances of non-compliance be lengthy, there seems no objection to the certificate stating that all the requirements have not been complied with, without specification of details, provided that it refers to the report for the details. If, however, the accounts of the company fail to comply with the requirements of **s. 197** (**3**) as to disclosing loans to and remuneration of directors, the auditors are required (by **subs.** (**3**)) to include the required particulars in their report.

It is to be noted that the auditors' report is to state whether, in their opinion, proper books have been kept and the balance sheet and accounts give a true and fair view, etc.[19] In forming their opinion, the auditors must exercise their own judgment, and if they do in fact entertain the opinion they express, they will, in reporting it, have performed their statutory duty. In forming their opinion they may take into account the advice of lawyers and other experts, but auditors cannot shelter themselves under an expert's opinion. They cannot successfully plead that in reporting they expressed the opinion of some expert—not their own opinion. The statements now required from the auditors in their report are more explicit than those required by the Act of 1929. With reference to the words 'as shown by the books of the company' in s 134 of the Act of 1929, it was generally considered that these words did *not* impliedly exempt the auditor from travelling outside the books With reference to the same words in the Companies Act, 1879, Lindley L.J said that the auditor must take reasonable care to ascertain that the books themselves show the company's true position.[20] This is now made abundantly clear by the **Ninth Schedule** to the Act of 1948.

Rights of Auditors

The rights of an auditor which by s. 134 (2) of the Act of 1929 enabled them to have access at all times to the books and accounts and vouchers of the company and to require such information and explanation as may be necessary for the performance of their duties, are extended by **s. 162** (**3**) and (**4**) of the Act of 1948. It is for the auditors themselves to judge what information and explanations are necessary for the performance of their duties (**s. 162** (**3**) re-enacting a provision more clearly expressed in s. 22 (2) of the Act of 1947). They have the right to attend

[16] *Dovey* v. *Cory* [1901] A.C. 477.
[17] *Findlay* v. *Waddell* [1910] S.C. 670 (Ct. of Sess.).
[18] *Spackman* v. *Evans* (1868) L.R. 3 H.L. 171
[19] See **Ninth Schedule,** *ante*, p. 216.
[20] *Re London and General Bank* [1895] 2 Ch. 673, at p. 683.

any general meeting of the company and to receive all notices and other communications relating to any general meetings which any member of the company is entitled to receive and to be heard at any general meeting on any part of the business which concerns them as auditors.

Auditor's right to inspect books.

The auditor's right of access to the books of the company can be enforced in a proper case by mandatory injunction; but not where litigation is pending between the company and the auditors, and the company may desire to appoint other auditors.[21]

Secret Reserves

Companies occasionally desire to have secret reserves of undivided profits so as to conceal the large amount made in prosperous years and to furnish the directors with a special fund with which to augment the divisible profits in lean years, or provide for unexpected contingencies. Not a few successful companies have created what is in substance equivalent to such a reserve by writing down excessively the value of some of their assets, and there are also cases where the articles expressly provide for a secret reserve and authorise the directors, in addition to the ordinary disclosed reserve, to establish a secret reserve and carry thereto so much of the annual profits as they think fit, and to apply such reserve as they deem expedient in the interests of the company without bringing it into the annual accounts and balance sheet. When such an authority is acted on and a secret reserve fund created, but not disclosed in the company's balance sheet, the question arose under the Act of 1908 whether an auditor, provided he refers to the reserve fund as an ' undisclosed asset ', was justified under the provisions of s. 113 of that Act in reporting that ' in his opinion the balance sheet is properly drawn so as to exhibit a true and correct view of the company's affairs '. According to dicta in *Newton* v. *Birmingham Small Arms Co.*,[22] he might be so justified on the ground that the purpose of a balance sheet is primarily to show that the financial position of the company is at least as good as there stated, not to show that it is not or may not be better.

These dicta were strongly criticised in later cases, and the provisions of the **Ninth Schedule** now make it clear that reserves cannot legally be kept secret, except to the extent that assets shown at cost less depreciation may not in fact have depreciated to the extent shown and may even have appreciated in value.

[21] *Cuff* v. *London and County Land, etc., Co.* [1912] 1 Ch. 440.
[22] [1906] 2 Ch. 378.

CHAPTER 20

NOTICES

A COMPANY in the course of its business has frequent occasion to give notice to its members, *e.g.*, of calls, forfeiture, general meetings, etc.,[1] and it would be impossible in most cases to give a personal notice. The articles therefore almost always provide in more or less detail for a more practical mode of serving such notices. They commonly provide that a notice may be given either personally or by post, and that in the latter case the notice is to be deemed to be served either ' when it is posted ', or ' on the day following that on which it is posted '. This is found more satisfactory than to provide (as in Table A, clause 97, of 1862) that the notice shall be deemed to be served when the letter containing the same would be delivered in the ordinary course of post; for it relieves the company from considering how many hours or days it will take for a letter, in the ordinary course of post, to reach the most distant of its members. Some articles, and Table A of 1908, provide that ' *unless the contrary is proved*, service is to be treated as effected at the time when the letter would be delivered in the ordinary course of post ', but this form is not to be recommended; and may be productive of great inconvenience. These words have been omitted from **cl. 131** of **Table A** of 1948.

Shareholders resident Abroad

Table A (of 1862) made no special provision as to a shareholder who was abroad. If, then it became necessary to serve a shareholder resident, say, in the South Sea Islands, it might, according to the words of that Table, be requisite to give several months' notice of a general meeting. This, of course, would be intolerable, and might paralyse the company's proceedings, but it was long since held in *Re Union Hill Silver Co.*[2] that it was not necessary in such circumstances to serve notice on shareholders resident outside the United Kingdom. This rule, being entirely consistent with common sense and common convenience, has been acted on ever since and has recently been confirmed by the Court of Appeal.[3] However, for many years past it has been usual (see first edition of *Company Precedents*, published in 1877) to make special provision as to service on members resident abroad, *e g.*, by providing in the articles that a member so resident may notify to the company an address in England at which notices for him may be served, and **Table A** (of 1948) provides (**cll. 131** and **134**) that if this is not done, notice sent to the registered address is to be the only notice required. A notice posted to the

[1] As to length of notice for general meetings, see *ante*, p. 144.
[2] (1870) 22 L.T. 400.
[3] *Re Warden and Hotchkiss, Ltd.* [1945] Ch. 270.

registered address is to be deemed to be served at the expiration of twenty-four hours, wherever the address may be. Clause 104 of Table A of 1929, under which notice to a member who had no registered address or address for service in the United Kingdom might be given by advertisement, disappears. This provision did not make advertisement essential in every case.[4] There is no need for any such provisions where a notice is to be deemed to be served when it is posted, or on the day following, for such a provision applies to all members, and a member resident abroad must take his chance of getting the notice in time.

Members resident in enemy-occupied territory should be treated as 'enemies' within the Trading with the Enemy Acts, and should not be served.[5]

Notices to Executors of Deceased Members

When notice of a general meeting is to be given to 'the members', it is not necessary to give it to the executors of a deceased member, unless they too are members.[6]

But the articles may provide for notice to the executor or administrator of a deceased member, and if they do, it must be given. Such a provision is inconvenient, except in the case of companies with very few members. **Clause 133** of **Table A** permits various methods of giving notice, including, where no new address has been notified, a notice given in any manner in which it might have been given if the death had not occurred. This is not inconvenient provided the officials of the company are reasonably careful. A more satisfactory form from the point of view of the company is given in *Company Precedents*, Part I, 15th ed., p. 735, cl. 147.

Authentication

A document or proceeding, including a notice, requiring authentication by a company, may be signed by any director, secretary, or other authorised officer of the company, and it need not be under the company's common seal, and may be in writing or in print, or partly in writing and partly in print (see **s. 36**). And it is to be borne in mind that the expression 'in writing' in an Act 'shall, unless the contrary intention appears, be construed as including reference to printing, lithography, photography, and other modes of representing or reproducing words in a visible form'.[7]

Notices to the Company

The Act, in **s. 437**, provides that 'a document may be served on a company by leaving it at or sending it by post to the registered office of the company', and under **s. 455** the term 'document' includes summons, notice, order, and other legal process, and registers.

[4] *Dickson* v. *Halesowen Steel Co.* [1928] W.N. 33.
[5] *Re Anglo-International Bank* [1943] Ch. 233.
[6] *Allen* v. *Gold Reefs of West Africa* [1900] 1 Ch. 656.
[7] S. 20 of the Interpretation Act, 1889.

It was held long since that the words 'other documents' in the Act of 1862 included a writ of summons.[8] It was held that service of a summons for an offence punishable summarily *must* be at the registered office.[9]

Section 437 of the Act of 1948 must be read in conjunction with s. 26 of the Interpretation Act, 1889, which runs thus:—

> **26.** Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve', or the expression 'give' or 'send', or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Verbal Notice

A verbal notice to a company is effective. Such a notice should be given to the secretary at the office or, in his absence, to a clerk.[10] Notice to a managing director, in that character, on a matter affecting the business of the company under his management, is notice to the company.[11]

Constructive Notice

A company is subject to the rules in regard to constructive notice; that is, notice which, though not actual notice, is in a court of law or equity imputed to a person. Hence, notice to the company's agent in any particular matter is notice to the company,[12] unless the agent is acting in fraud of his principal,[13] for in such a case the presumption, of course, is that he will not disclose his own fraud. So notice may be imputed where the company has knowledge of a fact which in common prudence should have led to further inquiry.[14]

Knowledge of a fact by a single director is not necessarily notice to the company,[15] and a company is not to be taken to have notice of all its secretary knows, *e.g.*, of matter communicated to him as secretary of another company, for he is under no duty to pass the knowledge on.[16]

A director is not necessarily affected with constructive notice in the absence of actual knowledge of the facts which appear in the books of the company.[17]

[8] *White* v. *Land, etc., Co.* [1883] W.N. 174
[9] *Pearks, etc.* v. *Richardson* [1902] 1 K.B. 91.
[10] *Truman's Case* [1894] 3 Ch. 272.
[11] *Dr. Jaeger's, etc., Co.* v. *Walker & Sons* (1897) 77 L.T. 180.
[12] *Rolland* v. *Hart* (1871) L.R. 6 Ch.App. 678, at p. 681; *Blackburn* v. *Vigors* (1887) 12 App.Cas. 531, 543.
[13] *Cave* v. *Cave* (1880) 15 Ch.D. 639.
[14] *Jones* v. *Smith* (1841) 1 Ha. 43; *Ware* v. *Lord Egmont* (1854) 4 De G.M. & G. 460; *Re A. W. Hall & Co.* (1887) 37 Ch.D. 712. See further, *Company Precedents*, Part III, 14th ed., p. 153, and s. 199 of the Law of Property Act, 1925.
[15] *Re Hampshire Land Co.* [1896] 2 Ch. 743; *Re Marseilles, etc., Co.* (1871) L.R. 7 Ch.App. 161; *Young* v. *David Payne & Co.* [1904] 2 Ch. 608; *J. C. Houghton & Co.* v. *Nothard, Lowe and Wills* [1928] A.C. 1.
[16] *Re Fenwick, Stobart & Co.* [1902] 1 Ch. 507.
[17] *Re Coasters, Ltd.* [1911] 1 Ch. 86.

CHAPTER 21

RESOLUTIONS OF GENERAL MEETINGS

THERE are various kinds of resolutions submitted to general meetings Of these the most common are:—

1. Ordinary resolutions.
2. Extraordinary resolutions.
3. Special resolutions.

And to these may be added—

4. Resolutions requiring under the company's regulations a specified majority.

1. Ordinary Resolution

An ordinary resolution is one which merely requires upon a show of hands a simple majority of the voters present, or, if a poll be duly demanded, a simple majority of the votes given thereat, whether in person or by proxy, where proxies are allowable.[1]

2. Extraordinary Resolution

An extraordinary resolution is defined by **s. 141** (1) of the Act of 1948 replacing s. 117 of the Act of 1929, thus:—

(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 as, being entitled so to do, vote in person or (where proxies are allowed) by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

The notice convening the meeting must specify the intention to propose the resolution 'as an extraordinary resolution', *e.g.*, that the meeting 'is convened to consider and, if thought fit, pass the following resolution, which will be proposed as an extraordinary resolution, that, etc'.[2] Where, however, *all* the shareholders are present, the omission of these words can be waived.[3]

3. Special Resolution

Form of.

Section 141 (2) to (5) provides as follows:—

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority

[1] See further, *Company Precedents*, Part I, 15th ed., pp. 993 *et seq.*
[2] *MacConnell* v. *E. Prill & Co.* [1916] 2 Ch. 57; *Re Bridport Co.* (1867) L.R. 2 Ch.App. 191, at p. 194.
[3] *Re Oxted Motor Co., Ltd.* [1921] 3 K.B. 32.

together holding not less than ninety-five per cent. in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, 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) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) 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 this Act or the articles.

Nature of special resolutions.

A special resolution is a most useful part of the mechanism of a company. It is by and through the instrumentality of such a 'special resolution' that many of the most important things which a company is, by the Companies Acts, empowered to do are ordained to be done. In defining the requisite steps for such a resolution, the aim of the Legislature seems to have been to secure that every important change shall be made only after due deliberation, and with the sanction, active or passive, express or tacit, of the great body of the shareholders of the company.

Acts for which requisite.

The following are some of the various things that a company may do by special resolution:—

(1) Alter its objects (**s. 5**).

(2) Alter its articles (**s. 10**).

(3) Change the name of the company, subject to approval of Board of Trade (**s. 18**).

(4) Reduce its capital, subject to sanction of court (**s. 66**).

(5) Convert any portion of its capital, uncalled, into reserve capital (**s. 60**).

Procedure.

The following points should be noted in regard to a special resolution:—

(a) Under the Act of 1908 and previous statutes two meetings were required. Now one meeting is sufficient, but not less than twenty-one clear days' notice must be given. A provision in the articles that the date of service of the notice shall be counted does not apply to a special resolution, but a provision that a notice sent by post shall be deemed to be served on the day after posting does apply.[4]

[4] *Re Hector Whaling, Ltd.* [1936] Ch. 208.

(b) The meeting must be duly convened in accordance with the articles of the company. If none, then as per **Table A.** Under the Act of 1908, if the articles so provided, the two meetings might be convened by the same notice.[5]

(c) The notice of the meeting must state the intention to propose the resolution 'as a special resolution'.[6]

(d) The meeting must be duly constituted, that is to say, a quorum must be present.

(e) The resolution must be passed at the meeting by a three-fourths majority of the votes cast at the meeting (**s. 141**).

(f) Amendments within the notice may be made.

(g) A poll may be demanded as provided by the articles, subject to **s. 137.**

(h) Unless a poll is duly demanded, a declaration of the chairman that the resolution has been carried is to be *conclusive* evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

(i) Upon a show of hands, hands only can be counted, not proxies.

(j) At a poll the number of votes which each voter is by the articles entitled to is to be taken into account, and votes by proxy are allowed. The proxy votes for his principal.

It is important to note that a quorum is essential[7]; that voting is, in the first instance, by a show of hands[8]; that proxies are only to be counted on a poll.[9]

Declaration of Chairman—Conclusiveness.

The section, it will be observed, says that the declaration of the chairman (if no poll be demanded) is to be 'conclusive'; and, in pursuance of this provision, the Court of Appeal, in *Re Gold Co.*,[10] held a declaration by a chairman conclusive, although out of seventeen present only eleven voted for and two against, and four abstained from voting. The word 'conclusive' seems clear enough, and it is made still clearer when contrasted with the words used in **ss. 81** and **118,** where the Legislature has made certain things prima facie evidence only. This decision was followed by Cozens-Hardy J. in *Re Hadleigh Castle Gold Mines*,[11] and approved by the Court of Appeal in *Arnot* v. *United African Lands*.[12]

But a chairman's declaration will not be conclusive where in making it he states the figures for and against, and those figures show that he erroneously declares that the resolution has been duly passed.[13]

[5] *Re North of England Steamship Co.* [1905] 2 Ch. 15 (C.A.).
[6] See further, as to notices, *ante*, p. 221.
[7] *Re Cambrian, etc., Co.* (1875) 23 W.R. 405.
[8] *Re Horbury Bridge Co.* (1879) 11 Ch.D. 109.
[9] *Ernest* v. *Loma, etc., Co.* [1897] 1 Ch. 1.
[10] (1879) 11 Ch.D. 701 (see p. 719), the majority was then based on the numbers present, under s. 69 of 1908.
[11] [1900] 2 Ch. 419.
[12] [1901] 1 Ch. 518.
[13] *Re Caratal (New) Mines, Ltd.* [1902] 2 Ch. 498.

4. Resolution requiring Special Majority

Occasionally the regulations provide that something may be done by or with the sanction of a resolution passed by a majority of a special character—for instance, a majority of the members present in person or by proxy and entitled to three-fourths of the votes to which all the members are collectively entitled.

Notice to Registrar of Resolutions

A printed copy of the following resolutions and agreements must be sent to the registrar within fifteen days (**s. 143** [14]):—

(1) Special resolutions.
(2) Extraordinary resolutions.
(3) Resolutions or agreements passed or agreed to by all the shareholders, which would otherwise have required some special formality.
(4) Resolutions binding upon classes of shareholders.
(5) Resolutions for winding up a company on effluxion of time.

These documents in the case of an exempt private company need not be printed, if the registrar approves of some other form of copy.

There are penalties for default (**s. 143 (6)**).[14]

Special Resolutions under the repealed Act of 1908

By s. 69 of the Act of 1908, a special resolution required two meetings. The Act of 1929 came into force on November 1, 1929. In a case where the first meeting was held on October 30 and a confirmatory meeting was held on November 14, 1929, it was held that the special resolution was valid.[15]

[14] Appendix 1, *post*.
[15] *Re Grayson, Rollo and Clover Docks, Ltd.* [1930] W.N. 27.

CHAPTER 22

MAJORITY RIGHTS OF MEMBERS

IT is a cardinal rule of corporation law that prima facie a majority of its members is entitled to exercise the powers of the corporation, and generally to control its operations.

Where no special provision is made by the constitution of a corporation, the whole are bound by the acts not only of the major part but of the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole or not.[1]

' It cannot be disputed ', said Lord Hardwicke in *Att.-Gen.* v. *Davy*,[2] ' that whenever a certain number of persons are incorporated, a major part of them may do any corporate act, or if all are summoned and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part '.

This rule is equally applicable to a company under the Act of 1929, save so far as its constitution or articles, or the Act itself, exclude or modify the rule. Where a corporate power is delegated to a smaller body, the same rule applies.[3] See, however, *Perrott and Perrott* v. *Stephenson*,[4] where Bennett J. took a different view on the construction of the articles.

The Act modifies the primary rule in certain cases. It requires, for instance, for the passing of a special resolution, or of an extraordinary resolution, a majority of three-fourths of those voting at the meeting, and, accordingly, where the Act, or the memorandum or the articles, require a special or an extraordinary resolution, a three-fourths majority is necessary; a bare majority is insufficient. Again, where the articles vest in the directors certain specific powers, *e.g.*, to make calls, forfeit shares, etc., the power, being delegated, resides with the directors exclusively, and a majority of the members cannot exercise the power, though it may sanction and approve of the exercise by the directors of such powers on any specific occasion.[5] Besides such cases of exclusive powers it often happens that the articles, whilst investing the directors with general powers, do not give them all the powers of the company; or it may be that, though they have all the powers of the company, they are, nevertheless, unable to exercise them in regard to some particular transaction by reason of their being themselves personally interested in such transaction. Where this is the case, the matter can be submitted to a

[1] Bacon, *Abridgement*, II, 269.
[2] (1741) 2 Atk. 212.
[3] *Ibid.*, and see *Kyd on Corporations* (1793), p. 400, and *per* Brett L.J., *Re York Tramways* (1882) 8 Q.B.D. at p. 698.
[4] [1934] Ch. 171.
[5] *Hampson* v. *Price's Patent Candle Co.* (1876) 24 W.R. 754.

general meeting, and the resolution of the meeting will sanction or not, as the case may be, what the directors have done or propose to do.[6]

The principle that the majority of members is entitled to control the company is the basis upon which rests the well-known

Rule in Foss v. Harbottle[7]

In that case two members of an incorporated company took legal proceedings against the directors and others to compel them to make good losses sustained by the company by reason of the fraudulent acts of such directors, and the court held that, as the acts were capable of confirmation by the majority of the members, the court would not interfere; that is to say, it was left to the majority to complain or to condone as they might think best. See also *Mozley* v. *Alston*[8] and *MacDougall* v. *Gardiner*,[9] where a single shareholder complained of breach of the articles, and it was held that the litigation ought to be in the name of the company, for that it was for the majority to say whether they wished to complain or not. Mellish L.J. said in that case:

'In my opinion, if the thing complained of is a thing which, in substance, the majority of the company are entitled to do, or if something has been done irregularly that the majority of the company are entitled to do regularly, or if something has been done illegally which a majority of the company are entitled to do legally, there can be no use in having litigation about it. The ultimate end, no doubt, is, that a meeting has to be called, and then ultimately the majority gets its wishes'.[10]

Limitations on supremacy of majority.

But this supremacy of the majority must be received with the following qualifications:—

(1) By **s. 210**[11] a member who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members including himself, may apply to the court by petition, and if the court is of opinion that the affairs of the company are being conducted as alleged and that a winding up would unfairly prejudice that part of the members but that otherwise the facts would justify a winding up order, the court may make an order regulating the conduct of the company's affairs or for the purchase of the shares held by any members or by the company (with reduction of capital) or otherwise. Where the memorandum or articles are altered by the order, further alterations inconsistent with the effects of the order cannot be made without leave of the court. Where the memorandum or articles are affected by such an order an office copy of the order must be delivered to the registrar within fourteen days.[12]

[6] *Grant* v. *United Kingdom Switchback Ry.* (1889) 40 Ch.D. 135.
[7] 2 Ha. 461.
[8] (1847) 1 Ph. 790.
[9] (1875) 1 Ch.D. 13.
[10] See also *Harben* v. *Phillips* (1883) 23 Ch.D. 14; *Duckett* v. *Gover* (1877) 6 Ch.D. 82 (as to further proceedings, 25 W.R. 554); *Exeter and Crediton Ry.* v. *Buller* (1847) 5 Ry.Cas. 211; *Normandy* v. *Ind, Coope & Co.* [1908] 1 Ch. 84; *Ving* v. *Robertson & Woodcock, Ltd.* (1912) 56 S.J. 412 (as to directors voting in their own interests).
[11] Re-enacting s. 9 of the Act of 1947.
[12] For details see **s. 210,** Appendix 1, *post*, and as to the power of the Board of Trade to file a petition under this section see *ante*, p. 214.

(2) No majority of shareholders can sanction that which is ultra vires the company.[13]

(3) A majority is not entitled to commit a fraud on the minority,[14] and see *Cook* v. *Deeks*,[15] where directors of a railway construction company obtained a contract in their own names to construct a railway, and used their voting powers to pass a resolution of the company declaring that the company had no interest in the contract. But, unless otherwise provided by the regulations, a shareholder as such is not debarred from voting or using his voting power to carry a resolution by the circumstance of his having a particular interest in the subject-matter of the vote.[16] And see *Foster* v. *Foster*,[17] where a principal shareholder removed the managing director and appointed herself.

(4) That a minority can prevent the company from acting on a special resolution obtained by a trick.[18]

(5) That an ordinary resolution inconsistent with the articles is not effectual.[19]

In the four last-mentioned cases the minority can commence proceedings in the name of the company. In other cases, if the minority purport to do so, the action may be stayed and the name of the company struck out, and the solicitor may be ordered to pay the costs personally.[20] An action can be commenced in the name of the company on the authority of a resolution of the board of directors, or where permanent directors are alone entitled to vote, by a resolution passed by the permanent directors.[21]

[13] *Burland* v. *Earle* [1902] A.C. 83.
[14] *Menier* v. *Hooper's Telegraph Works* (1874) L.R. 9 Ch. 350; *Burland* v. *Earle*, *supra*.
[15] [1916] 1 A.C. 554.
[16] *Dominion Cotton Mills* v. *Amyot* [1912] A.C. 546.
[17] [1916] 1 Ch. 532.
[18] *Baillie* v. *Oriental Telephone, etc., Co.* [1915] 1 Ch. 503.
[19] *Quin & Axtens* v. *Salmon* [1909] A.C. 442.
[20] *Marshall's Valve Gear Co.* v. *Manning, etc.* [1909] 1 Ch. 267; *West End Hotels Syndicate* v. *Bayer* (1912) 29 T.L.R. 92.
[21] *John Shaw & Sons (Salford), Ltd.* v. *Shaw* [1935] 2 K.B. 113. See further, *Company Precedents*, Pt. I, 15th ed., pp. 1178 *et seq.*

CHAPTER 23

REGISTERED OFFICE

EVERY company under the Act of 1948 is bound, as from the day on which it commences to carry on business or as from the *fourteenth*[1] day after incorporation, whichever is the earlier, to have a registered office to which all communications and notices may be addressed (**s. 107**). If a company carries on business without having such an office, the company and its directors and officers incur a penalty. Notice of the situation of the office and of any change therein must be given to the registrar within *fourteen days*.[2]

The situation of the registered office fixes the domicil of the company. A company registered in England may be an 'alien enemy' if its agents or the persons in de facto control of its affairs, whether authorised or not, are alien enemies, and in determining whether alien enemies have such control, the number of alien enemy shareholders is material.[3] But a company registered in England and carrying on business in an enemy country is not necessarily an enemy alien. In *Re Hilckes, ex p. Muhesa Rubber Plantations*,[4] the directors and the majority of the shareholders were English, and the only evidence of enemy character was that the company owned a rubber estate in enemy territory on which it kept a manager when war broke out.

The company's memorandum of association states, as we have seen, in what part of the United Kingdom the office of the proposed company is to be situate. This, once declared, becomes an unalterable condition of the company's constitution, which nothing short of an Act of Parliament can change. But though confined to that part of the United Kingdom—England or Scotland—which it has chosen by its memorandum, the company may, subject to that limitation, fix its office anywhere it likes within the chosen area, and change it from time to time provided it gives notice of each change to the registrar (see **s. 107** of the Act). The company is to paint or affix, and is to keep painted or affixed, its name on the outside of every office or place in which the business is carried on, in a conspicuous position in letters easily legible (see **s. 108**). There is a penalty for default.

The situation of the registered office of a company determined the question whether its shares were property within the British Dominions for the purposes of the Peace Treaty.[5]

As to the effect of the situation of the registered office on liability to income tax, see Chapter 47.

[1] Twenty-eighth in s. 92 of the Act of 1929.
[2] Twenty-eight days in s. 92 of the Act of 1929.
[3] *Daimler Co.* v. *Continental Tyre, etc., Co.* [1916] 2 A.C. 307.
[4] [1917] 1 K.B. 48.
[5] *Bacla* v. *The Public Trustee* [1926] Ch. 868.

There are various provisions of the Act in relation to the registered office; thus **s. 110** (**2**) of the Act provides that the register of members is to be kept at the registered office (with certain exceptions)[e] and the right of inspection is to be exercised there, and **s. 200** provides that the register of directors is to be kept there. Again, under **ss. 103, 104,** the register of mortgages and copies of registered documents are to be kept at the registered office, and the right of inspection is to be exercised there (with similar exceptions), and by **s. 146** the minute books are to be kept there. So, too, by **s. 433,** which provides for the publication, in case of banking and insurance companies and of certain other concerns, of a statement in a certain form, it is provided that a copy of such 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; and **s. 437** provides for the service of any notice, summons, order, and other document on the company at the registered office.[f] Where in an action or other legal proceeding it appears that the writ, petition, or other document cannot be served by reason of there being no registered office, the court will make an order for substituted service.

[e] See **s. 110,** Appendix 1, *post*
[f] See further, *ante*, p. 222

CHAPTER 24

MINUTES

Section 145 of the Act provides that minutes are to be made and kept of all proceedings of general meetings and of meetings of directors or managers, and **s. 148** (**4**) provides for penalties in case of default. **Section 145** also makes such minutes, if signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, evidence of the proceedings, *i.e.*, prima facie evidence, of the matters therein stated. The section, moreover, provides that, until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had. The protection as well as convenience afforded to a company by these privileges is very great, and the utmost care should be used to keep the minutes in correct form and make them complete. It was held in *Hearts of Oak Assurance Co.* v. *Flower & Sons* [1] that minutes kept on loose leaves were not properly kept for this purpose, but now by **s. 436** [2] minute books and similar documents can be kept by making entries in bound books or 'in any other manner', but adequate precautions must be taken to guard against falsification.

Section 146 of the Act of 1948 provides that books containing minutes of general meetings must be kept at the registered office, and members are entitled to inspection gratis and to copies at 6d. per 100 words.

Prima facie evidence.

Minutes, being only prima facie evidence, may be contradicted by other evidence.[3] But if signed by the chairman they are to be taken prima facie to be correct.[4]

If the minutes are made conclusive by the articles, the court may look at and consider the regularity of the notice [5]; but the accuracy of the minutes cannot be disputed.[6]

Not the only evidence.

There is no rule which makes minutes the only admissible evidence, and a bargain or transaction may, therefore, be made out and established as against the company though not recorded in the minute book: see *Re Pyle Works (No. 2)* [7] where a contract to give security by way of indemnity

[1] [1936] Ch. 76.
[2] Re-enacting s. 119 of the Act of 1947.
[3] *Tothill's Case* (1865) L.R. 1 Ch.App. 85.
[4] *Re Indian Zoedone Co.* (1884) 26 Ch.D. 70; and see *Southampton Dock Co.* v. *Richards*, 1 Man. & Gr. 448.
[5] *Betts & Co.* v. *Macnaghten* [1910] 1 Ch. 430.
[6] *Kerr* v. *Mottram* [1940] Ch. 657.
[7] [1891] 1 Ch. 173, at p. 184.

to directors was made out though not entered, and *Re Fireproof Doors, Ltd.*,[8] where a resolution of the board of directors fixing the quorum at one was upheld though not entered So a person may be proved to be a member, although no allotment is entered in the minutes.[9]

Where a notice is taken as read, it must be treated as part of the *res gestæ*.[10]

A director who is present at a meeting, at which the minutes of proceedings at a prior board are read and confirmed as correct, is not thereby made responsible for what was done at such prior board.[11]

Omnia rite acta præsumuntur

Entries in the company's books, which would be irregular unless based on resolutions of the board, afford, on the above principle, prima facie evidence of the resolutions, even though no minute thereof is forthcoming.[12]

Thus, a letter written by the secretary of the company will be assumed prima facie to have been written with the authority of the directors although no minute appears to that effect.[13] The absence, however, of any minute of an alleged transaction is material when the party who alleges the transaction was a director [14] Directors ', said Kekewich J , ' ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right ' [15]

Statute of Frauds

The chairman's signature of the minutes stating the terms of a contract may be a sufficient memorandum within s 4 of the Statute of Frauds or s. 40 of the Law of Property Act, 1925.[16] See *Gibson* v *Barton* [17] for an instance in which the minute book was put in evidence.

Form of Minutes—Ordinary General Meeting

The following will give some idea of the mode in which minutes are entered :—

> The Fourth Ordinary Meeting of the —— Company, Limited, held the —— day of —— [*at the registered office of the Company*] at —— o'clock.
>
> Mr. —— in the chair.

[8] [1916] 2 Ch. 142.
[9] *Re Great Northern Salt Co.* (1890) 44 Ch.D. 472, at p. 483.
[10] *Betts & Co.* v. *Macnaghten* [1910] 1 Ch. 430.
[11] *Re Lands Allotment Co.* [1894] 1 Ch. 616; *Re National Bank of Wales* [1899] 2 Ch 629; *Burton* v. *Bevan* [1908] 2 Ch. 240. See, however, *Ashurst* v. *Mason* (1875) L.R. 20 Eq 225.
[12] *Knight's Case* (1867) L.R. 2 Ch.App. 321; *Re Great Northern Salt, etc., Co.* (1890) 44 Ch.D. 472, at p. 483; and see *Lane's Case* (1863) 1 De G.J. & S. 504, at p. 509.
[13] *Johnson* v. *Lyttle's Iron Agency* (1877) 5 Ch.D. 687, at p. 691.
[14] *Re Rotherham, etc., Co* (1883) 25 Ch.D. 103, at p. 109.
[15] *Re Liverpool Household Stores* (1890) 59 L.J.Ch. 616, at p. 619.
[16] *Jones* v. *Victoria Graving Dock Co.* (1877) 2 Q.B.D. 314
[17] (1875) L.R. 10 Q.B. 329, at p. 332.

The Notice convening the Meeting was read by the Secretary.

The Minutes of the General Meeting of the Company held the —th ultimo were read by the Secretary, and signed by the Chairman.

It was resolved unanimously that the Report of the Directors, and the Accounts annexed thereto, be taken as read

Upon the motion of the Chairman, seconded by Mr ——, it was resolved unanimously [*or as the case may be*]—

That the Report of the Directors, and the Accounts annexed thereto, be hereby adopted.

Upon, etc., it was resolved that a dividend, etc.

Upon the motion, etc., it was resolved that Mr. —— be hereby elected a director in the place of Mr. ——

Upon, etc. [*vote of thanks*]

A B, Chairman.

If an amendment be moved, the minutes will run thus:—

It was moved by the Chairman, and seconded by Mr. ——, That, etc.

An amendment was thereupon moved by Mr ——, and seconded by Mr. —— [*here set it out*], *e.g.*—

'That the Report be received, but not adopted; and that a committee of five shareholders be appointed, with power to add to their number, to inquire into the formation and past management of the Company, and with power to call for books and documents, and to obtain such legal and professional assistance as may be necessary, such committee to report to a meeting to be called for ——day the —th of ——.'

The amendment was put to the Meeting and negatived.

The original question was then put to the Meeting and declared by the Chairman to be carried

Form of Minutes—Board Meeting

At a Meeting of the Directors held the —— day of —— at, etc. Present, Mr. ——, Chairman of the Board; Mr. ——, and Mr. ——.

The Minutes of the Meeting of the —th inst. were read and signed.

Upon the motion, etc., it was resolved, etc.

The proposed contract with A B for the purchase of, etc., was read, and it was resolved that the same be sealed, and the same was sealed accordingly.

The Secretary was directed to, etc.

A letter from, etc., addressed to the Secretary, having been read, and the Board being of opinion, etc., the Secretary was directed to reply, etc., and the manager was desired to, etc.

Mode of Taking Minutes

The usual plan adopted is for the secretary to make notes at each meeting of what passes, and subsequently to enter the particulars in the proper minute book ready for reading and signature by the chairman after they have been read and confirmed at the next succeeding meeting. (See **s. 145 (2)**.)

Signing of minutes as regards evidence.

Sometimes, *e.g.*, in the case of legal proceedings, it may be requisite to put the minute book in evidence, but the minutes of the last meeting have not been signed. In such case the chairman can sign, for though it is usual for him to sign at the next succeeding meeting,[18] he is not bound to wait. Minutes once made and signed ought never to be altered by striking out or adding anything.[19]

[18] *Southampton Dock Co.* v. *Richards* (1840) 1 Man. & G. 448.
[19] *Re Cawley & Co.* (1889) 42 Ch.D. 209, at p. 226

CHAPTER 25

NAME OF COMPANY

Company's name to be affixed outside office, and on notices, advertisements, etc.

The memorandum of association of every company under the Act must, as we have seen, state, amongst other things, the proposed name of the company, with ' Limited ' as part of it in cases where the company is limited, and the certificate of incorporation when given will then incorporate the company by such name. To this name the company must closely adhere. By **s. 108,** the name must be painted up or affixed to the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible and must be engraved in legible characters on its seal. It must also be mentioned (at the risk of heavy penalties for neglect to the company and the directors) in legible characters *in all business letters of the company and in all notices, and other official publications of the company,*[1] in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. And the names of directors and any change of name and their nationality (if not British) must be stated on all trade catalogues, circulars, etc., unless exempted by the Board of Trade.[2]

Object of the Legislature.

Why this solicitude on the part of the Legislature as to publication of a company's name? The answer is, that the Legislature, whilst allowing limited liability, desired by this means to make the company itself continually bring to the notice of those who dealt or might deal with it the fact that it was ' limited '. This policy it has fortified by pecuniary penalties; but it is not this only which makes neglect dangerous to directors. **Section 108** (**4**) provides that if any director, manager, or officer of a limited company, or any person on its behalf, signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, etc., wherein the name of the company is not mentioned in manner specified, he shall be personally liable to the holder of any such bill of exchange, etc., for the amount thereof unless the same is duly paid by the company. See *Atkin & Co.* v. *Wardle and Others*,[4] in which the *South Shields Salt Water*

[1] The words in italics are repeated from s. 57 of the Act of 1947, which introduced ' business letters ' for the first time.
[2] See **s. 201, Appendix 1,** *post.*
[4] (1889) 61 L.T. 23.

Baths Co., Ltd., was misdescribed in a bill as the *Salt Water Baths Co., Ltd.*, and it was held that the directors were personally liable on the bill [5]

There can be little doubt that the name of the company can be marked upon goods manufactured or supplied by the company in a shortened form without the word 'limited', such goods not being 'official publications' within **s. 108.**

Similarity of Names

Must not take another company's name. Exception to rule.

In choosing a name for a company, promoters must use care to avoid adopting a name which is too like that of another company. The Act of 1929 provided (s. 17) that no company was to be registered under a name identical with that by which a company in existence was already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where the company in existence was in course of being dissolved and signified its consent in such manner as the registrar required Now, by **s. 17** of the Act of 1948, no company shall be registered by a name which in the opinion of the Board of Trade is undesirable, and s. 17 of 1929 is repealed This no doubt will cover similarity of names, and care will have to be taken to avoid delay and expense from this cause.

Application to the court.

Even if the registrar passes a name, this will not prevent the proprietors of any concern, whether registered or not, if prejudiced by the registration, from taking legal proceedings. The principle on which the court interferes in such cases [6] is, not that there is a property in the name,[7] but that one person is not to be permitted to represent himself as carrying on the business which is carried on by another. The leading cases on this point, illustrating the principles on which the court acts, are *Lee* v *Haley* [8] and *Reddaway* v. *Banham.*[9] And as prevention is always better than cure, not only may a registered company be restrained from carrying on business as above, but promoters may be restrained from registering a company with a name calculated to deceive.

Where the name adopted is merely descriptive of the character of the defendant's business, the court has sometimes great difficulty in interfering.[10] But an injunction will be granted even in these cases if the name adopted is calculated to deceive [11] If the registrar exercises his discretion in the matter, a mandamus will not lie against him.[12]

A company purchasing the goodwill of an existing business purchases the right to the name under which it is carried on as part of the goodwill.[13]

[5] See also *Dermatine Co.* v. *Ashworth* (1905) 21 T.L.R. 510.
[6] See *ante*, p. 19.
[7] *Du Boulay* v. *Du Boulay* (1869) L.R. 2 P.C. 441.
[8] (1869) L.R. 5 Ch.App. 155.
[9] [1896] A.C. 179.
[10] *London and Provincial Law Assurance Society* v. *London and Provincial Joint Stock Life Assurance Co.* (1847) 17 L.J.Ch. 37.
[11] See *North Cheshire and Manchester Brewery Co* v. *Manchester Brewery Co.* [1899] A.C. 83, and other cases cited *ante*, p. 19.
[12] *R.* v. *Registrar of Companies* [1912] 3 K.B. 23.
[13] *Levy* v. *Walker* (1879) 10 Ch.D. 436.

If by inadvertence or otherwise a company is registered with a name identical with or closely resembling that of another company, the first-mentioned company, with the sanction of the Board of Trade, may change its name (**s. 18 (2)**).

The provision of s. 17 of the Act of 1929 prohibiting the use of certain phrases was repealed by the Act of 1947 [14] and no longer applies.

Change of Name

A company may by special resolution change its name, but only with the approval of the Board of Trade (**s. 18**). The proper course in such cases is to ascertain from the registrar that there is no objection to the proposed name, apply to the Comptroller of Companies, Board of Trade, Romney House East, Tufton St. S.W.1. stating the circumstances which have rendered the change desirable, and requesting him to obtain the sanction of the Board to the proposed change. In due course this will be brought before the Board, and, if the requisite consent is obtained, notice will be given to the applicant, and the company will pass a special resolution carrying out the alteration. Thereupon the registrar will issue a new certificate, as provided in the section, and the change of name will be completely effected.[15]

A company not formed under the Act of 1929 and seeking registration under Part IX of that Act, can now change its name with the approval of the Board of Trade and the assent of its members, if its name is 'undesirable' (**s. 388**).

Companies to promote Art, Commerce, etc.: Word 'Limited' dispensed with

Where an association is about to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and the founders are willing to form it on the footing that its profits or income shall be applied in promoting its objects only, and that no dividend shall be paid to its members, the Board of Trade may grant a licence authorising registration of the association with limited liability, but without the addition of the word 'limited' to its name. This was provided by s. 18 of the Act of 1929, now re-enacted in **s. 19** of the Act of 1948. Such a company could, under the Act of 1929, change its name (s. 19), but no express power was given to the Board of Trade to authorise the word 'limited' to be omitted.[16] And the Board may by licence authorise such a company which has been registered with the word 'limited', to alter its name by special resolution by omitting that word, or otherwise (**s. 19 (2)**). Many associations have been registered under this section. At first the applications came almost exclusively from Law Societies, Chambers of Commerce [17] and Trade Protection Societies, but the advantages offered

[14] S. 78 (4) of 1947.
[15] *Shackleford, Ford & Co.* v. *Dangerfield* (1868) L.R. 3 C.P. 407.
[16] This power has now been given (s. 79 of the Act of 1947, re-enacted by **s. 19** of the Act of 1948).
[17] As to the special provisions applicable where the name includes the words 'chamber of commerce' see **s. 19 (7)**, Appendix 1, *post*.

by the section are now better appreciated, and associations of all kinds apply.

Licence of Board of Trade.

An association desirous of being incorporated with limited liability but without the word 'limited' as part of its name, and of obtaining for that purpose a licence from the Board of Trade pursuant to **s. 19** of the Act, should, according to the rules now in force, make a written application to the Board for a licence, and with such application should transmit for the Board's consideration a draft in duplicate of the proposed memorandum and articles of association. A cheque for five guineas must also be sent to cover counsel's fee for perusal of the draft documents. See *Company Precedents*, Part I, 15th ed., p. 461 *et seq.*

Advantages of such companies and the members.

The advantages of incorporation for such associations are great. The association gains in stability, public estimation, and credit. It becomes a body corporate with perpetual succession, just as if it were incorporated by Royal Charter or special Act of Parliament. It can adopt in lieu of 'company' a more suitable name, such as chamber, club, college, guild, association It can have a common seal; it can hold property in its own name without the intervention of trustees; it can contract and take and defend legal proceedings in its own name; its affairs can be conducted much more efficiently, and—finally—its officers and members are freed from personal liability.

It enjoys all the privileges of limited companies and is subject to all their obligations except the use of the word 'limited' and of publishing its name and sending lists of members to the registrar (**s. 19**).

By **s. 14** of the Act a company 'formed for the purpose of promoting art, science, religion, charity or other like object not involving the acquisition of gain by the company or by its individual members', is not to hold more than two acres of land, but by licence of the Board of Trade it may hold more.

'Gain' means acquiring something, as opposed to spending only.[18]

Associations obtaining the licence register, in almost all cases, as companies limited by guarantee.[19] Generally, membership is constituted by election or by application in writing accepted by the governing body Sometimes (*e.g.*, in charitable associations) a candidate for election must make a donation. The governing body is not infrequently called the committee or the council. When, as is often the case, the association is formed to absorb and continue some existing association of the same name, the members of this all join the registered association, and the property, if any, is transferred to it, and the incorporated association thus silently takes the place of its predecessor. See further, as to the formation of such companies, *Company Precedents*, Part I, 15th ed., pp. 460

[18] *Per* Jessel M.R., *Re Arthur Average Association* (1875) L.R. 10 Ch.App. 545, n.
[19] See *post*, Chap. 36.

et seq., where the clauses which the Board of Trade require to be inserted in the memorandum will be found.

Under **s. 19 (5)** of the Act the Board of Trade has power to revoke its licence after due notice, and thenceforth the word 'limited' must be used.

A company thus registered without the word 'limited' can now alter its objects by special resolution without the sanction of the court; but it must give notice to the Board of Trade and the Board may vary or revoke the licence (**s. 19 (6)**). Under the Act of 1929 it was sometimes necessary to obtain the consent of the Board of Trade.[20]

When use of Word 'Limited' prohibited

Section 439 of the Act provides that if any person or persons trade or carry on business under any name or title of which the word 'limited' or any contraction or limitation of that word is the last word, that person or persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding £5 for every day upon which that name or title has been used.

Conveyances, Assignments, Leases, etc.

Conveyances, etc., by company.

When the directors, in pursuance of an agreement for sale or otherwise, desire to convey or assign property of the company to a purchaser or some other person, and also when they desire to grant a lease of, or to mortgage, the company's property, *the company* must be made a party to the deed by its corporate name—not the directors—and the company, not the directors, must thereby grant, or assign, or demise, as the case may be, and enter into such covenants as may be necessary. Thus, a conveyance of land will be to the effect following:—

> This Conveyance is made the —— day of —— between The —— Company Limited (hereinafter called 'the Company') of the one part and A B, of, etc., of the other part. Whereas, etc.
>
> Now This Conveyance Witnesseth that in pursuance of the said agreement and in consideration of, etc., the Company as beneficial owner hereby grants unto the said A B All That [*description of the land*]: To hold the same unto the said A B [in fee simple]. And the said Company hereby covenants with the said A B that, etc.
>
> As witness the common seal of the said Company and the hand and seal of the said A B the day and year first above written.

Conveyances, etc., to company.

In like manner where the directors have agreed to purchase or take on lease property, *e.g.*, land, buildings, letters patent, concessions, etc., on behalf of the company, the property will be conveyed, assigned, or demised respectively to the company, not the directors, unless in some special case it is desired to vest the property in the directors as trustees for the company. Accordingly, the company will be party to the deed, and the

[20] *Re St. Hilda's College* [1901] 1 Ch. 556.

conveyance, assignment, or lease will be expressed to be made ' to the said company and its assigns ', and the covenants will be ' with the said company and its assigns '.

Some persons in deeds use the expression ' the said company, its successors and assigns'; but the word ' successors ' is unnecessary and inappropriate,[21] and, accordingly, may be, and generally is, omitted with advantage.

The above rules apply not only to conveyances, etc., but to releases and other deeds Such instruments should all be made in the name of the company.

Notice.

So, too, a notice by the company, *e.g* , to dismiss an officer, will be given in the name of the company

The —— Company, Limited, hereby give you notice, etc.

In witness whereof the company hath caused two of its directors to affix their signatures hereto this —— day of ——.

For the company,

A. }
B. } *Directors.*

Writ.

Again, in a writ of summons the company is named, as the party suing or being sued, thus:—

Between

The —— Company, Limited, Plaintiffs

and

A B and C D, Defendants

Petition.

So a petition by a company runs thus:—

In His Majesty's High Court of Justice

The humble petition of the —— Company, Limited, showeth as follows, etc.

Registration of Business Names Act

The Registration of Business Names Act, 1916, as amended,[22] now applies to every company carrying on business under a business name which does not consist of its corporate name, and such a company must be registered as provided by sect. 3 of that Act, under which, in the case of a corporation there must be registered—

(a) the business name;

(b) the general nature of the business;

(c) the principal place of business;

. . . . . .

(f) its corporate name and registered or principal office;

(g) if the business is commenced after the passing of the Act of 1916, the date of the commencement of the business.

[21] Co.Litt. 94 b.

[22] Ss. 58 and 116 of the Act of 1947; see Appendix 2, *post*, and cl. 4 of Sched. 16 to the Act of 1948.

CHAPTER 26

CONTRACTS

A COMPANY can enter into contracts in much the same way as an individual, subject, however, to the four rules following:—

1. A contract ultra vires the company is wholly void and cannot be enforced or ratified.[1]
2. A contract which is ultra vires the directors, but not ultra vires the company, is invalid, unless and until it is ratified by the shareholders[2]; and even without such ratification it may, under certain circumstances, be binding on the company by virtue of the rule of estoppel recognised in *Royal British Bank* v. *Turquand*.[3]
3. A contract made before the incorporation of a company by some person professing to act on its behalf cannot be ratified by the company after its incorporation.[4]
4. A company cannot make a binding contract until it is entitled to commence business.[5]

Where a contract has been made before incorporation, there is nothing to prevent the company, when incorporated, from entering into a new contract to carry into effect the terms of the pre-incorporation contract.[6] Sometimes the contract is made before incorporation with some person purporting to act as trustee for the company. In this case also it is usual to make a fresh contract after incorporation. Mere acting on the old contract does not make it binding on the company,[7] though it may give the trustee the right to indemnity.[8] Merely taking the benefit of a pre-incorporation contract does not bind the company to fulfil the obligations of that contract.[9]

Rule 4 (above) is contained in **s. 109 (4)** of the Act of 1948, which runs as follows:—

(4) 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.

[1] See *ante*, pp. 49 to 51.
[2] *Grant* v. *United Kingdom Switchback Ry.* (1888) 40 Ch.D. 135.
[3] *Ante*, p. 32.
[4] *Kelner* v. *Baxter* (1866) L.R. 2 C.P. 174; *Re Empress Engineering Co.* (1880) 16 Ch.D. 125; *Natal Land, etc., Co.* v. *Pauline Colliery, etc., Syndicate* [1904] A.C. 120; *North Sydney Investment, etc., Co.* v. *Higgins* [1899] A.C. 263; *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.* [1902] 1 Ch. 146.
[5] See *ante*, p. 44.
[6] *Howard* v. *Patent Ivory Co.* (1888) 38 Ch.D. 158; *Re Dale and Plant* (1889) 61 L.T. 206; *Natal Land Co.* v. *Pauline Colliery Syndicate*, *supra*.
[7] *Re Northumberland Hotel Co.* (1886) 33 Ch.D. 16.
[8] *Hardoon* v. *Belilios* [1901] A.C. 118.
[9] *Re Northumberland Hotel Co.*, *supra*; *Re Rotherham Alum, etc., Co.* (1883) 25 Ch.D. 103; *Clinton's Claim* [1908] 2 Ch. 515, overruling *Re English and Colonial Produce Co.* [1906] 2 Ch. 435.

'Provisional' here means that the contract is to be read as if it contained a provision that it shall not be binding on the company unless and until the company becomes entitled to commence business.[10]

Private companies and companies registered before January 1, 1901, and companies registered before July 1, 1908, which have not issued a prospectus inviting the public to subscribe for their shares are exempt from this provision (**s. 109 (7)**).

The words of **s. 109 (4)** are very wide and appear to include all contracts, including contracts of membership.

The words 'shall be binding' do not give any statutory sanction to the contract, but mean that the contract is no longer provisional but complete: but it is only good for what it may be worth, *e.g.*, it may still be liable to be avoided for fraud, misrepresentation, etc.

As to the conditions with which a company must comply to entitle it to commence business, see pp. 44–45.

Form of Contracts

Contracts by, or by agents of, company.

According to the old common law rule a contract to bind a corporation had to be under its common seal. Modern decisions have relaxed this rule to some extent[11]; but the exigencies of business rendered a further relaxation of the rule desirable and this was done by s. 37 of the Companies Act, 1867, which is re-enacted in **s. 32** of the Act of 1948. The result of the enactment contained in that section is that a company can, as a general rule, contract without seal. It is sufficient if the contract is made by some person acting under the express or implied authority of the company; nor need the contract, as a general rule, be in writing even, except in the case of land; it is sufficient if it is made by word of mouth, provided that the person who makes it has authority to make it on the company's behalf. Who is a person acting on the implied authority of the company, must depend on the articles of the company. Usually the directors have express authority to act on the company's behalf, and they can, therefore, on the company's behalf, make contracts. So, too, if they appoint a manager or other official, he may be given authority by some resolution of the board, or by an instrument under the company's seal.[12]

But the mere appointment of a manager by directors, under a power for that purpose, will only operate as a delegation to such manager of the ordinary commercial business of the company.[13]

In contracts by a company acting by its agents, the better form is for the company to be made a party by its corporate name, the contract being signed by the agents on behalf of the company. No personal liability

[10] *Re Otto Electrical Manufacturing Co., Jenkin's Case* [1906] 2 Ch. 390.
[11] *South of Ireland Co.* v. *Waddle* (1869) L.R. 4 C.P. 617.
[12] *Beer* v. *London and Paris Hotel Co.* (1875) L.R. 20 Eq. 412; *Browning* v. *Great Central Mining Co. of Devon, Ltd.* (1860) 5 H. & N. 856; *Re Land Credit Co.* (1869) 4 Ch.App. 460.
[13] *Cartmell's Case* (1874) L.R. 9 Ch.App. 691.

under the contract can attach to the agents where they sign ' on behalf ' of the company.[14]

Contracts under Seal

As to the form which a contract to be sealed on behalf of a company should take, such a contract will be expressed thus: An agreement made this —— of —— between The —— Company, Limited, of the one part, and A B, of the other part, and it will provide that ' the said company shall [do so-and-so] and that the said A B shall [do so-and-so] ' and will conclude, As witness the common seal of the company and the hand [and seal] of the said A B, the day and year first above written.

Signed Contracts

As to the form which a contract to be signed on behalf of a company should take, the company by its corporate name should be made a party to it thus: ' between the —— Company, Limited, of the one part, and A B of the other part ', or it may be ' between N of —— on behalf of the — — Company, Limited, of the one part, and A B of —— of the other part '.

In any case care must be taken to show on the face of the contract that the person who signs it is acting for, or on account or on behalf of, the company, by inserting words to that effect in the description of the parties, or in the body of the agreement, or in connection with the signature. Any of these places will do [15] If the words ' for the —— Company, Ltd.' are written or printed immediately above or below or opposite the signature, that is sufficient.

For the purposes of the Moneylenders Act, 1927, a memorandum signed by a director and secretary ' for and on behalf of ' the company is ' signed personally by the borrower '.[16]

Oral Contracts

Where it is desired to make an oral agreement, the person who is to make it on behalf of the company must have an express or implied authority, and then a contract made by word of mouth between him and the other party will bind the company, subject, of course, to the provisions of the Statute of Frauds, the Sale of Goods Act, 1893, and the Law of Property Act, 1925, which require that certain agreements shall be in writing signed by the party to be charged. Section 4 of the Statute of Frauds (replaced as to contracts relating to land by s. 40 of the Law of Property Act, 1925) deals with various agreements, and, in particular guarantees, contracts for sale of lands or any interest in or concerning the same, and agreements not to be performed within the space of a year from the making thereof. In such cases no action is to be brought unless the agreement on which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some

[14] *Gadd* v. *Houghton* (1876) 1 Ex.D. 357; and see *ante*, pp. 185 *et seq.*
[15] See *Gadd* v. *Houghton* (1876) 1 Ex.D. 357.
[16] *Re British Games* [1938] Ch. 240.

other person thereunto authorised. It may be noted, however, that 'the statute in this part of it does not say that unless those requisitions are complied with, the contract shall be void but merely that no action shall be brought upon it'.[17] Accordingly, an agreement in relation to such matters is not void because it is not in writing, and it can be enforced against the company if, by any means, an admission of the terms of the agreement signed by some duly authorised agent of the company can be produced in evidence. Thus, a proposal in writing accepted orally is a sufficient memorandum as against the proposer[18]; so a letter from the company to its own solicitor mentioning the terms of the contract made is sufficient[19]; or a letter to an agent of the person sought to be charged.[20] A record of the terms of the contract in the minutes signed by the chairman may also suffice,[21] or part performance unequivocally referable to the contract.[22] 'The court', as Bowen L.J. said,[23] 'is not in quest of the intention of the parties, but only of evidence under the hand of one of the parties to the contract that he has entered into it.'

As to delivering to the registrar particulars of an oral contract for the issue of paid-up or partly paid-up shares for a consideration other than cash, see **s. 52 (2)** of the Act, *ante*, pp. 98, 99.

[17] *Per* Jervis C.J., *Leroux* v. *Brown* (1852) 12 C.B. 801, at p. 824; *Hoyle* v. *Hoyle* [1893] 1 Ch. 84.
[18] *Reuss* v. *Picksley* (1866) L.R. 1 Ex. 342.
[19] See *Gibson* v. *Holland* (1865) L.R. 1 C.P. 1.
[20] *Bailey* v. *Sweeting* (1861) 9 C.B. (N.S.) 843.
[21] See *Jones* v. *Victoria Graving Dock* (1877) 2 Q.B.D. 314; *Re Queensland, etc., Co.* [1894] 3 Ch. 181.
[22] *Wilson* v. *West Hartlepool Ry.* (1865) 2 De G.J. & S. at pp. 475 and 492; *Howard* v. *Patent Ivory Co.* (1888) 38 Ch.D. 163.
[23] *Hoyle* v. *Hoyle* [1893] 1 Ch. 99.

CHAPTER 27

THE COMMON SEAL

The right to a common seal.

To have a common seal is incidental to a corporation [1]; and **s. 13 (2)** of the Act of 1948 expressly declares that a company incorporated under that Act is to have a seal, and, by **s. 108 (1) (b)** of the same Act, the company is required to have its name 'engraven in legible characters on its seal'.

Who can use.

The right to use the seal of the company for the purposes of its business is usually vested in the directors. Occasionally the power is vested in them by express words, but, more usually, their power arises from the terms of a general clause enabling them to exercise all the powers of the company (see, for example, **clause 80 of Table A**). It has been laid down that the executive of the company is, prima facie, entitled to use the common seal.[2]

Contracts not under seal.

As to contracts not under seal, **s. 32** of the Act enables a company, as a general rule, to contract without seal; it need only contract under seal where a private person would have to do so, *e.g.*, in the case of a covenant or of a bond.

Conveyances, etc.

Conveyances, leases, certificates, etc., are not affected by this section, and where in the case of an individual a seal is requisite, it is requisite in the case of a company.

Thus, to convey freehold property, and to assign or surrender leasehold property, or to give a power of attorney, a seal is requisite. And a seal is requisite for some instruments in order to obtain certain statutory advantages, *e.g.*, in the case of a certificate of title to shares (**s. 81**); in the case of a share warrant (**s. 83 (1)**); and in the Law of Property Act, 1925, various statutory incidents are annexed to *deeds*.

Regulations as to use of seal.

Where the articles contain special provisions as to the affixing of the seal, *e.g.*, that the instrument must also be signed by two directors, those who deal with the company are bound to see that the document on the face of it accords with the articles; but as to deeds, see s. 74 of the Law of Property Act, 1925, *ante*, p. 32.

[1] *Sutton's Hospital Case*, 10 Rep. 30 b.
[2] *Re Barned's Banking Co.* (1867) L.R. 3 Ch.App. 105.

Presumption of validity.

If the instrument is on the face of it regular, persons dealing with the company have a right to presume that the seal so affixed has been duly affixed, that the directors were duly appointed and their signatures duly made [3]; and the burden of proving the contrary rests with those who allege it [4]

This is a corollary from the rule in *Royal British Bank* v. *Turquand*.[5] In *County of Gloucester Bank* v. *Rudry, etc. Co.*,[6] the seal had been irregularly affixed to an instrument, but the company was held bound by it, for the instrument appeared to be in accordance with the articles, and the irregularity was only in regard to the 'indoor' management, with which an outsider cannot be acquainted. On the other hand, it has been held in a later case, distinguishing *County of Gloucester Bank* v. *Rudry, etc. Co.*, that if the seal is affixed fraudulently by the secretary for his own private ends, the company is not estopped [7] Where the presumption does not apply, as in the case of a non-trading corporation, an instrument to which the seal has been irregularly affixed is inoperative.[8]

Delivery of deed not required from a corporation

A deed to be effective must be sealed and *delivered*, but, in the case of a corporation, the affixing of the seal imports delivery 'Le fait d'un corporation ne besoign ascun delivery mes l'apposition del common seale done perfection al ces sans ascun deliverie' Rol Abr Faits, 23 (I), 50; and see *Comyns' Digest*, Fact A (3), that 'a common seal fixed to the deed of a corporation is tantamount to a delivery'. *Cruise's Digest*, 4th ed., vol 4, 28, is to the same effect. Accordingly, whilst in the case of a private individual it is usual to add an attestation clause to the effect that the instrument was 'signed, sealed, and *delivered*' in the presence of the witness, in the case of a company the clause merely states that 'the common seal was affixed hereto in the presence of —— and ——'.

Prima facie, therefore, if the common seal is duly affixed to a deed it becomes operative,[9] and it rests with those who allege the contrary to establish the fact.

Nevertheless, a corporation can execute a deed in escrow, *i.e.*, can seal it subject to a condition suspending its efficacy.

As Lord Cranworth said in *Xenos* v. *Wickham* [10]:—

'The efficacy of a deed depends on its being sealed and delivered by the maker of it, not on his ceasing to retain possession of it. This, as a general proposition of law, cannot be controverted. It is not affected by the circumstances that the maker may so deliver it as to suspend or qualify its binding effect. He may

[3] *Re County Life Assurance Co.* (1870) L.R. 5 Ch.App. 288; *Mahony* v. *East Holyford Mining Co.* (1875) L.R. 7 H.L. 869.
[4] *Clarke* v. *Imperial Gas, etc., Co.* (1832) 4 B. & Ad. 315; *Hill* v. *Manchester, etc., Co* (1833) 5 B. & Ad. 866.
[5] *Ante*, p. 32.
[6] [1895] 1 Ch 629.
[7] *Ruben* v. *Great Fingall Co.* [1906] A.C. 439.
[8] *Bank of Ireland* v. *Evans' Trustees* (1855) 5 H.L.C. 389; *Mayor of the Staple* v *Bank of England* (1887) 21 Q.B.D. 160; and see *London Freehold Land Co.* v *Suffield* [1897] 2 Ch. 608.
[9] *London Freehold, etc., Co.* v. *Suffield* [1897] 2 Ch. 608.
[10] (1866–7) L.R. 2 H.L. 310, at pp. 323, 324.

declare that it shall have no effect until a certain time has arrived, or until some condition has been performed; but when the time has arrived, or the condition has been performed, the delivery becomes absolute, and the maker of the deed is absolutely bound by it, whether he has parted with the possession or not. Until the specified time has arrived, or the condition has been performed, the instrument is not a deed. It is a mere escrow. . . . I know of nothing intermediate between a deed and an escrow.'

Whether a document sealed by a company was or was not intended to operate as a complete and operative instrument, or as an escrow, depends on the intention of the parties as expressed or implied. See *Derby Canal Co.* v. *Wilmot*,[11] where the company's seal was affixed to a conveyance; but the clerk was directed to retain it until certain accounts were adjusted. Lord Ellenborough C.J., and the rest of the court, held that,

in order to give it effect, the affixing of the seal must be done with intent to pass the estate; otherwise it operates no more than a feoffment would do without livery of seisin; whereas here, though the seal was directed to be and was affixed to the instrument for form, yet it was with a reservation of any present effect to pass the title out of the company, as they do not choose to deliver over the possession of the conveyance till the accounts were settled between them and the purchaser'.

See, too, *Mouatt* v. *Castle Steel, etc., Co.*,[12] in which the court found as a fact that debentures to bearer sealed by the company had not in fact been delivered, and held them void in consequence. It is quite consistent with this, however, that the company may be estopped from setting up non-delivery where an instrument under the seal is taken in good faith.[13] The onus of proving that a deed duly sealed was only executed in escrow rests with those who so assert.[14]

Whether sealed document a deed.

A document to which the seal is affixed is not necessarily a deed; thus a certificate of title to shares is not a deed [15]; but it would seem that every *contract* under the seal is a deed, save only that, by the Bills of Exchange Act. 1882, s. 91, a corporation is empowered to seal, instead of signing, acceptances, indorsements and the like.

Foreign Seals Act.

Besides its common seal, a company may, under **s. 35** of the Act, obtain power to have an official seal for use abroad; and, under **s. 34** of the Act, it can authorise any person, as the attorney of the company, to execute, under his seal, deeds outside the United Kingdom.

[11] (1808) 9 East 360.
[12] (1886) 34 Ch.D. 58.
[13] *County of Gloucester Bank* v. *Rudry, etc., Co.* [1895] 1 Ch. 629.
[14] *Roberts* v. *Security Co.* [1897] 1 Q.B. 111, and *London Freehold, etc., Co.* v. *Suffield, supra.*
[15] *The Queen* v. *Morton* (1873) L.R. 2 C.C.R. 22; *South London Greyhound Racecourses, Ltd* v. *Wake* [1931] 1 Ch. 496, at p. 503.

CHAPTER 28

SECRETARY AND OTHER OFFICIALS

Appointment and Remuneration of Secretary

ALMOST every going company has always had a secretary. The articles sometimes contain a clause declaring who shall be the first secretary. In any case a resolution is usually passed appointing a secretary and stating his remuneration, and, if the terms of appointment are special, the agreement in regard thereto is generally put in writing. By **ss. 177, 178 and 179** of the Act of 1948 [1] every company must have a director and a secretary, and a sole director shall not also be secretary; and a company cannot have as secretary a company the sole director of which is a sole director of the company. Anything required to be done by a director and the secretary cannot be done by one person acting in both capacities.

By **s. 200** [2] a company must include in the register of directors the name and address, and any former name, of the secretary, or, if the secretary is a corporation, its corporate name and registered or principal office. If all the partners of a firm are joint secretaries, the name and office of the firm may be stated.

A return must be made within fourteen days (**s. 200 (4) and (5)**).

A secretary is generally remunerated by a fixed salary.

Acts required to be done by a secretary can in case of a vacancy or incapacity be done by an assistant secretary, or, if none available, by anyone authorised by the directors to act (**s. 177 (2)**).

Duties

The duties of the secretary vary with the size and nature of the company and the terms of the arrangement made with him. But in the ordinary course he is present at all meetings of the company, and of the directors, and makes proper minutes of proceedings thereat; issues, under the direction of the board, all necessary notices to members and others; conducts all correspondence with shareholders in regard to calls, transfers, forfeiture and otherwise; keeps the books of the company, or such of them as relate to the internal business of the company, *e.g.*, the register of members, the share ledger, the transfer book, the register of mortgages; certifies transfers, etc., etc. He also makes all necessary returns to the Registrar of Companies.

Where the same person is secretary to two companies, A and B, knowledge acquired elsewhere by him as secretary of A Company is not to be treated as knowledge by him as secretary of B Company, unless there is a duty to communicate the knowledge.[3]

[1] Re-enacting s. 26 of the Act of 1947.
[2] Re-enacting s. 27 of the Act of 1947.
[3] *Re Fenwick, Stobart & Co., Deep Sea Fishery Co.'s Claim* [1902] 1 Ch. 507; and see p. 223.

Powers

A secretary, as such, has no authority to bind the company by contract or to make representations as to the company's affairs to induce people to take shares so as to bind the company [4]; or to register a transfer until passed by the directors.[5]

Certification of transfers.

As a rule the secretary is given power to certify a transfer. By s. 79 [6] the certification is to be taken as a representation by the company that there have been produced to the company such documents as on the face of them show a prima facie title to the shares in the transferor, but not as a representation that the transferor has any title to the shares. The company may be liable if a false certification is made fraudulently or negligently. This section alters the law as laid down in *George Whitechurch, Ltd.* v. *Cavanagh*,[7] where the secretary fraudulently gave a certification in the case of a transfer of shares though certificates had not been lodged, and it was held that the company was not liable, as the secretary had no authority to grant a certification except where certificates had in fact been lodged.[8]

Where a secretary was held out as a person to answer certain inquiries, it was held that the company incurred no liability for untrue answers if made by the secretary, not acting for the company but for his own private ends [9]; and in a subsequent case [10] the House of Lords held the same principle to be applicable to a share certificate to which the secretary had fraudulently, for his private ends, affixed the seal of the company and forged the signatures of the directors. The company might, however, be liable in an action for deceit if the secretary was acting in the course of his employment, though the fraud was committed for his own benefit.[11] See also as to cheques with forged signatures of directors, *Kepitigalla Rubber Estates* v. *National Bank of India*.[12]

Where a director advanced money for the benefit of a company at the request of the secretary, without the authority of a properly constituted board of directors, he was held not to be entitled to recover the money advanced.[13]

A secretary, as such, has no power to convene a general meeting,[14] or to strike a name off the register of members,[15] or to pass and register a transfer not approved by the directors.[16] In that case the secretary

[4] *Barnett, etc., Co.* v. *South London Tramways Co.* (1887) 18 Q.B.D. 815.
[5] *Chida Mines, Ltd.* v. *Anderson* (1905) 22 T.L.R. 27.
[6] Re-enacting s. 70 of the Act of 1947.
[7] [1902] A.C. 117, followed in *Kleinwort, Sons & Co.* v. *Associated Automatic Corporation* [1934] W.N. 65.
[8] See further, *ante*, p. 117.
[9] *British Mutual Bank* v. *Charnwood Forest Ry.* (1887) 18 Q.B.D. 714.
[10] *Ruben* v. *Great Fingall Consolidated* [1906] A.C. 439.
[11] *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716.
[12] (1909) 25 T.L.R. 402.
[13] *Re Cleadon Trust* [1939] Ch. 286.
[14] See *ante*, p. 142.
[15] *Wheatcroft's Case* (1873) 29 L.T. 324.
[16] *Chida Mines* v. *Anderson*, *supra*.

registered the transferee, and afterwards the directors refused to pass the transfer.

Liability

A company's secretary is liable to heavy punishment for falsifying any books or documents of the company (**s. 329**). And he may incur liability and penalties under the Act in the following cases amongst others: statutory declaration to obtain certificate of incorporation (**s. 15 (2)**); statutory declaration for company commencing business (**s. 109 (2) (c)**); signing the annual list of members and summary (**s. 126 (1)**); and return of allotments (**s. 52 (3)**). He is also liable for misfeasance if he receives an improper commission.[17] But a secretary is in a very different position to directors, and is not to be fixed personally with liability for a misapplication by them of the company's funds, though he may have known all about it.[18]

A secretary sued for negligence may set up the Statute of Limitations.[19]

A secretary is an 'officer' of the company (**s. 455**).

Appointment of Secretary and Other Officers

An appointment of an officer by a company is commonly made by instrument in writing pursuant to **s. 32** of the Act of 1948, and this course is a better one than placing reliance for the purpose, as is sometimes done, on the articles of association, for an appointment made by the articles is not, it seems, a contract in writing by the company at all, though it may be held to evidence the terms on which the company has agreed to employ the officer or agent.[20] Moreover, special stipulations are usually required on such appointment, and they cannot be so conveniently inserted in the articles as in a formal agreement for employment.

Specific performance.

It is a cardinal doctrine of equity that specific performance of a contract for personal service will not be ordered.[21] Service under coercion can never be satisfactory. Thus, specific performance of a contract to employ a managing director was refused in *Bainbridge* v. *Smith*,[22] though a contract giving power to nominate directors was enforced in *British Murac Syndicate* v. *Alperton Rubber Co.*[23] Where there is a negative stipulation that an employee will not engage elsewhere, the court will grant an injunction to restrain a breach thereof.[24] To found this

[17] *Barrow's Case* (1880) 28 W.R. 341; *McKay's Case* (1875) 2 Ch.D. 1.
[18] *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 396.
[19] *Municipal Freehold Land Co* v. *Pollington* (1890) 63 L.T. 243.
[20] *Eley* v. *Positive Government, etc., Co.* (1876) 1 Ex.D. 88; *Re Rotherham Co.* (1883) 25 Ch.D. 103; and see *ante*, p. 28.
[21] *Stocker* v. *Brocklebank* (1851) 3 M. & G. 250; *Mair* v. *Himalaya Tea Co.* (1865) L.R. 1 Eq. 411.
[22] (1889) 41 Ch.D. 462.
[23] [1915] 2 Ch. 186; and see *ante*, p. 37.
[24] *Lumley* v. *Wagner* (1852) 1 De G. M. & G. 601

remedy by injunction, however, the company must put in the contract a clear negative covenant, or words amounting thereto.[25]

Dismissal.

In the absence of express provision—that is, unless he has consented to forego it—an employee is entitled to reasonable notice of dismissal, or to compensation in lieu thereof [26]; but there are certain things—going to the root of the contract—for which an employee may be dismissed summarily and without notice; for instance, wilful disobedience to any lawful order of the company,[27] misconduct,[28] incompetence or permanent disability,[29] speculating on the Stock Exchange,[30] or even an act of forgetfulness by an employee, if it has, or is calculated to have, serious results, may justify dismissal without notice.[31]

Where a servant is wrongfully dismissed from his employment, the damages for dismissal cannot include compensation for the manner of the dismissal.[32]

Where power is reserved to the company at its absolute discretion to determine the engagement at an earlier date than that fixed, proper notice of the company's intention to terminate must be given.[33]

An officer who accepts an incompatible office, by doing so prima facie vacates his original office.[34]

Winding up

An order for winding up is equivalent to dismissal,[35] and so is the appointment by the court of a receiver and manager in a debenture action [36]; and in most cases voluntary winding up operates in like manner. It was held that the mere fact of voluntary winding up did not so operate,[37] but a voluntary winding up coupled with a sale of the company's business was held to operate as a dismissal.[38]

Where an appointment is made for a fixed period, it becomes a question of construction whether there is a definite agreement by the company to provide employment for the period named, in which case no term will be implied authorising the company to discontinue its business.[39] If there is no such definite agreement to provide employment,

[25] *Whitwood Chemical Co.* v. *Hardman* [1891] 2 Ch. 416.
[26] *Green* v. *Wright* (1876) 1 C.P.D. 592.
[27] *Spain* v. *Arnott* (1817) 2 Stark. 256; *Amor* v. *Fearon* (1839) 9 A. & E. 548.
[28] *Pearce* v. *Foster* (1886) 17 Q.B.D. 536; *Boston Deep Sea* v. *Ansell* (1888) 39 Ch.D. 339.
[29] *Harmer* v. *Cornelius* (1858) 5 C.B. (N.S.) 236.
[30] *Pearce* v. *Foster* (1886) 17 Q.B.D. 536.
[31] *Foster* v. *London and County Printing Works* [1899] 1 Q.B. 901.
[32] *Addis* v. *Gramophone Co.* [1909] A.C. 488.
[33] *Re African Association and Allen* [1910] 1 K.B. 396.
[34] See *ante*, pp. 170, 171.
[35] *Chapman's Case* (1866) L.R. 1 Eq. 346.
[36] *Reid* v. *Explosives* (1887) 19 Q.B.D. 264.
[37] *Midland Counties District Bank* v. *Attwood* [1905] 1 Ch. 357.
[38] *Reigate* v. *Union Manufacturing Co.* [1918] 1 K.B. 592 (C.A.).
[39] *Turner* v. *Goldsmith* [1891] 1 Q.B. 544; *Ogdens* v. *Nelson* [1905] A.C. 109; *Reigate* v. *Union Manufacturing Co., supra*; *Fowler* v. *Commercial Timber Co.* [1930] 2 K.B. 1 (where the plaintiff had himself voted for voluntary liquidation); *Shirlaw* v. *Southern Foundries (1926)* [1939] 2 K.B. 206.

the court will not, as a rule, imply a term that the company will not discontinue its business.[40]

A person who is appointed to be governing director for life by the articles is not entitled to damages on the voluntary winding up of the company.[41]

As to the measure of damages, see *Re Gramophone Records, Ltd.*,[42] and *Re W. R. Snow & Co., Ltd* ,[43] where it was held that a provision fixing the amount of the damages could not be relied upon where the amount fixed might be much more than the loss suffered. If a company by winding up disables itself from carrying out its bargain to continue an employee in its employment, it cannot hold him to his share of the bargain not to compete in business with the company.[44]

Trade secrets.

An employee or ex-employee may generally be restrained by injunction from revealing trade secrets [45]

[40] *Rhodes* v. *Forwood* (1876) 1 App.Cas. 256; *Lazarus* v. *Cairn Line* (1912) 106 L.T. 378; *Re Railway and Electric Co.* (1888) 38 Ch.D. 597; *Hamlyn & Co.* v. *Wood* [1891] 2 Q.B. 488.
[41] *Re Farrer* [1937] Ch. 352.
[42] [1930] W.N. 42.
[43] [1930] W.N. 68.
[44] *Measures Bros., Ltd.* v. *Measures* [1910] 2 Ch. 248 (C.A.).
[45] *Merryweather* v. *Moore* [1892] 2 Ch. 518; *Robb* v. *Green* [1895] 2 Q.B. 315.

CHAPTER 29

BILLS OF EXCHANGE AND PROMISSORY NOTES

Company's Power to Issue

Express and implied powers.

Whether a company can make, accept, indorse, or issue bills of exchange, promissory notes, and other negotiable instruments depends on its objects; it cannot issue such instruments unless it has an express or implied power given to it by its memorandum. In the case of *a trading company* there is an implied power to accept and issue bills and notes as there is to borrow—business convenience requires it—and there are other commercial concerns which may also have an implied power.[1] But usually the memorandum of association contains express power. The following are instances in which it has been held that companies had no such implied power, and illustrates the inconvenience of relying on an implied power: a gas company [2]; a mining company [3]; a cemetery company [4]; a railway company [5]

Acceptance by Director in Name of Company

How bills accepted, etc.

Section 33 of the Act enacts that 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 or by or on behalf or on account of the company, by any person acting under its authority.

Thus, in order to accept a bill, all that is necessary is to authorise one of the directors, or the secretary, or someone else, to sign the acceptance on behalf of the company and then let the acceptance be in the e terms:—

Accepted

For the —— Company, Limited, and by its authority, payable at, etc

Countersigned: N., *Secretary* A. B. } *Directors.*

A bill may be:—

£ s. d. London, 1st March, 1878.

Three months after date, pay to ——, or order, one hundred pounds, value received.

For the —— Company, Limited.

To Mr. ——. A. B. } *Directors.*

[1] *Re Peruvian Ry.* (1867) L.R. 2 Ch.App. 623.
[2] *Bramah* v. *Roberts* (1837) 3 Bing.N.C. 963.
[3] *Dickinson* v. *Valpy* (1829) 10 B. & C. 128.
[4] *Steele* v. *Harmer* (1845) 14 M. & W. 831.
[5] *Bateman* v. *Mid Wales Ry.* (1866) L.R. 1 C.P. 499.

A bill drawn on a company ought to be addressed to the company thus: 'To the —— Company, Limited', *not* 'To the Directors of the —— Company, Limited.'

A promissory note may be:—

Three months after date, The —— Company, Limited, promises to pay to ——, or order, the sum of ——, value received.

For, etc. [*as above*].

An indorsement may be:—

Pay to ——, or order.

For, etc. [*as above*].

A cheque can be signed in the same way.

A bill, note, cheque, or indorsement may be accepted, drawn, or made on behalf of a company, by any person who has the necessary authority.

Acceptances under seal.

Under s. 91 of the Bills of Exchange Act, 1882, it is provided that: 'In the case of a corporation where . . any instrument in writing is required to be signed, it is sufficient if the instrument in writing be sealed with the corporate seal' Accordingly, if preferred, an acceptance can be in this form:-

Accepted

Payable at the —— Bank, Limited.

As witness the common seal of the —— Company, Limited.

A promissory note runs in this form:—

The —— Company, Limited, hereby promises to pay to —— of —— on the —— day of —— next, the sum of £——

As witness the common seal of the said company this —— day of ——.

Danger of omitting the word 'limited', or not stating the name correctly.

In relation to bills of exchange and promissory notes the provisions of **s. 108 (1) (c)** of the Act must be borne in mind, and accordingly the true name of the company must appear, and particularly the word 'limited' must not be omitted. Any breach of this enactment involves heavy penalties, and, what is more, may impose personal liability on the directors. See the concluding words of the section. *Atkins & Co.* v. *Wardle*,[6] is an instance in which directors were held personally liable on a bill which did not state the name of a company correctly; and see *Penrose* v. *Martyr*,[7] in which a bill addressed to a company omitted the word 'limited' in describing it. It was accepted by 'J. M., Secretary to the company', and it was held that he was personally liable. See also *Nassau Steam Press* v. *Tyler*,[8] where the directors described the company by a wrong name and were held personally liable. But directors were held not personally liable where, owing to the length of the rubber stamp employed, the word 'limited' overlapped the paper and did not appear[9]

[6] (1889) 61 L.T. 23.
[7] (1858) E.B. & E. 499.
[8] (1894) 70 L.T. 376.
[9] *Dermatine Co.* v. *Ashworth* (1905) 25 T.L.R. 510.

'For' the company.

As to the importance of using the words 'for' or 'on account of' the company, see *ante*, pp. 244, 245, and s. 26 of the Bills of Exchange Act, 1882. A note in the form 'We, the directors of the A Company, Limited, promise to pay', etc., signed by the chairman and three other directors, with the seal of the company in the corner, was held to bind the directors personally.[10] A bill accepted in the form 'H. I. and R. M., Directors, Fashions Fair Exhibition, Ltd', and indorsed at the request of the plaintiff by the directors, 'Fashions Fair Exhibition, Ltd.: H. I. and R. M. Directors', was held in the circumstances to render the directors liable as indorsers.[11] But where a promissory note was framed thus: 'I, ——, promise to pay to Mr. C. the sum of £300, J. H. S., etc., Ltd., J. H. S., Managing Director', it was held that J. H. S. was not personally liable.[12]

Acting under authority.

Where a managing director signed a bill on behalf of the company without any authority to do so, it was held that the company was bound to a person taking the bill in due course.[13]

[10] *Dutton* v. *Marsh* (1871) L.R. 6 Q.B. 361.
[11] *Elliott* v. *Bax Ironside* [1925] 2 K.B. 301.
[12] *Chapman* v. *Smethurst* [1909] 1 K.B. 927 (C.A.), reversing [1909] 1 K.B. 73.
[13] *Dey* v. *Pullinger Engineering Co.* [1921] 1 K.B. 77; dissenting from *Premier Industrial Bank* v. *Carlton Co.* [1909] 1 K.B. 106.

CHAPTER 8

BORROWING POWERS

Where power to borrow exists.

Most companies, like individuals, require to borrow from time to time for the exigencies of their business. To entitle a company to borrow it must have power to borrow given to it by its constitution Whether a company under the Act has or has not such a power will depend on the objects specified in its memorandum of association. If these objects comprise, as they usually do, an express power to borrow, there is of course no question; but it is not always necessary to find an express power. It is sufficient if there is an implied power. An implied power arises whenever the objects are such that a power to borrow may fairly be regarded as incidental to the company's objects. This is the case with a *trading* company. It has—it must have—as incidental to carrying on its business, an implied power to borrow [1]; but in regard to non-trading companies, there must be something in the memorandum or articles to show expressly or inferentially that the company is to have power to borrow; for a company, as we have seen already (p. 45), under the Act, is a statutory corporation with limited powers In the case of *The Queen* v. *Sir Charles Reed*,[2] Cotton L.J. observed [3]:

'It was said that every corporation, unless restricted by its act of incorporation, has the same power as an individual to enter into contracts, including that of borrowing money. In our opinion this contention . . . cannot be maintained. The power of a corporation established for certain specified purposes must depend upon what those purposes are, and except so far as it has express power given to it, it will have such powers only as are necessary for the purpose of enabling it in a reasonable and proper way to discharge the duties, or fulfil the purposes for which it was constituted. . . . A trading corporation stands, as regards an implied power of borrowing, in a very different position'.[4]

If a company has no power by its constitution to borrow, it can remedy the defect by taking such a power, or extending it if its existing power is unduly limited, by special resolution. The sanction of the court is not required, but an application can be made to the court to cancel the alteration.[5]

Limit of Borrowing Powers

Sometimes, though rarely, the memorandum of association limits the borrowing powers to a specific sum, or to a sum not exceeding the paid-up capital; but in ninety-nine cases out of a hundred there is no limit in the memorandum, and there is nothing whatever in the Act itself to limit

[1] *Bryon* v. *Metropolitan, etc., Co.* (1858) 3 De G. & J. 123; *Ex p. City Bank* (1868) L.R. 3 Ch.App. 758; *General Auction, etc., Co.* v. *Smith* [1891] 3 Ch. 432.
[2] (1880) 5 Q.B.D. 483.
[3] *Ibid.*, at pp. 488 and 489.
[4] See also *Baroness Wenlock* v. *River Dee* (1885) 10 App.Cas. 359.
[5] See *ante*, p. 59.

borrowing powers. If, therefore, the company has express or implied power to borrow, it may from time to time borrow as much as it wants, subject to any restrictions in its articles.

Bound by regulations.

Usually the articles authorise the directors to exercise the company's borrowing powers. This authority may be given in two ways: either generally by a clause empowering the directors to exercise all such powers as may be exercised by the company, and are not by the articles or by statute expressly directed or required to be exercised or done by the company in general meeting (see **Table A, cl. 80**), or by a special clause empowering the directors to borrow or raise money; but it is not uncommon to provide that the directors shall not borrow more than a specified sum without the sanction of a general meeting. In considering the powers of the directors to borrow, it is not, therefore, necessary to find an express power for them to borrow; it is sufficient if the company has power, and the articles contain a clause like **cl. 80** of **Table A**, vesting in the directors the general powers of the company.[6] The Rules of the Stock Exchange require that the borrowing power of directors be limited by the articles to a reasonable amount

Power to give Security

Where a company has power to borrow, it has, as incidental thereto, power to secure the repayment of borrowed money by mortgage or charge of all or any or its propery, real or personal, present or future.[7]

Power to Mortgage uncalled Capital

At one time it was thought that a power to borrow did not include a right to mortgage or charge uncalled capital[8]; but in 1875, Jessel M.R. decided that a mortgage of uncalled capital was allowable where the company's articles of association gave the power, and there was nothing in the memorandum of association to the contrary[9]; and accordingly, in the first edition of the author's work on *Company Precedents*, published in 1877, and in all subsequent editions, the author, after referring to this decision, gave forms of debentures charging the company's undertaking and its uncalled capital for the time being. Doubts having been raised as to the validity of such a mortgage, the matter was considered in the Court of Appeal in *Re Pyle Works*,[10] and it was held that *Re Phœnix Bessemer Co.* was well decided. Subsequently the same question came before the Judicial Committee of the Privy Council, and it was again held that if there is power in the memorandum, or power in the articles and nothing in the memorandum to the contrary, uncalled capital

[6] *Re Patent File Co.* (1870) L.R. 6 Ch.App. 83: *Re Anglo-Danubian Co.* (1875) L.R. 20 Eq. 339.
[7] *Australian, etc., Co.* v. *Mounsey* (1858) 4 K. & J. 733; *Re Patent File Co.* (1870) L.R. 6 Ch.App. 83.
[8] *Stanley's Case* (1864) 4 De G.J. & S. 407
[9] *Re Phœnix Bessemer Co.* (1875) 44 L.J.Ch. 683; 32 L.T. 854.
[10] (1890) 44 Ch.D. 534.

can be effectually charged.[11] But ' if the memorandum when authorising certain charges, has omitted to authorise a charge on uncalled capital, the omission may imply a prohibition '.[12]

What words sufficient to allow.

It is not essential that a power to mortgage uncalled capital or future calls should be given in terms by the articles; something less may be sufficient; thus a power in the memorandum to mortgage the property *and rights* of the company is sufficient.[13] So, too, a power to mortgage the company's ' assets ' appears to be sufficient[14]; or to raise money ' in various modes ', or ' in such other manner as the company may determine '[15]; or to raise money on ' any security of the company '[16] But a power to borrow on the *property* of the company will not authorise a charge on the company's uncalled capital, for uncalled capital is only ' property ' potentially, that is to say, when called up[17]; and even the words ' property both present and future ' are insufficient[18]

How enforced.

A receiver cannot make calls, unless (1) the articles authorise the directors to delegate their power of making calls to a receiver, or (2) the court orders him to make calls The court may also order the directors, or (in a winding up) the liquidator, to make calls and hand them over to the receiver.[19]

A mortgage of uncalled capital does not prevent the company from forfeiting the shares for non-payment of calls.[20]

As to mortgaging reserve capital.

The Court of Appeal, in *Bartlett* v. *Mayfair Property Co* ,[21] held that capital which, under sections corresponding to **s. 60** or **64**, was ' not capable of being called up except in the event and for the purposes of the company being wound up ', cannot be charged by the company under a power in its memorandum or articles to charge its uncalled capital.

This decision was strongly criticised by the author in previous editions[22]; but it was followed with approval by Buckley J. in *Re Irish Club Co., Ltd.*,[23] and has never been overruled.

Property situate Abroad

When a company, desirous of borrowing, holds property abroad, as is very commonly the case, it may have to consider how such property can best be made available as security. The leading principle to be borne in

[11] *Newton* v. *The Debenture Holders of Anglo Australian, etc., Co.* [1895] A.C. 244.
[12] *Per* Lord Macnaghten, *ibid.*, at p. 249.
[13] *Howard* v. *Patent Ivory Co.* (1888) 38 Ch.D. 156.
[14] *Page* v. *International, etc , Co.* (1893) 68 L.T. 435.
[15] *Jackson* v. *Rainford* [1896] 2 Ch. 340.
[16] *Newton* v. *Debenture Holders of Anglo-Australian, etc., Co., supra.*
[17] *Irvine* v. *Union Bank of Australia* (1877) 2 App.Cas. 366.
[18] *Re Streatham Estates Co.* [1897] 1 Ch. 15; *Re Russian Spratts, Ltd.* [1898] 2 Ch. 149
[19] See *Re Phœnix Bessemer Co., supra*; *Company Precedents*, Part III, 15th ed., p. 698
[20] *Re Agency Land and Finance Co.* (1903) 20 T.L.R. 41.
[21] [1898] 2 Ch. 28.
[22] See 12th ed., p. 289 *et seq.*
[23] [1906] W.N. 127.

mind with regard to this is that immovable property is governed by the *lex loci rei sitæ*, and therefore to perfect the title of the mortgagee or chargee upon property situate abroad the local law must be complied with. Unless it is, the title of the mortgagee or chargee may be intercepted by a local mortgage, charge, lien, or execution. It would be impossible here to detail the various peculiar conditions of the *lex loci* in different countries: sometimes the local law does not permit land to be vested in aliens, or in a foreign corporation; sometimes it does not recognise trusts or a floating charge; sometimes it does not allow concessions to be charged or chattels to be mortgaged unless possession is at once taken by the mortgagee. In cases like these the company should perfect as far as possible the security it offers according to the requirements of the local law. If it is unable to do this, it may yet through its articles give constructive notice to all persons dealing with it of the charge, and so disentitle them to ignore it.

Mortgage of foreign property.

Even without complying with the formalities required by the local law in relation to mortgages or transfers, it is still competent to a company to create an effective charge on property belonging to it in a foreign country; for the court, exercising its equitable jurisdiction *in personam*, enforces equities in regard to foreign land where the mortgagor company is within the jurisdiction [24]; and in determining whether there is an equity the court regards English, not foreign, law, and if according to English law there is an equity, *e.g.*, if for valuable consideration a company agrees to give a charge on foreign property, the court will enforce it, although the equity may be one not recognised by the *lex loci rei sitæ* [25]; but—and this is the danger of the situation—it will only enforce it subject to any rights which may in the meanwhile have been rightfully acquired under the local law of the foreign country. This is illustrated in *Maudsley* v. *Maudslay, Sons & Field* [26] There the debenture holders of an English company had a floating charge on its assets which included a French debt due to the company. A creditor of the company in France attached this debt by legal process in France, and the court in England held that the title of the French creditor must prevail against a receiver for the debenture holders subsequently appointed.[27]

Mode of Borrowing

A company which has power to borrow may borrow in such manner as it thinks fit. It can therefore raise money on a legal mortgage of any specific portions of its property, or by equitable mortgage, *e.g.*, deposit of title deeds, or by a floating charge on the whole undertaking of the

[24] *Penn* v. *Lord Baltimore* (1750) 1 Ves.Sen. 444; W. & T.L.C., 9th ed., 638; *Cranstown* v. *Johnston* (1793) 3 Ves. 170; *Mercantile, etc., Co.* v. *River Plate, etc., Co.* [1892] 2 Ch. 303; *Duder* v. *Amsterdamsch Trustees Kantoor* [1902] 2 Ch. 132; *British South Africa Co.* v. *De Beers* [1912] A.C. 52.

[25] *Ex p. Pollard* (1838–40) 4 Deac. 27; *Coote* v. *Jecks* (1872) L.R. 13 Eq. 597; *Hicks* v. *Powell* (1869) L.R. 4 Ch.App. 741; *Ex p. Holthausen* (1874) L.R. 9 Ch.App. 722.

[26] [1900] 1 Ch. 602.

[27] See further, *Company Precedents*, Part III, 15th ed., p. 56 *et seq.*

company,[28] or by bonds, or by promissory notes, or by debentures or debenture stock.[29] Overdrawing the company's banking account is borrowing.[30]

Ultra Vires Borrowing

Borrowing ultra vires the company.

Where a company has no borrowing power or where the memorandum of association fixes a limit to the borrowing powers of the company—a very rare thing—any borrowing in the one case and any borrowing in excess of such limit in the other case is ultra vires the company, and securities given for the same are inoperative. In such cases the contract is not merely avoidable, it is absolutely void and incapable of ratification, even if every member of the company purports to ratify it; nor can the company make good an ultra vires borrowing by obtaining enlarged powers of borrowing under **s. 5** of the Act.

Ultra vires the directors.

So, too, if the company has unlimited powers of borrowing, but the directors, having only limited powers, exceed them. In such a case the borrowing, being ultra vires the directors, is irregular and the securities are inoperative, unless the company is estopped from alleging their invalidity under the rule in *Royal British Bank* v. *Turquand* [31]; or unless the shareholders elect, as they may do, to ratify the act of the directors [32]

Ultra vires borrowing rights of lenders. Subrogations.

Where there is an ultra vires borrowing, the lender has no right of action in respect of the loan against the company itself, but he has certain rights in respect of the moneys received by the company under the transaction. He has, that is to say, if he intervenes before the money has been spent, a right to follow his money and to obtain an injunction restraining the company from parting with it. And even if the company has spent it he may be entitled, if it has been applied in paying off just debts owing to creditors of the company, to stand in the place of and to be subrogated to the rights of such creditors as simple contract creditors [33]; but not to any securities for their debts held by such creditors.[34] The rights of a depositor in a bank where the whole banking business was ultra vires were decided in *Sinclair* v. *Brougham* (*Birkbeck Building Society*),[35] where it was held that the surplus assets after payment of valid debts must be distributed pari passu among the depositors and the shareholders in proportion to the amounts paid or subscribed by them.

[28] See further, *post*, p. 295 *et seq.*
[29] See as to these, *post*, p. 272 *et seq.*
[30] *Cunliffe, Brooks & Co.* v. *Blackburn Benefit Society* (1884) 9 App.Cas. 865.
[31] (1857) 6 El. & Bl. 327.
[32] *Irvine* v. *Union Bank of Australia* (1879) 2 App.Cas. 366.
[33] *Blackburn Building Society* v. *Cunliffe, Brooks* (1883) 22 Ch.D. 61; 9 App.Cas. 857; *Re Cork and Youghal Ry. Co.* (1869) L.R. 4 Ch.App. 748; *Re German Mining Co.* (1853) 4 De G.M. & G. 56; *Baroness Wenlock* v. *River Dee (No. 2)* (1887) 19 Q.B.D. 155; *Neath Building Society* v. *Luce* (1889) 43 Ch.D. 158; *Re Harris Calculating Machine Co.* [1914] 1 Ch. 920; *Sinclair* v. *Brougham* [1914] A.C. 398; and *Re Airdale Co-operative Society* [1933] 1 Ch. 639.
[34] *Re Wrexham, Mold and Connah's Quay Ry.* [1899] 1 Ch. 440 (C.A.).
[35] [1941] A.C. 398.

Joint debentures.

Where several companies—each of which had power to borrow but no power to borrow jointly—borrowed jointly on debentures, each company was held chargeable for what it received [36]

Personal liability of directors.

The lender of ultra vires borrowed money has in some cases a right against the directors of the borrowing company personally for breach by them of their implied warranty of authority, if their acts amount to an implied representation of fact [37]; and it makes no difference as to the liability of the directors in such a case that they did not know that they were exceeding their powers.[38] But the directors are not liable if their acts amount only to a misrepresentation of law.[39] But see *West London Commercial Bank* v. *Kitson*,[40] where the directors were held liable on a warranty of authority, though their private Act gave no power to accept bills. It is difficult to reconcile this latter case with the rule that a person dealing wih the company must be taken to have notice of the contents of its memorandum of association or other documents by which it is constituted.[41]

Where directors personally guarantee repayment by a company of a loan which is secured by an ultra vires arrangement with the company, the guarantors are not relieved from liability by the claim being unenforceable against the company.[42]

Constructive Notice of Borrowing Limit

As to how far a person lending to a company is bound to see that the internal regulations as to borrowing have been observed, see *Royal British Bank* v. *Turquand* [43]; and other cases cited on pp. 32–34, *ante*.

Registration of Mortgages and Charges

Registration under **s. 104.**

Section 104 requires every limited company to keep a register of all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, and to enter in it a short description of the property charged, the amount of the charge, and the names of the persons entitled to it.

Non-registration under this section does not affect the validity of the charge. The sole penalty is the statutory fine of £50, and that only when the omission to register is wilful.[44]

[36] *Re Johnston Foreign Patents* [1904] 2 Ch. 234.
[37] *Firbank* v. *Humphreys* (1886) 18 Q.B.D. 54; *Weeks* v. *Propert* (1873) L.R. 8 C.P. 427; *Chapleo* v. *Brunswick, etc., Society* (1881) 6 Q.B.D. 696.
[38] *Weeks* v *Propert*, *supra*.
[39] *Rashdall* v. *Ford* (1866) L.R. 2 Eq. 750 (where the company had no power at law to borrow on Lloyd's Bonds); *Beattie* v. *Ebury* (*Lord*) (1874) L.R. 7 Ch.App. 777.
[40] (1884) 13 Q.B.D. 360.
[41] See *ante*, p. 32.
[42] *Garrard* v. *James* [1925] Ch. 616.
[43] (1856) 5 El. & Bl. 248; 6 El. & Bl. 327.
[44] *Re General South American Co.* (1876) 2 Ch.D. 337; *Wright* v. *Horton* (1887) 12 App.Cas. 371.

The register to be kept under s. 104 is open to the inspection of any creditor or member of the company without fee, and to the public on payment of a fee not exceeding 1s. (s. 105).

Registration under ss. 95 to 109.

Section 95 provides for the registration in a public register of a company's mortgages and charges, and avoids, as against creditors and liquidators, mortgages and charges not duly registered within twenty-one days after their creation.

Section 95 provides as follows:—

95.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the 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 charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges:—

(*a*) a charge for the purpose of securing any issue of debentures;

(*b*) a charge on uncalled share capital of the company;

(*c*) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(*d*) a charge on land, wherever situate, or any interest therein, *but not including a charge for any rent or other periodical sum issuing out of land* [45];

(*e*) a charge on book debts of the company;

(*f*) a floating charge on the undertaking or property of the company;

(*g*) a charge on calls made but not paid;

(*h*) a charge on a ship or any share in a ship;

(*i*) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, 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 charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the

[45] The words in italics were introduced by s. 89 (1) of the Act of 1947.

delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) 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 charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) 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, for the purposes of this section, 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:

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.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a 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 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 subsection, be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

(*a*) the expression 'charge' includes mortgage;

(*b*) the expression 'the fixed date' means in relation to the charges specified in paragraphs (*a*) to (*f*), both inclusive, of subsection (2) of this section, the first day of July, 1908, and in relation to the charges specified in paragraphs (*g*) to (*i*) both inclusive, of the said subsection, the first day of November, 1929.

The registrar may, on proper evidence, enter a memorandum of release or discharge on the register. This now applies to part of the debt or part of the property released from the charge (**s. 100**).[46]

[46] Incorporating amendments by s. 89 (3) of the Act of 1947.

Section 96 provides as follows:—

96.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

Section 93 of the Act of 1908 (replaced by **s. 95** (above)) only applied to a charge 'created by a company'. Where, therefore, the company purchased property which was subject to a charge, no registration was required under that section.[47]

Section 97 extends the duty of registration to such charges as follows:—

97.—(1) Where a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument 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 completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Section 98 provides as follows:—

98.—(1) The registrar of companies shall keep, with respect to each company a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter in the register with respect to such charges the following particulars:—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section ninety-five of this Act;

(*b*) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding one shilling for each inspection as may be specified by regulations made by the Board of Trade.

[47] Cf. *Re Connolly Bros., Ltd.* (*No.* 2) [1912] 2 Ch. 25.

(4) **The powers to make regulations conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**

Section 100 provides for entry of satisfaction on proof that the debt has been paid in whole or in part or that part of the property has been released from the charge.[48]

With reference to these sections the following observations occur:—

(1) A mortgage or charge is 'created' when the deed or agreement is executed or entered into, even though the advance is made subsequently.[49]

(2) **Paragraphs (d) and (e) of subs. (1)** of what is now **s. 95,** were first introduced in s. 10 of the Act of 1907 and **paras. (g) (h) and (i)** by the Act of 1928.

(3) The word 'charge' includes a lien and an equitable charge, whether created or evidenced by deed or instrument in writing or created by oral communication, express or implied, *e.g.*, by deposit of title deeds or by an agreement to deposit.[50]

(4) The mortgage or charge is void as against the liquidator and creditors only. It is good as against the company, and the company may give a subsequent valid mortgage to secure the same debt. But if a subsequent creditor, even with notice of the first charge, takes a registered charge before the first charge is registered, he obtains priority.[51]

(5) 'Book debts' are debts connected with and arising out of the company's trade, which are entered, or commonly entered, in books.[52] Any assignment of a book debt is within the section if it is intended to be a security for a debt.[53] A document purporting to be a sale of hire-purchase agreements was construed by Eve J. as a charge on book debts, but was held by the Court of Appeal to be a sale.[54] A letter directing moneys payable under a contract to be remitted to the company's bankers with whom the company had an overdraft containing the words, these instructions 'to be regarded as irrevocable', unless the bank should consent to their cancellation, has been held to be a charge on book debts.[55] An assignment of a part of a book debt is not a charge on the book debt.[56]

[48] S. 84 of the Act of 1929 only provided for entry of satisfaction when the whole debt had been paid.

[49] *Watson & Co.* v. *Spiral Globe Co.* [1902] 2 Ch. 209; *Re Harrogate Estates, Ltd.* [1903] 1 Ch. 498; *Appleyard* v. *New London and Suburban Co.* [1908] 1 Ch. 621; *Esberger & Son, Ltd.* v. *Capital and Counties Bank* [1913] 2 Ch. 366; *Dublin City Distillery Co.* v. *Doherty* [1914] A.C. 823.

[50] *Dublin City Distillery Co.* v. *Doherty* [1914] A.C. 823.

[51] *Re Monolithic Co.* [1915] 1 Ch. 643.

[52] See *Shipley* v. *Marshall* (1863) 14 C.B. (N.S.) 566; *Tailby* v. *Official Receiver* (1888) 13 App.Cas. 523; *Dawson* v. *Isle* [1906] 1 Ch. 633; *Re Law Car, etc., Corporation* [1911] W.N. 91.

[53] *Saunderson & Co.* v. *Clark* (1913) 29 T.L.R. 579; and see *Ladenburg & Co.* v. *Goodwin, Ferreira & Co.* [1912] 3 K.B. 275.

[54] *Re George Inglefield, Ltd.* [1933] Ch. 1.

[55] *Re Kent and Sussex Sawmills, Ltd.* [1947] Ch. 177.

[56] *Ashby Warner & Co.* v. *Simmons* [1936] W.N. 212.

(6) As to **subs.** (3), this provides for an alternative mode of registration,[57] and it is applicable both to debentures and debenture stock.[58] Registration under this subsection protects not only debentures of the series properly issued, but also documents which purport to be debentures of the series, but which owing to some technical defect can only be upheld as agreements for debentures.[59]

(7) A mortgage of substituted property made pursuant to the provisions of an unregistered trust deed requires registration,[60] unless the debentures or debenture stock have been registered under **s. 95 (8)** [61] Having regard to **s. 97 (1)**, the mere fact that the charge was not created by the company will not now remove the necessity for registration. The decision in *Bristol United Breweries* v. *Abbott* [62] is to this extent modified by the Act of 1929. It has been doubted whether the *Cunard Case* covers a substituted security where the new charge is not made by the company; but it is submitted that such a charge falls within **s. 98 (1) (a)** and is protected by registration of the particulars mentioned in **s. 95 (8)**. In any case failure to register under **s. 97** does not affect the validity of the charge As to a separate charge on profits, securing a bonus to debenture holders, see *Hoare* v. *British Columbia Association* [63]

(8) Registration under this section makes registration as a land charge under the Land Charges Act, 1925, unnecessary (see s. 10 (5) of that Act).

(9) The certificate of registration is conclusive,[64] even though the certificate does not refer to part of the property comprised in the charge.[65]

The section only applies to the specified classes of mortgages and charges. A simple mortgage or charge not for the purpose of securing an issue of debentures or debenture stock, and not within **paras. (b) to (l) of subs. (1)**, is not within the section: *e.g.*, a mortgage or charge on a concession, or a mortgage by deposit of dock warrants, bills of exchange, or other mercantile documents.

Bill of sale.

A bill of sale, as defined by s. 4 of the Bills of Sale Act, 1878, includes all assurances of personal chattels with certain exceptions. A pledge of goods accompanied by delivery of possession to the pledgee is not a bill

[57] *Re Harrogate Estates Co.* [1903] 1 Ch. 498.
[58] *Cunard Steamship Co.* v. *Hopwood* [1908] 2 Ch. 564.
[59] *Re Fireproof Doors* [1916] 2 Ch. 142.
[60] *Cornbrook, etc., Co.* v. *Law Debenture Corporation* [1904] 1 Ch. 103.
[61] See *Cunard Steamship Co.* v. *Hopwood* [1908] 2 Ch. 564.
[62] [1908] 1 Ch. 279.
[63] [1912] W.N. 235; 107 L.T. 602.
[64] *Re Yolland, Husson and Birkett* [1908] 1 Ch. 152.
[65] *National Provincial Bank* v. *Charnley* [1924] 1 K.B. 431.

of sale,[66] and this is not affected by the addition of a letter of trust[67]; nor is an oral agreement giving security followed by possession[68]; nor prima facie are inventories of goods with receipt attached[69]; nor sale and hiring agreements.[70]

Industrial societies are not excluded from the Bills of Sale Acts[71]; but the charge is severable, and may be valid as to property other than chattels.[72]

As to **para. (f)**, ' floating charge ', see *post*, p. 295 *et seq.*

If the security is under the section avoided, the obligation of the company to repay the money lent remains as an unsecured liability, and matures at once. (See **s. 95 (1)**.)

The section does not apply to a charge given for the purpose of obtaining any loan guaranteed by the Government in pursuance of any war obligation (Government War Obligations Act, 1914).

Extension of time and rectification of mistakes.

By **s. 101** of the Act provision is made for extension of the time for registration and for rectification of mistakes by a judge of the High Court on being satisfied that the omission to register a mortgage or charge within the time required by the Act, or that the omission or mis-statement of any particular with respect to 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 '. The court may extend the time for registration on such terms and conditions as seem to the judge just and expedient. The words here, accidental or due to inadvertence ' have a very wide meaning.[73] In exercising this discretionary power of granting relief on terms, it has become the practice to insert in the order the following words: ' This order to be without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered '.[74]

This proviso, as the Court of Appeal explained in *Re Ehrmann Bros., Ltd*,[75] is merely designed to protect rights acquired against the property of the company in the interval between the expiration of the twenty-one days for registering and the extended time allowed by the order. It does not protect the existing unsecured creditors *who have not obtained any*

[66] *Ex p. Hubbard* (1886) 17 Q.B.D. 690.
[67] *Re David Allester, Ltd.* [1922] 2 Ch. 211; and see *Wrightson* v. *McArthur Hutchinson (1919), Ltd.* [1921] 2 K.B. 807.
[68] *Charlesworth* v. *Mills* [1892] A.C. 231; *Ramsay* v. *Margrett* [1894] 2 Q.B. 18.
[69] *Ramsay* v. *Margrett, supra.*
[70] *Manchester Ry.* v. *North Central Waggon Co.* (1888) 13 App.Cas. 554. See further, *Company Precedents*, Part III, 15th ed., pp. 188 *et seq.*
[71] *Re North Wales Produce Society, Ltd.* [1922] 2 Ch. 340.
[72] *Ibid.*
[73] *Re Jackson & Co.* [1899] 1 Ch. 348.
[74] *Re Joplin Brewery Co.* [1902] 1 Ch. 79; *Re Spiral Globe Co.* [1902] 1 Ch. 396; *Re Abrahams & Sons* [1902] 1 Ch. 695; *Re Ehrmann Bros.* [1906] 2 Ch. 697; *Re Cardiff Workmen's Cottage Co.* [1906] 2 Ch. 627.
[75] *Supra.*

security or charge upon the property subject to the debentures.[76] It does protect a secured creditor whose security is registered between the expiration of the twenty-one days and the extended time allowed by the order, even though he has notice of the prior unregistered charge.[77] Where an order extending the time is made, and these words appear in it, and before actual registration a winding up commences, the mortgage or charge, if subsequently registered, is not effective as against the general body of the creditors.[78]

The application should be made by summons.[79]

An order for extension will not be made after a winding up commences.[80] Where a meeting has been convened to consider a winding up, the order ought to provide an opportunity for the liquidator, if a winding up occurs, to apply to discharge the order.[81]

Sometimes, in cases where an extension of time is not obtainable, the company, in lieu thereof, may call in and cancel the debentures and issue new debentures, to be registered in due course.[82]

The court has power to extend the time even where the default was made before January 1, 1909.[83]

Where the directors of a company, knowing that the company was bound to go into liquidation, did not oppose the extension of time for registration of a charge, and did not inform the court of the circumstances, the proceedings were held by Eve J. to be a fraudulent preference and the registration was declared void; but the Court of Appeal and the House of Lords held that there was not sufficient evidence of an intention to prefer.[84]

Fees.

By the Companies (Fees) No. 1 Order, 1929, the following fees are made payable:—

For registering under **Part III** of the Companies Act, 1948, any charge required to be registered thereunder, whether created by a company or existing on property acquired by the company—

	£	s.	d.
Where the amount of the mortgage or charge does not exceed £200	0	10	0
Where it does exceed £200	1	0	0

[76] See *Re Johnson (J. C.) & Co.* [1902] 2 Ch. 101 (C.A.), and *Company Precedents*, Part III, 15th ed., pp. 193–195.
[77] *Re Monolithic Co.* [1915] 1 Ch. 643.
[78] So held by Buckley J. in *Re Anglo-Oriental Carpet Co.* [1903] 1 Ch. 914
[79] Order LIIIB, 1948, r. 8 (n).
[80] *Re Abrahams & Sons, supra.*
[81] *Re Charles (L. H.) & Co., Ltd.* [1935] W.N. 15.
[82] *Bowen* v. *Defries & Co.* [1904] 1 Ch. 37.
[83] Interpretation Act, 1889, s. 38; *Re Herts and Essex Waterworks Co.* [1909] W.N. 48; *Re Lush & Co.* [1913] W.N. 39; 108 L.T. 450.
[84] *Re M.I.G. Trust* [1933] Ch. 542; affirmed *sub nom. Peat* v. *Gresham Trust* [1934] A.C. 252.

	£	s.	d.
For registering particulars of a series of debentures under **Part III** of the Companies Act, 1948—			
Where the total amount secured by the whole series does not exceed £200	0	10	0
Where it does exceed £200	1	0	0
For registering the appointment of a receiver or manager of the property of a company under **s. 102** of the Companies Act, 1948	0	5	0
For inspecting the register of charges—			
For each inspection	0	1	0

CHAPTER 31

DEBENTURES AND DEBENTURE STOCK

Meaning of 'Debenture'

THE term debenture is not a technical term. 'I cannot find', said Chitty J. in *Levy* v. *Abercorris, etc., Co*,[1] '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'. It is, however, a word which has been in use for many centuries, and is mentioned in the Parliament Rolls as early as the time of Henry V, 1414. The term is used also in the Paston Letters, 1455, and in 12 & 13 Edward IV, 1472, provision was made in regard to debentures under the seal of the staple of Calais. From thenceforth, the term appears from time to time in the statutes. It is a very wide term, but it is now generally used to signify a security for money, called on the face of it a debenture, and providing for the payment of a specified sum- say £100—at a fixed date, with interest meantime. It usually gives a charge by way of security, and in most cases is expressed to be one of a series of like debentures. But the term, as used in common parlance, is of an extremely elastic character: for (a) it is sometimes used, both by lawyers and commercial men, to describe an instrument which is not called, on the face of it, a debenture, *e g*, a railway mortgage or bond.[2] (b) It is used of an instrument which is not one of a series.[3] 'You may have a single debenture issued to one man.'[4] (c) It is not confined to instruments issued by companies; clubs sometimes issue debentures, and, occasionally, individuals, *e g*, the Tichborne Bonds. (d) It is not the less a debenture because it is not under seal: *British India, etc., Co.* v. *Commissioners*,[5] in which case a debenture was merely signed by two directors. (e) Or because it does not provide for payment at any fixed date, but only in the event of winding up, or in some contingency. (f) Or because there is no personal liability on the company to pay, but the security is to be as against the property of the company only. (g) Or because it does not contain any charge.[6] The term debenture is used in several Acts of Parliament in addition to the Companies Acts, *e.g.*, the Stamp Acts, 1870 and 1891, and the Bills of Sale Act, 1882.

Statutory definition.

The Act of 1908 did not define a 'debenture'. It merely stated (s. 285) that 'debentures' includes debenture stock. This section was,

[1] (1887) 37 Ch.D. 264.
[2] See *Gardner* v. *London, Chatham and Dover Ry.* (1866-7) L R 2 Ch.App. 201.
[3] *Levy* v. *Abercorris Co., supra.*
[4] *Robson* v. *Smith* [1895] 2 Ch. 118.
[5] (1881) 7 Q.B.D. 165.
[6] *British India, etc., Co.* v. *Commrs.* (1881) 7 Q.B.D. 165; *Speyer Bros.* v. *Commrs. of I.R.* [1907] 1 K.B. 246; [1908] A C. 92; *Lemon* v. *Austin Friars Investment Trust* [1926] Ch. 1 (income stock entitling holder to portion of profits, but containing no charge).

however, amended by the Act of 1928, and the amendment was incorporated in the Act of 1929 and now in **s. 455** of the Act of 1948, which provides that 'debenture' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not. This amendment, probably unintentionally, extended the meaning of 'debenture' in the Act so as to include a mortgage by a company issued to a single mortgagee. See *Knightsbridge Estates Trust, Ltd.* v. *Byrne*,[7] where the company mortgaged freehold land to the trustee of a friendly society to secure £310,000, and the mortgage provided that this sum, with interest, should be repayable by eighty half-yearly instalments. The company claimed to be entitled to redeem the mortgage on the ground that the postponement of the date of redemption for forty years was a clog on the equity of redemption. It was, however, held by the House of Lords that the mortgage was a debenture, and that the doctrine of clogging the equity did not apply to a debenture, since, by **s. 89**, a debenture may be made irredeemable.[8]

'Securities' is apparently used in a sense wider than its strict legal meaning; but it can hardly be intended to bear its wider or commercial meaning, which would include shares.[9]

Distinguished from 'Debenture Stock'

Debenture stock is a much more modern term than debenture. In substance the holders of debenture stock and the holders of debentures generally stand very much in the same position. The term debenture stock, in common parlance, is used to describe a debt owing by the company, payable at a fixed date, or in the event of winding up, or some other contingency, and in the meantime carrying interest at a specified rate, and secured usually by a trust deed on the property of the company. The debt is generally made payable to trustees, and the beneficial interest thereof is represented by certificates held by the debenture stock holders. **Section 80** makes provision for the prompt issue of the certificates. The difference between debentures and debenture stock—apart from the fractional sub-divisibility of the latter—is, that 'a debenture' is the description of an instrument, whereas 'debenture stock' is the description of a debt or sum secured by an instrument. It is, to use Lord Lindley's words, 'borrowed capital consolidated into one mass for the sake of convenience'.

Classes of Debentures

The principal kinds of debentures are the following:—

I. Debentures payable to registered holder.

II. Debentures payable to bearer simply.

III. Debentures payable to registered holder, but with interest coupons payable to bearer.

[7] [1940] A.C. 613.
[8] See *post*, p. 301.
[9] Cf. *Re Rayner* [1904] 1 Ch. 176.

IV. Debentures payable to bearer, but with power for bearer to have them placed on a register and to have them at any time withdrawn therefrom.

In each case the debentures are usually secured by some mortgage or charge on property of the company, whether by trust deed, or in the debentures themselves, or in both ways

A debenture, though one document, consists usually of two parts, (1) the body of the instrument containing the bond or covenant and charge, and (2) the indorsed conditions

Class I.—Debentures to Registered Holder

The object of this form of debenture is to meet the requirements of the money market, and to facilitate and simplify dealings. It may be convenient to go through the various provisions of the usual forms, and explain briefly their object and operation

The - Company, Limited.

Issue of £100,000 of debentures of £100 each, carrying interest at 4 per cent. per annum.

No. —— DEBENTURE. £100.

Payment of principal.

1. *The — - Company limited (hereinafter called 'the company'), will on the —— day of ——, or on such earlier day as the principal moneys hereby secured become payable in accordance with the conditions indorsed hereon, pay to A B of —— or other the registered holder for the time being hereof, the sum of* £[100].

The registered debenture has many advantages:—

1. The title of the debenture holder is recorded in the books of the company, and is consequently not exposed to the risks of loss or damage incident to a debenture to bearer passing from hand to hand.

2. The registered holder is the only person recognised by the company as entitled to the debentures. This simplifies dealings with the security.

3. The company having the names and addresses of the registered holders can more easily communicate with them where it wishes to do so for purposes of redemption, compromise, or reconstruction.

4. The registered debenture is a species of security well understood on stock exchanges and favoured by investors.

Consideration

It will be observed that clause 1 does not express the consideration In the case of a deed there is no need to do so; but if the instrument be under hand only, then the consideration should be stated, and even in the case of a debenture by deed, there is, perhaps, some advantage in showing, on the face of it, that it was, in fact, issued for valuable consideration. In such a case, where it is desired to be more explicit, the

clause can begin with the words ' For valuable consideration already received ', or, if desired, ' In consideration of the sum of £—— already received '.

' *Will pay.*'

The clause uses the term ' will pay '. This is a perfectly simple, intelligible and effective expression, and it is more suitable for an ordinary business document than the expression ' covenants '. But there is no magic in the term, and occasionally the words ' undertakes ', ' promises ', ' covenants ', or ' binds itself ', are substituted.[10]

Time for payment.

A debenture usually fixes a date for payment as above, *e.g.*, at the end of five, ten, twenty, or thirty years; but sometimes it is framed as a perpetual debenture, and in that case the clause runs ' will, as and when the principal moneys hereby secured become payable in accordance with the conditions endorsed hereon ', the intention being that the principal shall only become payable in the events specified in the conditions 8 and 9, *post*, p. 283.

Occasionally, where there is a temporary loan on debentures, they are made payable on demand, and then the clause runs ' will, on demand in writing ', or ' will, at the expiration of seven days after demand in writing, etc.'. Such debentures are often issued to a company's bankers as security for an overdraft.

Payment to registered holder.

The object of making the debenture payable to the registered holder is to simplify the title, and enable the company to look to some specified person as the holder to whom it can make payments, and whose receipt will be a sufficient discharge to the company.

In the absence of provisions as to register and ancillary clauses, the company would have to take notice of any number of assignments, charges, and claims that might be brought to its notice.

Payment of interest.

2. *The company will, during the continuance of this security, pay to such registered holder interest thereon at the rate of —— per cent. per annum by half-yearly payments on the —— day of —— and —— day of —— in each year, the first of such half-yearly payments to be made on the —— day of —— next.*

Currency of interest.

A debenture almost always provides for payment of interest as in clause 2; but sometimes the interest is made payable quarterly. Very commonly the expression used is ' will in the meantime pay ', but there is some ambiguity in this expression. It may mean ' until the date fixed for payment ' or ' until the date of actual payment '. The latter construction would seem to accord best with the intention; and, as the words

[10] See *Ex p. City Bank* (1868) L.R. 3 Ch.App. 758; *Norton* v. *Florence Land Co.* (1877) 7 Ch.D. 332.

are ambiguous, should be preferred. Should, however, the former construction prevail, subsequent interest would only be recoverable by way of damages.[11]

How judgment affects interest.

Moreover, if the holder should obtain judgment on the debenture the interest would thenceforth cease to be payable under the debenture, for the contract would merge in the judgment, which carries interest at 4 per cent. only.[12] By using, however, the words 'during the continuance of this security' both these difficulties are avoided. Sometimes interest is made payable only out of profits.[13]

As to payment by uncashed cheque, see *Re Defries & Sons.*[14]

Charge.

3. *The company hereby charges with such payments its undertaking, and all its property, present and future [including its uncalled capital].*

Charge in trust deed.

A mortgage debenture generally contains a charge as in clause 3. Sometimes the charge, however, is effected by a trust deed[15]; but even where there is a trust deed, a general charge as above is very commonly inserted in the debenture. The word 'charge' creates a good equitable mortgage; but equity is not particular as to the terms used, and the word 'bind' or 'mortgage' is equally effective. So, too, if it is stated that the property shall stand as a security, or shall be a security for payment, etc., that is sufficient. All that equity requires is a sufficient indication of the intention to charge.[16]

Floating security.

As to the operation of a charge on the 'undertaking', see *post*, pp. 295 *et seq.* A general charge as given in clause 3 is, by the courts, treated as a floating security, as to which, see *post*, pp. 295 *et seq.*

Charge on specific property.

Sometimes, instead of a charge in general words as above, the debenture charges some specific property, *e.g.*, the company's brewery at ——— or the company's patents, etc. Or the charge may be on some portion only of the property, *e.g.*, the book debts, present and future, of the company. If a legal charge on land is required, the charge should be expressed to be 'by way of legal mortgage'.[17]

[11] *Goodchap* v. *Roberts* (1880) 14 Ch.D. 49; *Cook* v. *Fowler* (1874) L.R. 7 H.L. 27; *Gordillo* v. *Weguelin* (1877) 5 Ch.D. 303.
[12] *Re European, etc., Co.* (1876) 4 Ch.D. 33; *Ex p. Fewings* (1883) 25 Ch.D. 338.
[13] See *Company Precedents*, Part III, 15th ed., p. 274; *Heslop* v. *Paraguay Central* (1910) 54 S.J. 234; *Popple* v. *Sylvester* (1882) 22 Ch.D. 98, and the observations thereon in the last-mentioned case.
[14] [1909] 2 Ch. 423.
[15] *Post*, p. 301.
[16] *Re Strand Music Hall Co.* (1865) 3 De G.J. & S. 147; *Re New Durham Salt Co.* (1890) 2 Meg. C.R. 360.
[17] Law of Property Act, 1925, s. 87.

Uncalled capital.

The words 'including the uncalled capital' are very commonly inserted where the company has power to mortgage its uncalled capital.[18]

The inclusion of uncalled capital adds additional security, and, at the same time, does not prevent the company from calling up and dealing with its capital as and when required.

Reference to indorsed conditions.

4 *This debenture is issued subject to, and with the benefit of, the conditions indorsed hereon, which are to be deemed part of it.*

Are part of debenture.

The effect of these words in clause 4 is to import the indorsed conditions into the contract, and make them part of it.

Sometimes the above clause is omitted and the conditions are set out on the face of the debenture. This is an alteration merely in form, not in substance.

Sealing.

Given under the common seal of the company this —— day of ——

The common seal of the above-named company was affixed hereto in the presence of ——. (L.S.)

Not always necessary.

A debenture is almost always under seal, but it need not be so; it may be under hand, and occasionally is. See *British India, etc., Co.* v. *Commissioners*,[19] where the debentures were merely signed by two directors on behalf of the company, and *Re Fireproof Doors, Ltd.*[20]

If the articles contain any special provisions as to affixing the seal, they must, of course, be observed.[21]

Indorsed Conditions

On the back a series of conditions are usually indorsed as follows:—

The conditions within referred to.

'Pari passu' clause

1. *This debenture is one of a series of* 1,000 *debentures, each for securing the principal sum of* £100 *and interest. The debentures of the said series are all to rank pari passu in point of charge without any preference or priority one over another, and such charge* [*save as regards the hereditaments comprised in the trust deed below mentioned*] *is to be a floating security, but so that the company is not to be at liberty to create any mortgage or*

[18] See *ante*, p. 259.
[19] (1881) 7 Q.B.D. 165.
[20] [1916] 2 Ch. at p. 150.
[21] See *ante*, p. 247.

charge on its [freehold and leasehold] property [pari passu with or] in priority to the said debentures.

Before the Act of 1907 condition 1, when framed as above, was held to be open to this objection, that after paying off a debenture of the series the company could not issue in its place another debenture to rank pari passu with the others of the same class, although the total amount outstanding was kept within the limit [22] This difficulty was removed by s. 15 of the Act of 1907, now replaced by **s. 90** of the Act of 1948.[23]

Express ' pari passu ' provision.

The object of the pari passu provision is to place all the debentures on the same level as to security; so that, if the security is to be enforced, whatever is realised from it shall be divided amongst them rateably, in proportion to the amounts paid up on each debenture [24]; and if more interest is in arrear on some of the debentures than on others, in proportion to the total amount due to each debenture holder for capital and interest.[25] But for some such provision the debentures would rank in point of security according to their dates of issue; and, accordingly, the first issued would rank as a first charge, and the next issued as a second charge, and so on.[26] This would be entirely destructive of the marketable character of the security. Where there is a pari passu clause, a debenture holder, who seeks to enforce the security, must sue on behalf of himself and the other debenture holders. The presence of a pari passu clause does not, however, prevent a debenture holder, whose debt is due, from getting judgment and obtaining payment from the company if he can, and so, too, if, without judgment, he can obtain payment from the company, he cannot be called on to hand back what he has received for the benefit of the other debenture holders.

Effect as to set-off.

Where a holder of debentures of a series, containing a pari passu clause, owes money to the company, he cannot, on a distribution of the proceeds of sale of the company's assets, set off his debt against the amount due to him on his debentures. The principle to be applied is that where a person entitled to participate in a fund (*viz.*, the proceeds of sale) is also bound to make a contribution (*viz.*, his debt) in aid of that fund, he cannot be allowed to participate unless and until he has fulfilled his duty to contribute.[27]

[22] *Re Geo. Routledge & Sons* [1904] 2 Ch. 474; *Re Tasker (W.) & Sons* [1905] 1 Ch 283; *Re Perth Electric Tramways* [1906] 2 Ch. 216; *Re Russian Petroleum Co.* [1907] 2 Ch. 540.
[23] See *post*, p. 308
[24] *Re Smelting Corporation* [1915] 1 Ch 472.
[25] *Re Midland Express, Ltd.* [1914] 1 Ch. 41.
[26] *Re New Clydach, etc., Co.* (1868) L.R. 6 Eq. 514.
[27] *Cherry* v. *Boultbee* (1839) 4 My. & Cr. 442; *Re Brown & Gregory, Ltd.* [1904] 1 Ch. 627; and cf. *Re Peruvian Ry.* [1915] 2 Ch. 144; *Wilkins H. & Elkington, Ltd.* v. *Milton* (1916) 32 T.L.R. 618.

Floating charge.

'Such charge is to be a floating security.'[28] It is, and has been for many years, usual to state expressly that the charge is a 'floating security', or a 'floating charge', although the presence of the word 'undertaking' in the debentures imports this. And even where the word 'undertaking' is not used, the fact that the charge is a general charge on all the property of the company as a going concern is regarded by the court as a sufficient indication of intention that the charge is to be a floating security merely; for, otherwise, the business of the company would be paralysed.[29]

Effect of, as to later specific charges.

In condition 1 above, the floating character of the charge is largely qualified; for one of the most important features of such a charge is that it leaves the company at liberty to create specific mortgages or charges ranking in priority thereto The condition, as above framed, restricts this power. Occasionally the prohibition is not confined to the freehold and leasehold land, but is general. Such a general prohibition, however, is often found extremely inconvenient.

Later legal mortgage.

The prohibition, though good, is not absolutely protective; for, if the company, disregarding it, creates a legal mortgage or charge on the property in favour of a person who takes for value without notice of the character of the debenture-holders' charge, such person, in accordance with the ordinary rules, obtains priority by virtue of the legal estate.[30] And it has been held that an equitable mortgagee who obtains the title deeds and takes without notice of the debentures obtains priority.[31] See as to a solicitor's lien, *Brunton* v *Electrical Engineering Corpn.*[32] Where the clause expressly allows the company to mortgage its property, this does not, prima facie, authorise the company to create a further floating charge pari passu with the existing charge[33]; but an unlimited power to create charges over certain property may be sufficient to authorise a floating charge.[34]

Register to be kept.

2. *A register of the debentures will be kept at the company's registered office wherein there will be entered the names, addresses and descriptions of the registered holders and particulars of the debentures held by them respectively, and such register will at all reasonable times during business hours be open to the inspection of the registered holder hereof, and his legal personal representatives and any person authorised in writing by him or them.*

[28] See further as to this, *post*, p. 295.
[29] *Re Florence Land Co.* (1878) 10 Ch.D. 530; *Re Colonial Trusts* (1879) 15 Ch.D. 478.
[30] See *English and Scottish, etc., Co., Ltd.* v. *Brunton* [1892] 2 Q.B. (C.A.) 700.
[31] *Re Castell & Brown, Ltd.* [1898] 1 Ch. 315.
[32] [1892] 1 Ch. 434.
[33] *Re Benjamin Cope & Sons* [1914] 1 Ch. 800.
[34] *Re Automatic Bottle-Makers, Ltd.* [1926] Ch. 412.

Shows title.

The provision as to keeping a register is to simplify the title, and afford both to the company and the debenture holder, and those who may deal with the latter, a simple mode of ascertaining who is for the time being the proprietor of the debenture. Coupled with the next condition it has greatly facilitated dealings with debentures. By **s. 87** of the Act of 1948 every registered holder of debentures or shareholder is entitled to inspect the register of debenture holders and to acquire a copy at the charge of 6d. for every 100 words; and every other person has the same right, but may be called upon to pay a fee not exceeding 1s.[35]

The provisions of **s. 110 (2)** of the Act of 1948, as to the place where the register of members may be kept[36] (subject to special provisions as to Scotland) also apply to the register of debenture holders (**s. 86**).

Registered holder only recognised.

3. [*Save as in these conditions provided*] *the registered holder, or his legal personal representatives, will be regarded as exclusively entitled to the benefit of this debenture, and all persons may act accordingly, and the company shall not be bound to enter in the register notice of any trust, or, save as herein provided, and except as by some court of competent jurisdiction ordered, to recognise any trust or equity affecting the title to the debentures or the moneys thereby secured.*

How such clause operates.

The object of condition 3 is to fortify the title of the registered holder by making the company agree to recognise him exclusively. The latter part of the condition is intended to relieve the company, as far as is practicable, from the obligation to take notice of trusts or equities. Such a provision cannot, of course, relieve the company from its duty to recognise an order of the court[37]; but it is apprehended that, where there is such a condition, a mere notice of an equity may be disregarded; for one who claims under a debenture must be bound by the terms of the contract, and cannot be allowed both to approbate and reprobate.[38]

Transfer.

4. *Every transfer of this debenture must be in writing under the hand of the registered holder or his legal personal representatives. The transfer must be delivered at the registered office of the company with a fee of* 2s. 6d., *and such evidence of title or identity as the company may reasonably require, and thereupon* [*if this debenture remains registered in the name of the transferor the transferee will be recognised as having become entitled to the benefit of this debenture free from any equities,*

[35] The right of these persons to inspect the register was added by s. 74 (2) of the Act of 1947.

[36] See *ante*, p. 232.

[37] *Binney* v. *Ince Hall, etc., Co.* (1866) 35 L.J.Ch. 363.

[38] See, however, *Mackereth* v. *Wigan Coal and Iron Co.* [1916] 2 Ch. 293, and other cases discussed on p. 136.

set-off or cross-claims which, but for this provision, the company would be entitled to set up against the transferor and] the transfer will be registered and a note of such registration will be indorsed hereon The company shall be entitled to retain the transfer.

Working of clause.

The principal object of this clause also is to simplify the title to the debenture, by providing for the delivery of every instrument of transfer to the company, so that if any question as to the title arises the company will have the requisite documents in its possession In the absence of some such provision, the company would only receive a notice of the transfer which might or might not be authentic. In practice the condition is found extremely useful The clause says nothing about a debenture holder's trustee in bankruptcy He has power to transfer under s. 48 of the Bankruptcy Act, 1914.

A company is bound to exercise considerable care in regard to the registration of transfers. If it registers a forged transfer, it may incur serious responsibility [39] No transfer must be registered unless an instrument of transfer is produced (see **s. 78**), and the company (even in liquidation) is bound by the conditions [40]

On the death of a holder of debentures on which are endorsed conditions similar to 3 and 4 above, the company is bound to register the executor as a holder in his own name on production of probate, and cannot insist on a transfer being executed [41]

As to the words in square brackets, see note to condition 7, *infra*.

Joint holder

5 *In the case of joint registered holders, the principal moneys and interest hereby secured shall be deemed to be owing to them on a joint account*

Condition 5 is commonly inserted, but having regard to s 111 of the Law of Property Act, 1925, it is probably unnecessary.

Closing of Register.

6. *No transfer shall be registered during the seven days immediately preceding the day by this debenture fixed for payment of interest.*

Object of.

Condition 6 is inserted in order to prevent the great inconvenience that may arise if transfers come in just when the half-year's interest is being calculated. Most companies like to send out the interest on the day it becomes due, and it is practically impossible to do this if a number of transfers come in during the calculations

[39] See *ante*, p. 123
[40] *Farmer* v. *Goy & Co.* [1900] 2 Ch. 149 (Cozens-Hardy J.).
[41] *Edwards* v. *Ransomes & Rapier, Ltd.* [1930] W.N. 180.

Exclusion of equities.

7. *The principal moneys and interest hereby secured will be paid [and such moneys are to be transferable free from and] without regard to any equities between the company and the original or any intermediate holder hereof, or any set-off or cross-claim, and the receipt of the registered holder for such principal moneys and interest shall be a good discharge to the company for the same.*

Law as to equities.

Condition 7 is one of the most important conditions in the debenture. Prima facie a debenture, being a chose in action, is only assignable subject to all equities between the company and the original subscribers.[42] Thus, in *Athenæum, etc., Soc.* v. *Pooley*,[43] debentures had been issued to A as part of the consideration for property sold by him to the company. The price was excessive, and A had bribed the company's manager who arranged the sale. A afterwards transferred the debentures to B, who sold in the market to C, who bought without any notice of the circumstances relating to their issue. C subsequently sought to enforce them as against the company. Held, that though C was a purchaser bona fide without notice, yet, being only a purchaser of a chose in action, he could stand in no better position than A, and therefore that his claim failed. 'Mr. —— appears to have bought these debentures innocently, but very imprudently, in the belief, probably, that they were good securities, and without notice of anything to the contrary. Unfortunately, however, he bought what the English law calls a chose in action, and it is too clearly settled to admit of question or argument that a person buying a chose in action, which can only be put in suit in the name of the original holder, cannot in general stand in a better position than the original holder'.[44]

But this 'is a rule which must yield when it appears from the nature or terms of the contract that it'—the chose in action—'must have been intended to have been assignable free from and unaffected by such equities',[45] and it is now a matter of course to insert such a provision in a debenture unless the circumstances are very special; for investors long since discovered the extreme inconvenience of dealing with a security which was liable to be defeated or depreciated by the unexpected intervention of some latent equity.

The efficacy of the condition is exemplified by the decision of

[42] Law of Property Act, 1925, s. 136 (1), replacing s. 25 (6) of the Judicature Act, 1873; *Mangles* v. *Dixon* (1852) 3 H.L.C. 702; *Re Natal Investment Co.* (1868) L.R. 3 Ch. 355.

[43] (1858) 3 De G. & J. 294.

[44] *Per* Knight Bruce L.J., *ibid.*, at pp. 298, 299.

[45] *Per* Lord Cairns L.J., *Re Agra, etc., Bank* (1865) L.R. 2 Ch. 397; *Crouch* v. *Crédit Foncier* (1873) L.R. 8 Q.B. 385; *Re Blakely Ordnance Co.* (1867) L.R. 3 Ch.App. 154; *Higgs* v. *Northern Assam Tea Co.* (1869) L.R. 4 Ex. 387; *Re Northern Assam Tea Co.* (1870) L.R. 10 Eq. 458.

Stirling J. in *Farmer* v. *Goy & Co.*,[46] which may be contrasted with *Re Taunton, Delmard & Co.*,[47] and *Re Rhodesia Goldfields, Ltd.*[48]

In the absence of the bracketed words in this condition and in condition 3 the company can set up equities against an unregistered transferee of the debenture.[49] The bracketed words go far to nullify this power.

The latter part of the condition is useful as relieving the company from going into the question of title.

Notice by company to pay off.

8. *The company may at any time give notice in writing to the registered holder hereof, his executors or administrators, of its intention to pay off this debenture, and, upon the expiration of six months from such notice being given, the principal moneys hereby secured shall become payable.*

Sometimes the words ' after the —— day of —— next ' are inserted before the words ' give notice ', so that the holder may have, at any rate, a term of five, or ten, or sometimes twenty years' quiet enjoyment of the security; but in large numbers of cases the clause is left as it stands above.

In instruments coming into operation after the commencement of the Law of Property Act, 1925, ' month ' means ' calendar month ' (s. 107).

As to the mode of giving notice, see *post*, p. 287.

Immediate payment where default as to interest or winding up.

9. *The principal moneys hereby secured shall immediately become payable* —

(a) *If the company makes default for a period of six months in the payment of any interest hereby secured, and the registered holder hereof, before such interest is paid, by notice in writing to the company, calls in such principal moneys; or*

(b) *If an order is made or [an effective] resolution is passed for the winding up of the company.*

Repayment if default in interest.

As to paragraph (a), it is more satisfactory to the investor to know that if his interest gets largely into arrear he can call up his principal, as in the case of an ordinary mortgage, and such a provision is valid. It is not regarded as a penalty against which equity can relieve.[50]

Repayment on winding up.

As to paragraph (b), it was long since settled that where a winding up ensues, the debenture holder is entitled to enforce his charge and obtain

[46] [1900] 2 Ch. 149.
[47] [1893] 2 Ch. 175.
[48] [1910] 1 Ch. 239.
[49] *Re Palmer's Decoration and Furnishing Co.* [1904] 2 Ch. 743; *Andrews* v. *Brown and Gregory* [1904] 2 Ch. 448.
[50] *Thompson* v. *Hudson* (1869) L.R. 4 H.L. 1; *Wallingford* v. *Mutual Society* (1880) 5 App. Cas. 685.

immediate payment, even though his debenture has not matured.[51] And even though winding up for the purposes of reconstruction is not one of the specified causes on the happening of which the security becomes enforceable.[52] Accordingly, the clause does not prejudice the position of the company, while, at the same time, it serves to make clear the position of the debenture holder—a position which otherwise would have to be ascertained from a study of the authorities. A clause such as 9 above enables the company to insist on paying off debenture holders in the event of the winding up of the company.[53] But the company cannot require trustees for debenture holders to release their security without satisfying them that all the debentures are paid off.[54] A clause restraining a debenture holder from taking proceedings on his debenture without the consent of the majority of the debenture holders is valid.[55]

The word 'effective' is sometimes omitted. It may be very inconvenient for the debenture holder to have to wait to see whether a disputed or opposed resolution will become effective.

Warrant for interest.

10 *In respect of each half-year's interest on this debenture a warrant on the company's bankers payable to the order of the registered holder hereof, or, in the case of joint holders, to the order of that one whose name stands first in the register as one of such joint holders, will be sent by post to the registered address of such registered holder, and the company shall not be responsible for any loss in transmission. The payment of the warrant, if purporting to be duly indorsed, shall be a good discharge to the company.*

Until payment of the warrant, the debt is not satisfied [56]

The debt is a specialty debt, and the period of limitation is, therefore, twelve years under the Limitation Act, 1939.

A statement of the amount of the debenture debt and accrued interest in the company's balance sheets is a sufficient acknowledgment under s. 5 of that Act [57]

Power to appoint receiver.

11. *At any time after the principal moneys hereby secured become payable, or* [**after the security constituted by the trust deed below mentioned becomes enforceable**] *the registered holder of this debenture may from time to time, with the consent in writing of the holders of the majority in value of the outstanding debentures of the same series, appoint by writing any person or*

[51] *Hodson* v. *Tea Co.* (1880) 14 Ch.D. 859; *Wallace* v. *Universal, etc., Co.* [1894] 2 Ch 547 (C.A.).
[52] *Re Crompton & Co.* [1914] 1 Ch. 954.
[53] *Consolidated Goldfields* v. *Simmer and Jack East* [1913] W.N. 41; 108 L.T. 488.
[54] *Re General Motor Cab Co.* (1912) 56 S.J. 573, as explained in *Consolidated Goldfields* v. *Simmer and Jack East, supra.*
[55] *Pethybridge* v. *Unibifocal Co.* [1918] W.N. 278.
[56] *Re Defries & Son* [1909] 2 Ch. 423.
[57] *Burnham* v. *Atlantic and Pacific, etc., Co.* [1928] Ch. 836.

persons [*approved by the trustees of the said trust deed*] *to be a receiver or receivers of the property charged by the debentures* [**and not comprised in such trust deed**], *and may with the like consent remove any such receiver, and every such appointment or removal shall be as effective as if all the holders of debentures of the same series had concurred therein, and a receiver so appointed shall have power* (1) *to take possession of, collect and get in the property charged by the debentures, and for that purpose to take all proceedings in the name of the company or otherwise as may seem expedient;* (2) *to carry on or concur in carrying on the business of the company, and for that purpose to raise money on the premises charged in priority to the debentures or otherwise;* (3) *to sell or concur in selling all or any of the property charged by the debentures after giving to the company at least seven days' notice of his intention to sell, and to carry any such sale into effect by conveying in the name and on behalf of the company or otherwise;* (4) *to make any arrangement or compromise which he or they shall think expedient in the interest of the debenture holders.*

A receiver so appointed shall be deemed to be the agent of the company and the company shall be solely responsible for his acts or defaults and for his remuneration. The provisions of ss. 101 (1) *and* (2), 104, 106, 107, *and s.* 109 (3), (4), (6), (7) *and* (8), *of the Law of Property Act,* 1925, *and the powers thereby conferred on a mortgagee or receiver shall, so far as applicable, apply to the receiver so appointed as if such provisions were incorporated herein save that all moneys received by such receiver after providing for the matters specified in clauses* (i) *to* (iii) *of s.* 109 (8), *aforesaid, and for all costs, charges and expenses of or incidental to the exercise of any of the powers of such receiver shall be applied in or towards satisfaction pari passu of the debentures.*

Receivers.

When a receiver has been appointed, every invoice, order for goods or business letter must contain a statement that a receiver has been appointed (**s. 370**). The power may be vested in a third party, but in such a case is in the nature of a trust.[58] In the absence of such a clause, the provisions of the Law of Property Act, 1925, as to the appointment of receivers, do not apply, at any rate to a debenture which is one of a series, charging the undertaking of the company.[59] A clause merely incorporating the provisions of the Conveyancing Act, 1881, which have been replaced by the sections referred to in cl. 11, was considered in *Deyes* v. *Wood*,[60] where the receiver was held to be the agent of the debenture holders in spite of a clause incorporating these sections. The

[58] *Re Maskelyne British Typewriter* [1898] 1 Ch. 133.
[59] *Blaker* v. *Herts, etc., Waterworks Co.* (1889) 41 Ch.D. 399.
[60] [1911] 1 K.B. 806.

clause should, therefore, expressly provide that the receiver shall be the agent of the company.[61]

The question of agency has become less important since **s. 369 (2)** of the Act of 1948[62] has provided that the receiver is to be personally liable on any contract entered into by him in the performance of his functions to the same extent as if he had been appointed by order of the court,[63] except in so far as the contract otherwise provides, and entitled to indemnity out of the assets.

The receiver ceases to be the agent of the company after the commencement of a winding up; but he does not thereupon become the agent of the debenture holder, and the trustees for the debenture holders do not become personally liable upon contracts made by the receiver.[64] The same principle applies in a voluntary winding up.[65]

By **s. 369 (1)**[66] the receiver may apply to the court for directions.

An important advantage may be gained in winding up by the insertion of a clause for the appointment of a receiver.[67]

A power to get in the property includes power to bring actions in the name of the company for that purpose.[68]

As to the receiver's duty to file his accounts, see **s. 374.**[69] The court may fix the remuneration of the receiver on the application of the liquidator.[70]

A corporation or an undischarged bankrupt[71] cannot be appointed receiver.

Trust deed referred to

[11A. *The holders of the debentures of this issue are and will be entitled pari passu to the benefit of, and subject to the provisions contained in, a trust deed dated the —— day of ——, and made between the company of the one part and —— and —— of the other part, whereby [certain property] was charged in favour of trustees for securing the payment of the principal moneys and interest payable in respect of the said debentures*]

This condition should be inserted where there is to be a trust deed

It imports into the debenture the provisions of the trust deed, and renders the security subject to the obligations of such trust deed, and entitled to the benefit of it.[72]

[61] See *Company Precedents*, Part III, 15th ed., pp. 282, 283, *Cully* v. *Parsons* [1923] 2 Ch. 512.
[62] Re-enacting s. 87 (2) of the Act of 1947.
[63] See s. 369 (2) Appendix 1, *post*
[64] *Gosling* v. *Gaskell* [1897] A.C. 575.
[65] *Thomas* v *Todd* [1926] 2 K.B. 511
[66] Re-enacting s. 87 (1) of the Act of 1947
[67] *Re Henry Pound, Son and Hutchings* (1889) 42 Ch.D. 402
[68] *Wheeler (H.) & Co., Ltd.* v. *Warren*, [1928] Ch. 840.
[69] Appendix 1, *post*.
[70] See *post*, p. 314.
[71] See *post*, p. 313.
[72] See *post*, p. 301. As to the advantages of a trust deed, see *Company Precedents*, Part III, 15th ed., pp. 77, 78.

Place of payment.

12. *The principal moneys and interest hereby secured will be paid at the —— Bank, Limited, No. —, —— Street, London, or at the registered office of the company.*

In the absence of some such provision, the ordinary rule prevails, and the company is bound to search out its creditor and pay him, and interest runs until tender at such place.[73] Where a clause is framed in the alternative as above, it rests with the debenture holder to elect at which place payment shall be made, and he must communicate his election to the company.[74]

Currency.

Debentures are as a rule payable in the currency of the country where they are repayable. In the case of an Australian company the debenture holders had an option to require payment in London and it was held that debentures which became payable in London were payable in English pounds sterling.[75]

A provision that the debentures should be repayable in gold of a certain weight and fineness was held to be valid in *Feist* v. *Société Intercommunale Belge*.[76]

Service of notices on holder

13. *A notice may be served by the company upon the holder of this debenture by sending it through the post in a prepaid letter addressed to such person at his registered address. Any notice served by post shall be deemed to have been served at the expiration of twenty-four hours after it is posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.*

It is a matter of great convenience to the company to have some special mode like this of serving notices provided by the debenture. In the absence of such a provision, it is for the company, if it desires to give notice, *e.g.*, for the purpose of redemption, to find out the address of the debenture holder, and to take care that notice is effectually served on him. The above clauses relieve the company from this difficulty, or, at any rate, simplify the position very much.

Class II.—Debentures to Bearer

In framing a debenture to bearer the object is to endow it with the characteristics of a negotiable instrument, and in particular (a) to make it transferable by delivery; (b) to make it transferable free from equities; (c) to render the delivery of the debenture and any interest coupon a

[73] *Fowler* v. *Midland Electric Corporation* [1917] 1 Ch. 527, 532.
[74] *Saunderson* v. *Bowes* (1811) 14 East 508; *Thorn* v *City Rice Mills* (1889) 40 Ch.D. 357.
[75] *Adelaide Electric Co.* v. *Prudential Assurance Co.* [1934] A.C. 122, overruling *Broken Hill Proprietary Co.* v. *Latham* [1933] Ch. 373.
[76] [1934] A.C. 161.

good discharge to the company; (d) to enable the bearer to sue the company in his own name, if necessary; and (e) to insure a good title to any person who acquires the debenture bona fide for valuable consideration, notwithstanding any defect in the title of the person from whom he acquires it.

The following are the clauses usually inserted. As to the negotiability of such instruments, see *post*, p. 292.

DEBENTURE TO BEARER

The —— Company, Limited

Issue of —— debentures of £—— each carrying interest at the rate of —— per cent. per annum.

No. ——. DEBENTURE *£——.*

Payment of principal

1 *The —— Company, Limited (hereinafter called 'the company'), will, on the —— day of ——, or on such earlier day as the principal moneys hereby secured shall become payable in accordance with the conditions indorsed hereon, pay to the Bearer on presentation of this debenture the sum of £——.*

Negotiability by law merchant.

In making the instrument payable to bearer the object is to make the security negotiable by the law merchant [77] or, if not, then as far as practicable by contract, or estoppel. There is no objection in point of law to making the instrument payable to bearer without the production of any assignment [78]

Payment of interest

2 *The company will, during the continuance of the security, pay interest thereon at the rate of —— per cent. per annum, by equal half-yearly payments on every —— day of —— and —— day of —— in accordance with the coupons annexed hereto.*

Coupons.

In the case of a debenture to bearer it is necessary to provide for payment of interest in accordance with coupons annexed, for otherwise it would be necessary to insist on production of the debenture for payment of interest, and make some indorsement thereon of the payment. Where the payment is not to be made till a distant date, or the debenture is what is known as a perpetual one, it is usual in the first instance to issue with the debenture only a limited number of coupons providing for the payment of interest, say, for ten or twenty years. In such case provision is made for the issue of further coupons when the original coupons are exhausted.

[77] See *post*, p. 292.

[78] *Per* Rolt L.J., *Re Blakely Ordnance Co.* (1867) L.R. 3 Ch.App. 159; *Re Natal Investment Co.* (1868) L.R. 3 Ch App. 355.

3. *The company hereby charges* [as above, p. 276].

Reference to indorsed conditions.

4. *This debenture is issued subject to, and with the benefit of, the conditions indorsed hereon, which are to be deemed part of it.*

See *ante*, p. 277.

Given under the common seal of the company this —— day of ——.

The form of coupon is as follows:—

The —— Company, Limited.

Debenture No. ——. *Interest Coupon No. ——.*

For —— pounds. Half-year's interest due on the —— day of —— and payable at the —— Bank or at the registered office of the company (less income tax). £——.

—— Secretary.

Indorsed Conditions

The conditions within referred to:—

Pari passu clause.

1. *This debenture is one of a series of, etc.* [as above, p 277].

Coupons.

2. *Annexed to this debenture are —— coupons, each providing for the payment of a half-year's interest. Such interest will be payable only on presentation and delivery of the coupon referring thereto.*

There is no doubt as to the validity of such a stipulation as that in condition 2.[79]

Exclusion of equities.

3. *The principal moneys and interest hereby secured will be paid without regard to any equities between the company and the original or any intermediate holder hereof.*

As debentures to bearer are now negotiable by the law merchant, condition 3 is implied and might be omitted.[80]

Surrender of outstanding coupons on redemption of debentures.

4. *If the principal moneys hereby secured shall become payable before the —— day of —— the person presenting this debenture for payment must surrender therewith the coupons representing subsequent interest, the company nevertheless paying the interest for the fraction of the current half-year.*

[79] *Crouch* v. *Crédit Foncier of England* (1873) L.R. 8 Q.B. 384; *Re Natal Investment Co.* (1868) L.R. 3 Ch.App. 355.

[80] See *post*, 292 *et seq.*

The provisions of condition 4 probably only express what would otherwise be implied, but the condition is inserted in order to make the contract perfectly clear. It is obvious that a company could not allow future coupons to remain outstanding on the ground that they were to be treated as waste-paper. If presented, as they might be, and refused payment, it would damage the credit of the company.

Delivery of coupon good discharge.

5. *The delivery to the company of this debenture and of each of the said coupons shall be a good discharge for the principal moneys and interest therein respectively specified, and the company shall not be bound to inquire into the title of the respective bearers of such instruments or to take notice of any trust affecting such moneys or be affected by express notice of the right, title, or claim of any other person to such moneys or instruments.*

Condition 5 is—or was—beneficial both to the company and the debenture holders. It simplified and protected the position of both. That it is effective is unquestionable.[81] Now, however, that the negotiability of debentures to bearer is established [82] the condition might safely be dispensed with.

Notice by advertisement to pay off.

6. *The company may at any time after the —— day of —— give notice by advertisement in the 'Times' and one other London daily newspaper of its intention to pay off this debenture, and upon the expiration of six months from such notice being given, the principal moneys hereby secured shall become payable.*

See *ante*, p. 283.

Immediate payment on default as to interest or winding up.

7. *The principal moneys hereby secured shall immediately become payable—*

(a) *If the company makes default, etc.* [as at p. 283, substituting 'bearer' for 'holder']; or

(b) *If an order is made or* [*an effective*] *resolution is passed for the winding up of the company.*

Debenture to be treated as negotiable.

[8. *This debenture is to be treated as negotiable, and all persons are invited by the company and the owner for the time being hereof to act accordingly.*]

The object of condition 8 was to fortify the title of the debenture holder for the time being by enabling him, if necessary, to establish direct privity of contract with the company, and to endow the instrument with

[81] *Crouch* v. *Crédit Foncier* (1873) L.R. 8 Q.B. 384; *Re Natal Investment Co.* (1868) L.R. 3 Ch.App. 355.

[82] *Post*, p. 292.

the most important characteristic of a negotiable instrument, namely, that a person who acquires the instrument for value obtains a good title notwithstanding any defect of title in the person from whom he takes it. The words of invitation are in the nature of an offer held out to all the world, requesting them to act thereon; and it seems probable that any person who does act on that invitation by altering his position is entitled as against the company to rely on his having so acted as an acceptance of the offer, and as therefore constituting a direct contract by him with the company.[83] But here again the negotiability of debentures to bearer, now established,[84] makes the condition superfluous

Place of payment.

9. *The principal moneys and interest hereby secured will be paid at the —— Bank, Limited, No. —, —— Street, London, or at the registered office of the company*

Trust deed referred to.

10. [*Reference to trust deed, if any,* as at p. 286, *ante.*]

Notice by advertisement.

11. [*Provision that notice may be given by advertisement, and deemed to be served on the day on which it is advertised.*]

Class III.—Debentures to Registered Holder with Coupons to Bearer

These are framed on the basis of the registered debenture above set forth,[85] but condition 2[86] of the bearer debenture is substituted for clause 10,[87] and the conditions are modified so as to provide for interest coupons.

Class IV.—Debenture to Bearer capable of being registered

This form of security may be said to combine the advantages of the registered debenture and the debenture to bearer. Those investors who prefer a debenture to bearer get it, and those who—like trustees—wish to avoid the risk incidental to the possession of an instrument to bearer can safeguard themselves by registering. The drawback is the stamp duty.[88]

The form adopted for this convertible debenture usually provides for payment ' to the bearer, or, when registered, to the registered holder of the debenture ', and the conditions empower the bearer at any time to take it in to be registered in his name, and provide that thenceforth, whilst registered, the registered holder is to be regarded as the owner,

[83] *Re Agra and Masterman's Bank* (1867) L.R. 2 Ch.App. 397; *Carlill* v. *Carbolic Smoke Ball Co.* [1893] 1 Q.B. 256.
[84] *Post*, p. 292.
[85] *Ante*, pp. 274–287.
[86] *Ante*, p. 288.
[87] *Ante*, p. 284.
[88] See *post*, p. 294.

and shall alone be entitled to give receipts for the principal moneys, and to transfer; and a further provision enables the registered holder at any time to have the registration cancelled and the instrument liberated and made again ' to bearer '.

Negotiability of Bearer Debentures or Instruments by Mercantile Custom

From being ordinary choses in action debentures to bearer have now, after a somewhat prolonged controversy, been admitted into the select circle of negotiable instruments by virtue of the general custom of merchants.

It is a well-established common law rule that when a general custom is proved to exist as a fact, it is adopted by the common law and becomes part of it. The negotiability of bills of exchange, of bank notes, of cheques, of circular notes, of exchequer bills, and of foreign bonds to bearer, was long ago established in this way; but for many years there was no judicial decision recognising a similar negotiability in the case of debentures to bearer. The contrary was indeed held in *Crouch* v. *Crédit Foncier.*[90] In that case the debenture in question had been stolen, and the plaintiff derived title from the thief; he was therefore not entitled to recover unless the debenture was negotiable. It was tacitly admitted at the trial that such instruments were treated as negotiable, and it was proved that the plaintiff gave value for the debenture without notice, and the jury found a verdict in his favour. This verdict was, however, set aside on the ground, amongst others, that as the debenture was an English instrument made in England, it could not be rendered negotiable by custom; ' but as the instruments themselves ', said the court, ' are only of recent introduction, it can be no part of the law merchant,' that is to say, ' of the ancient law merchant which forms part of the law, and of which the law takes notice '.[91]

Contrary view of Exchequer Chamber and House of Lords.

This view of the law was emphatically disclaimed in the Exchequer Chamber.[92] In that case, the instrument under consideration was scrip to bearer for a foreign government bond It was proved that it was by custom treated as negotiable, but it was argued, on the authority of the last-mentioned case, that, as the custom was modern, it could not have effect. The court, however, held that the custom, though modern, *was* effective, and the scrip negotiable; and the following luminous passage from the judgment delivered by Cockburn C.J. effectually disposes of the line of argument above referred to.

' It is true that the law merchant is sometimes spoken of as a fixed body of law forming part of the common law and, as it were, coeval with it. But, as a matter of legal history, this view is altogether incorrect. The law merchant thus spoken of with reference to bills of exchange and other negotiable securities, though forming part of the *lex mercatoria*, is of comparatively recent origin. It

[90] (1873) L.R. 8 Q.B. 374.
[91] *Per* Blackburn J., *ibid.*, at pp. 386, 387.
[92] *Goodwin* v. *Robarts* (1875) L.R. 10 Ex. 337.

is neither more nor less than the usages of merchants and traders in the different departments of trade, ratified by the decisions of courts of law, which, upon such usages being proved before them, have adopted them as settled law with a view to the interests of trade and the public convenience, the court proceeding herein on the well-known principle of law that, with reference to transactions in the different departments of trade, courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any custom or usage prevailing generally in the particular department. By this process, what before was usage only, unsanctioned by legal decision, has become engrafted upon or incorporated into the common law, and may thus be said to form part of it.' [93]

This decision was affirmed by the House of Lords,[94] partly on the ground that negotiability was established, and partly on the ground of estoppel.

The principles laid down by Cockburn C.J. have never since been questioned. No doubt the instrument with which the learned judge was dealing was not an English instrument, but it has since been clearly established that the same principles apply to English instruments.

The question arose in *Bechuanaland Exploration Co.* v. *London Trading Bank* [95]; the instruments in that case being debentures to bearer issued by an English company—the Beira Junction Railway Company—in England. The debentures in question had been fraudulently taken from the plaintiff company and pledged with the defendant bank, which took them for value, in good faith, without notice. Evidence was given that by the custom of merchants in England, similar debentures to bearer were, and for some twenty years and upwards had been, dealt with as negotiable instruments; and it was held on this evidence by Kennedy J. that the custom was efficacious, that the debentures, notwithstanding their being modern English instruments, were negotiable and, accordingly, that the plaintiff's claim failed. The learned judge said:

'It appears to me that upon the vital question of the effect of modern mercantile usage, such as I think has been sufficiently proved in the present case, it is impossible to treat the reasoning of the Court of Queen's Bench in *Crouch* v *The Crédit Foncier of England*,[96] and the reasoning of the Exchequer Chamber in *Goodwin* v. *Robarts*,[97] as capable of reconciliation. I read the judgment of the Exchequer Chamber in the later case as plainly disapproving of the reasoning of the judgment in the earlier case. It cannot, I think, be maintained that the judgment in *Goodwin* v. *Robarts* upon the effect of modern mercantile usage was unnecessary to the decision, nor, I think, can it be maintained that the two judgments are capable of reconciliation on the ground that the instrument in question in the earlier case was an English instrument, and the instrument in question in the later case was, though issued by a London agent, to all intents and purposes the scrip of a foreign government.'

Thus, the doctrine laid down in *Crouch* v. *Crédit Foncier* was finally disposed of, and the negotiability by the law merchant of debentures to bearer recognised and finally established, and in *Edelstein* v. *Schuler &*

[93] *Ibid.*, at p. 346.
[94] (1876) 1 App.Cas. 476.
[95] [1898] 2 Q.B. 658.
[96] (1873) L.R. 8 Q.B. 374.
[97] (1875) L.R. 10 Ex. 337; (1876) 1 App.Cas. 476.

Co.,[98] Bigham J. in following the decision in *Bechuanaland Exploration Co.* v. *London Trading Bank*, *supra*, said:—

> 'In my opinion the time has passed when the negotiability of bearer bonds, whether Government bonds or trading bonds, foreign or English, can be called in question in our courts. The existence of the usage has been proved so often, and its convenience is so obvious, that it must be taken now to be part of the law.'

As a result of these cases, all that is now necessary is to make the instrument in terms payable to bearer, and to take care that no condition or stipulation appears which is repugnant to or inconsistent with the nature of a negotiable instrument.

The stamp on a debenture to bearer is 8s. per £10. By the Stamp Act, 1891, the duty was 1s. per £10. This has now been doubled three times.[99]

Proof of Negotiability

Having regard to the decisions in *Bechuanaland Exploration Co.* v. *London Trading Bank*[1] and in *Edelstein* v. *Schuler & Co.*[2] the High Court, it is presumed, will now take judicial notice of the negotiability of debentures to bearer, for 'when a general usage has been judicially ascertained and established it becomes part of the law merchant which courts of justice are bound to know and recognise, and justice could not be administered if evidence were required to be given *toties quoties* to support such usages, and issue might be joined upon them in each particular case'.[3] However, it may be well to bear in mind that in order to prove negotiability it is only necessary to prove that the instrument is in form negotiable, *e.g.*, payable to bearer, and that it is in fact by general custom treated as negotiable.[4] Nor does the court require the custom to be proved by a cloud of witnesses. Thus, in the first of the above-mentioned cases, the instruments in question—Argentine Cedulas—were to bearer, and their negotiability was established by the evidence of a bank manager.

So, in *Venables* v. *Baring Brothers & Co.*,[5] American railway bonds to bearer were held to be negotiable, on the evidence of business men that such bonds were here always treated as negotiable.[6] It is not necessary to show a custom in relation to the securities of the particular company. It is sufficient that instruments of a like character issued by other companies are treated as negotiable.[7] Nor, again, is it necessary to show that the instrument fulfils the conditions of a promissory note.[8]

[98] [1902] 2 K.B. 144.
[99] See *Company Precedents*, Part III, 15th ed., pp. 223, 224 and 230, and Finance Act, 1947, s. 52.
[1] [1898] 2 Q.B. 658.
[2] [1902] 2 K.B. 144.
[3] *Per* Lord Campbell in *Brandao* v. *Barnett* (1846) 12 Cl. & Fin. 787, at p. 805.
[4] *London Joint Stock Bank* v. *Simmons* [1892] A.C. 201; *Venables* v. *Baring Brothers* [1892] 3 Ch. 527; *Picker* v. *London and County Banking Co.* (1887) 18 Q.B.D. 515.
[5] [1892] 3 Ch. 527, 539.
[6] See also *Bentinck* v. *London Joint Stock Bank* [1893] 2 Ch. 120.
[7] See *Venables* v. *Baring Brothers & Co.*, *supra*.
[8] *Rumball* v. *Metropolitan Bank* (1877) 2 Q.B.D. 194; *Goodwin* v. *Robarts* (1876) 1 App.Cas. 476.

An idea at one time prevailed that an instrument under seal could not by the law merchant acquire the character of negotiability, but there appears to be no substantial foundation for this view. In *Crouch* v. *Crédit Foncier*,[9] the court no doubt regarded *Glyn* v. *Baker*[10] as a strong authority that a promissory note could not be under seal, but in that case no evidence of negotiability by custom was adduced, and in *Venables* v. *Baring Brothers & Co.*[11]; and *Bechuanaland Exploration Co.* v. *London Trading Bank*,[12] where such evidence *was* adduced, the instruments were held to be negotiable, though under seal

By s. 106 of the Act of 1908 (now **s. 93** of the Act of 1948) any doubt as to the validity in Scotland of debentures to bearer was removed.

Floating Charge

Validity and nature of floating charge.

The validity and effect of what is now called a 'floating charge' on the property, both present and future, of a company was first recognised in *Re Panama, New Zealand, etc. Co*[13] by Giffard L.J. In that case the company had issued debentures, and thereby charged its 'undertaking' with the payment thereof It was held that the word 'undertaking' meant all the property, present and future, of the company, and that the charge thereon was effective and was to operate by way of floating security. Giffard **L.J. said:—**

'I take the object and meaning of the debenture to be this, that the word "undertaking" necessarily infers that the company will go on, and that a debenture holder could not interfere until either the interest which was due was unpaid, or until the period had arrived for the payment of his principal and that principal was unpaid. I think the meaning and object of the security was this, that the company might go on during that interval, and, furthermore, that during the interval the debenture holder would not be entitled to any account of mesne profits or of any dealing with the property of the company in the ordinary course of carrying on their business. I see no difficulty or inconvenience in giving that effect to this instrument. But the moment the company comes to be wound up and the property has to be realised, that moment the rights of these parties beyond all question attach My opinion is that, even if the company had not stopped, the debenture holders might have filed a bill to realise their security. I hold that under these debentures they have a charge upon all property of the company, past and future, by the term "undertaking", and that they stand in a position superior to that of the general creditors who can touch nothing until they are paid.'

This decision was of the utmost importance, not merely because it put this construction on the word 'undertaking' - a word which had been largely used in debentures—but because it recognised clearly what many other nations do not recognise—the legal validity of a general charge on all the property of a company, both present and future, by way of floating security. Long previously it had, no doubt, been decided that in equity

[9] (1873) L.R. 8 Q.B 374.
[10] (1811) 13 East 509.
[11] [1892] 3 Ch. 527
[12] [1898] 2 Q.B. 658.
[13] (1870) L.R. 5 Ch. 318.

future property, or even possibilities, could be effectually charged. *Row* v. *Dawson*,[14] *Tailby* v. *Official Receiver*,[15] and *Holroyd* v. *Marshall*,[16] were sufficient to show that a charge on all the property, present and future, of a company was not too indefinite to take effect, and these principles being established there was, of course, no difficulty in holding that such a charge—provided the intention was sufficiently expressed—could be made subject to the company's power to deal with the property notwithstanding the charge.

It is not necessary, however, to the creation of a floating charge that the word 'undertaking' should be employed. Any words charging all the property of a going company will be construed as meant to give a floating charge only, and for the very good reason that unless so construed such a charge would paralyse the company's business.[17] A charge on part only of the property where necessary to effectuate the intention, expressed or implied, will be treated as a floating charge.[18]

A charge on furniture and plant 'which now are or may be placed on the premises' has been held to be a floating charge.[19]

Some subsequent cases.

The nature of a floating charge has been elucidated still further in subsequent cases, and the following points have been settled:—

(1) A floating charge operates as an *immediate* and continuing charge on the property charged subject only to the company's powers to deal with the property in the ordinary course of its business.[20]

(2) A floating charge, unless otherwise agreed, leaves the company at liberty to create specific mortgages ranking in priority to the floating charge,[21] and by dealings with debtors to give them a right of set-off.[22]

(3) Notice of the floating charge does not postpone subsequent specific mortgages.[23]

(4) But a floating charge is valid as against execution creditors.[24] Save that if the execution creditor takes property in execution, and completes the execution, *e.g.*, by seizure and sale by the sheriff, or a garnishee order absolute (but not a garnishee order

[14] (1749) 1 Ves.Sen. 331.
[15] (1888) 13 App.Cas. 523.
[16] (1862) 10 H.L.C. 191.
[17] *Wheatley* v. *Silkstone Co.* (1885) 29 Ch.D. 715; *Re Florence Land Co* (1878) 10 Ch.D. 530; *Re Colonial Trusts Corporation* (1879) 15 Ch.D. 465.
[18] *Illingworth* v. *Houldsworth* [1904] A.C. 355.
[19] *National Provincial Bank* v. *United Electric Theatres* [1916] 1 Ch. 132.
[20] *Re Florence Land Co.* (1878) 10 Ch.D. 541; *Re Standard Manufacturing Co.* [1891] 1 Ch. 627; *Hubbuck* v. *Helms* (1887) 56 L.T. 232; *Foster* v. *Borax Co.* [1901] 1 Ch 326; *Nelson & Co.* v *Faber & Co.* [1903] 2 K.B. 367; *Hamer* v. *London City and Midland Bank* (1918) 118 L.T. 571.
[21] *Wheatley* v. *Silkstone Coal Co.* (1885) 29 Ch.D. 715; *Government Stock, etc., Co.* v. *Manila Ry.* [1897] A.C. 81; *Re Castell & Brown, Ltd.* [1898] 1 Ch. 315.
[22] *Biggerstaff* v. *Rowatt's Wharf* [1896] 2 Ch 93; *Nelson* v. *Faber, supra.*
[23] *Re Hamilton's Windsor Ironworks* (1879) 12 Ch.D. 712.
[24] *Re Opera* [1891] 3 Ch. (C.A.) 260; *Taunton* v. *Sheriff of Warwickshire* [1895] 2 Ch 319; *Re Standard Manufacturing Co.* [1891] 1 Ch. 627; *Davey & Co.* v. *Williamson & Sons* [1898] 2 Q.B. 194; *Simultaneous Colour Printing Syndicate* v *Foweraker* [1901] 1 K.B. 771; *Duck* v. *Tower Galvanising Co.* [1901] 2 K.B. 314; *Re London Pressed Hinge Co.* (1905) 21 T.L.R. 322.

nisi[25]) whilst the charge floats, he obtains, it has been held, priority.[26] So, also, if money is paid to the sheriff whilst the charge is a floating charge to induce him to refrain from selling property in his hands.[27]

(5) It is also valid as against the general creditors, whether in a winding up or otherwise.[28]

(6) By **s. 322** a floating charge created within *twelve months* of the commencement of a winding up is invalid unless it is proved that the company was solvent immediately after the creation of the charge, except to the amount of any cash paid to the company at the time of or after the creation of, and in consideration for, the charge, with interest at 5 per cent. *or such other rate as may be ordered by the Treasury.*[29] The section only invalidates the floating charge; the debt remains, but is an unsecured debt.[30] Money paid a few days before and in reliance on the charge is cash paid 'at the time' within this section,[31] and see *Re Olderfleet Shipbuilding Co.*,[32] where payments were made two or three weeks before the commencement of the winding up. As to the meaning of 'cash', see *Re Orleans Motor Co.*[33] and *Re Hayman, Christy & Lilly, Ltd.*,[34] where it was held that debentures given to secure advances on current account are only valid to the extent of the money actually owing on that account at the date of the winding up.[35] The dicta in these cases were, however, disregarded by the Court of Appeal in *Re Matthew Ellis, Ltd.*,[36] where a debenture was issued to a director of the company to secure a loan made by him, on the terms that part of the loan was to be used to pay off a debt owing by the company to a firm in which the director was a partner. It may be doubted, however, whether such part of the loan which was, by the terms of the loan, to be used to pay off an existing debt to the lender himself (with others) was really 'cash paid to the company' within **s. 322**, it being in fact paid through the company's banking account to the lender himself. And see *Re Destone Fabrics, Ltd.*,[37] where Simonds J. declined to be misled by 'a transparent subterfuge', and his decision was upheld by the Court of Appeal. As to the effect of

[25] *Norton* v. *Yates* [1906] 1 K.B. 112.
[26] *Evans* v. *Rival Granite Quarries* [1910] 2 K.B. 979.
[27] *Heaton & Dugard, Ltd.* v. *Cutting Bros.* [1925] 1 K.B. 655.
[28] *Re General South American Co.* (1876) 2 Ch.D. 337.
[29] The period under the corresponding section (212) of the Act of 1908 was three months, and of 1929 (s. 266) six months. The power given to the Treasury is new; see ss. 93 and 120 (3) of the Act of 1947.
[30] *Re Parkes Garage (Swadlincote), Ltd.* [1929] 1 Ch. 139.
[31] *Re Columbian Fireproofing Co.* [1910] 2 Ch. 120; *Re F. & E. Stanton, Ltd.* [1929] 1 Ch. 180.
[32] [1922] 1 Ir.R. 26.
[33] [1911] 2 Ch. 41.
[34] [1917] 1 Ch. 283.
[35] And see *Revere Trust* v. *Wellington Handkerchief Works* [1931] N.Ir. 55.
[36] [1933] 1 Ch. 458.
[37] [1941] Ch. 319.

an agreement to issue debentures in certain events, one of which occurs within three (now twelve) months of the winding up. See *Re Gregory, Love & Co.*[38]

(7) A floating charge, unless otherwise agreed, retains its floating character until a receiver is appointed (either by the court or by a debenture holder under a power contained in the debenture) or a winding up commences.[39] The charge ceases to be a floating charge on a winding up, even though the debentures are not repayable under the express terms of the debentures.[40] It is then said to crystallise.[41]

(8) A landlord can distrain for rent before the appointment of a receiver. Afterwards he can still distrain at common law, but where a receiver has been appointed by the court, he must apply for leave of the court.[42] He cannot distrain on lands not comprised in the lease.[43]

(9) Where chattels are in the company's possession under a hire-purchase agreement, under which the goods are to remain the property of the supplier, the rights of the owner prevail over a floating charge created by the company, even if the chattels become fixtures: *Re Morrison Jones and Taylor, Ltd.*[44] In this case the hire-purchase agreement was made before the debentures were issued; but it is submitted that, even if the hire-purchase agreement were later in date than the floating charge, the debenture holders would only obtain a charge on the company's interest, which is subject to the rights of the owner of the chattel.[45] A mortgagee who obtains a fixed legal mortgage, without notice of the terms of the hire-purchase agreement, would have a prior right to fixtures on taking possession.[46] But this principle does not apply to an equitable charge.[47]

The best general description of a floating security is that given by Lord Macnaghten in *Government Stock Co.* v. *Manila Ry.* His Lordship said[48]:—

'A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to

[38] [1916] 1 Ch. 203.
[39] *Re Florence Land Co., supra*; *Government Stock, etc., Co., supra*; *Foster* v. *Borax Co., supra*; *Nelson & Co.* v. *Faber & Co., supra*; *Evans* v. *Rival Granite Quarries* [1910] 2 K.B. 979, at p. 1001.
[40] *Re Crompton & Co., Ltd.* [1914] 1 Ch. 954.
[41] *Re Griffin Hotel Co., Ltd.* [1941] 1 Ch. 129; *post*, p. 318.
[42] *General Share and Trust Co.* v. *Wetley, etc., Co.* (1882) 20 Ch.D. 260; *Re New City Constitutional Club* (1887) 34 Ch.D. 646.
[43] *Re Roundwood Colliery Co.* [1897] 1 Ch. 373.
[44] [1914] 1 Ch. 50.
[45] *S.C., per* Eve J. at p. 55; cf. *Wilson* v. *Kelland* [1910] 2 Ch. 306; *Re Connolly Bros. (No. 2)* [1912] 2 Ch. 25; *Hamer* v. *London City and Midland Bank* (1918) 87 L.J. K.B. 973.
[46] *Hobson* v. *Gorringe* [1897] 1 Ch. 182; *Ellis* v. *Glover and Hudson, Ltd.* [1908] 1 K.B. 388; *Reynolds* v. *Ashby & Son* [1904] A.C. 466.
[47] *Re Samuel Allen & Sons, Ltd.* [1907] 1 Ch. 575.
[48] [1897] A.C. at p. 86.

intervene may of course be suspended by agreement. But if there is no agreement for suspension, he may exercise his right whenever he pleases after default.'

Subsequent dealings by company with property subject to floating charge.

Pending any such intervention, the company has a free hand to deal with and dispose of the property charged in the ordinary course of the company's business. It may do so by way of sale, lease, exchange, specific mortgage, or otherwise, as it deems most expedient Thus, an assignment by the company of arrears of rent made before the appointment of a receiver gives the assignees a good title as against debenture holders having only a floating charge; but if the land is specifically charged by the debentures, the debenture holders can claim the rents.[49] As to the effect of a prior mortgage of a lease on the debenture holders' interest in fixtures, see *Re Rogerstone Brick Co.*,[50] where it was held that the mortgagee by assignment was entitled to the proceeds of sale of the fixed plant as against the debenture holders.

This power to create a specific mortgage, ranking on the property charged in priority to the debenture charge, was clearly not at first contemplated; for Giffard L.J. in *Re Panama, New Zealand, etc. Co.*,[51] in stating that the company might, notwithstanding the charge, deal with its property, added: 'I do not refer to such things as sales or mortgages of property'; but the law of debentures, like all branches of a living law, is constantly growing; and it was held in *Re Florence Land Co.*[52] and in *Re Colonial Trusts*,[53] that the floating charge left the company at liberty to create specific mortgages or charges in priority to such floating charge. In the latter case it was laid down[54] that it would be a monstrous thing to hold that a floating security prevented the making of specific charges, or specific alienations of property, because so to hold would destroy the very object for which the money was borrowed—the carrying on the business of the company.

In a subsequent case it was urged that where the subsequently created charge was only an equitable security, it ought not to have priority over the equitable charge of the debenture holder; but this, too, was overruled See *Wheatley* v *Silkstone Co.*,[55] where the company, after creating a floating charge on its undertaking, had created a subsequent equitable charge in favour of its bankers by deposit of title deeds, and North J., after referring to the authorities, said:—

'Those authorities furnish a very clear and intelligible principle to be followed. In this case I find that the debenture is intended to be a general floating security over all the property of the company, as it exists at the time when it is to be put in force; but it is not intended to prevent, and has not the effect of in any way preventing, the carrying on of the business in all or any of the ways in which it is carried on in the ordinary course, and, inasmuch as I find that in the ordinary course of business, and for the purpose of the business, this

[49] *Re Ind, Coope & Co.* [1911] 2 Ch. 223.
[50] [1919] 1 Ch. 110.
[51] *Ante*, p. 295.
[52] (1878) 10 Ch.D. 530.
[53] (1879) 15 Ch.D. 465.
[54] *Ibid.* at p. 472.
[55] (1885) 29 Ch.D. 715.

mortgage was made, it is a good mortgage upon, and a good charge upon, the property comprised in it, and is not subject to the claim created by the debentures.'

This decision is a specially strong one, because the debentures in question were expressed to be by way of *first charge* on the undertaking; but in regard to this the learned judge said:—

'I find also that the "first charge" referred to in the debentures is fully satisfied by being the first charge against the general property of the company at the time when the claim under the debentures arises, and can have effect given to it. There will be a declaration, therefore, that the charge of the plaintiff is prior to the debentures.' [56]

In balancing equities between debenture holders under a floating charge and subsequent specific incumbrancers, it must not be forgotten that the debenture holders are presumed to be cognisant of the above-mentioned decisions and to have contracted on the footing thereof.

Prior mortgages, prohibition of.

The extreme elasticity of a floating charge, and the wide powers which it thus allows to the company of dealing with the debenture holders' property, are in some cases considered excessive, and, accordingly, it is not uncommon to insert in the instrument creating the charge words to the effect that the floating charge is *not* to authorise the company to create any mortgage or charge ranking in priority to or pari passu with the debentures, and this qualification is for the most part effective. Thus, if the company creates a mortgage in favour of any person who has notice of the floating charge and qualification, such person ranks after the floating charge. But a person who obtains a legal mortgage, and makes out (a) that he was not aware of the existence of the floating charge; or (b) that though he was aware of the charge he was not aware of the qualification, is entitled to priority by virtue of the legal estate.[57] Such a qualification in a floating charge is to be strictly construed. See *Brunton* v. *Electrical, etc. Corporation*,[58] where it was held that the qualification did not prevent the company's solicitor from acquiring a lien in priority to the debentures.[59] Nor will the prohibition prevent a subsequent equitable mortgagee who obtains the title deeds of property comprised in the debenture holder's security and takes without notice from obtaining priority.[60] Nor will it prevent a mortgage to a vendor of after-acquired property to secure purchase-money,[61] or a mortgage to secure an advance of part of the purchase-money by a third party.[62] Where a specific charge is made expressly subject to a floating charge, the specific charge is postponed as

[56] See also *Ward* v. *Royal Exchange Shipping Co.* (1887) 58 L.T. 174.
[57] *English and Scottish, etc., Co.* v. *Brunton* [1892] 2 Q.B. 700; *Coveney* v. *Persse* [1910] 1 Ir.R. 194.
[58] [1892] 1 Ch. 434.
[59] And see *Robson* v. *Smith* [1895] 2 Ch. 118.
[60] *Re Castell & Brown, Ltd.* [1898] 1 Ch. 315; *Re Standard Rotary Machine Co.* (1906) 95 L.T. 829.
[61] *Wilson* v. *Kelland* [1910] 2 Ch. 306.
[62] *Re Connolly Bros., Ltd.* [1912] 2 Ch. 25.

from the date when the floating charge becomes crystallised by the appointment of a receiver.[63]

Perpetual Debentures and Debenture Stock

For many years it has been quite common to issue debentures or debenture stock described as 'perpetual' or 'irredeemable', meaning that such debentures were made payable only in the event of a winding up or some serious default by the company. Sometimes, also, debentures and debenture stock were made payable at a remote period, such as fifty or a hundred years after issue. In cases like these, doubts often arose whether the securities were effective, or whether the indefinite or prolonged postponement of the right of redemption was not in effect a 'clog on the equity', and, as such, void.[64] To quiet these doubts, and to bring the law into accord with what it has commonly been taken to be, s. 14 of the Act of 1907, now replaced by **s. 89** of the Act of 1948, enacted as follows:—

> A condition contained in any debentures or in any deed for securing any debentures [or debenture stock], whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures [or debenture stock] are thereby 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.

A mortgage of land by a company to a single mortgagee is a debenture within this section, and is not invalid by reason of the date of redemption being postponed to a remote period.[65]

Trust Deeds

Debentures and debenture stock are constantly secured by a trust or covering deed, conveying property of the company to trustees in favour of the debenture holders, charging other property and containing a number of ancillary provisions regulating the respective rights of the company and the debenture holders. Whether there should be a trust deed or not must depend on the circumstances; where the debentures are issued only for a temporary purpose, *e.g.*, to bankers as security for an overdraft or to other persons for a short term, or are to be taken up by the directors, a deed may be dispensed with; but in transactions of any magnitude there is a growing disposition to supplement the debentures by a trust deed, as improving the security.

Its advantages may be briefly summarised as follows:—

1. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders. Thus they may vote as they consider best in respect of shares vested in them as trustees.[66]
2. The debenture holders can by these trustees of theirs enter and sell the property comprised in the security.

[63] *Re Robert Stephenson & Co., Ltd.* (1913) 107 L.T. 33.
[64] See *Company Precedents*, Part III, 15th ed., p. 116 *et seq.*
[65] *Knightsbridge Estates Trust, Ltd.* v. *Byrne* [1940] A.C. 613; see *ante*, p. 273.
[66] *Burns* v. *Siemens Bros.* [1918] 2 Ch. 324.

3. **A legal estate is vested in the trustees with the protection which it carries with it.**

As regards the frame of it, a trust deed usually contains a legal mortgage of the freehold and leasehold properties, *e.g.*, in the case of a brewery, the brewery and tied houses, and a general charge by way of floating security on the rest of the assets and undertaking. Under the Law of Property Act, 1925, the legal mortgage takes the form of a demise to the trustees for a term of years or a charge by way of legal mortgage (see s. 87). Following on the charge comes a clause specifying the various events on the happening of which the security is to become enforceable.

1. Default in payment of principal or interest.
2. Winding up.
3. Breach of covenant.
4. Appointment of a receiver

Other events are sometimes added .

The trust deed then provides that, when the security becomes enforceable, the trustees may at their discretion and shall, at the request of a specified proportion of the debenture or debenture stockholders, sell the mortgaged premises, and apply the net proceeds in paying off the debentures or debenture stock and hand the balance to the company.

The deed also empowers the trustees to appoint receivers to carry on the business; provides for the trustees' indemnity, for meetings of the debenture holders, giving large powers to majorities, and imposes on the company certain obligations as regards insurance, repairs, furnishing information, further assurance, etc. In the case of debenture stock, the trust deed, in addition to the above provisions, usually constitutes the stock by a covenant therein contained—on the part of the company—to pay the amount of the stock, and the interest, or by an acknowledgment of indebtedness to the trustees for the amount thereof.

The trust deed usually contains a provision exempting a trustee from liability for acts and omissions except in case of wilful default. By s. 152 of the Act of 1929, such provisions in the articles of association as applying to directors were declared to be invalid, and now by **s. 88** of the Act of 1948 [67] this is extended to trustees of debenture trust deeds. Any provision in a trust deed is now void so far as it could have the effect of exempting a trustee from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee. But this does not prevent a release given after the event or a provision in the trust deed enabling a release to be given by agreement of a majority of not less than three-fourths in value of the debenture holders present at a meeting summoned for that purpose and in respect of specific acts or omissions or on the trustee dying or ceasing to act. A person who was a trustee at the commencement of the act may still be protected by provisions of the deed then in force or by a resolution passed by a three-quarters majority at a meeting, and the other trustees

[67] Re-enacting s. 75 of the Act of 1947.

and even future trustees may also be protected, while there is any trustee still entitled to the protection of existing provisions, by such a resolution.[68]

Remuneration of trustees.

The trustees are commonly given remuneration by the deed, but, unless otherwise provided, this ranks after the debenture or debenture stock holders.[69] The deed usually provides otherwise, and gives the trustees a lien, which is effective.[70] Whether the trustees are entitled to remuneration after the appointment of a receiver depends on the construction of the trust deed. Remuneration was not allowed in *Re Locke & Smith, Ltd.*,[71] where remuneration was payable 'during the continuance of this security' and 'as and by way of remuneration for their services as trustees', on the ground that in the ordinary course, where a receiver is appointed, the services of the trustees are terminated. But it was allowed in *Re Anglo-Canadian Lands*,[72] where the deed provided for remuneration until the mortgaged property was reconveyed or realised, and in *Re British Consolidated Oil Corporation*.[73]

Registration of Debentures under the Bills of Sale Acts

In *Re Standard Manufacturing Co.*[74] it was held that the Bills of Sale Acts, 1878 and 1882, did not apply to any mortgage or charge of chattels (whether debentures or not) made by companies under the Act of 1862. Debentures issued by a company, not being bills of sale within the Bills of Sale Acts, are accordingly not void as against execution creditors for want of registration under those Acts.[75] Nor are debentures in any way invalidated by those Acts as against the liquidator of the company as representing creditors of the company[76]; and the fact that the debenture holders' chattel property remains at the date of winding up in the possession of the company as reputed owner makes no difference; for **s. 317** of the Companies Act, 1948, does not introduce the order and disposition clause into winding up with other bankruptcy rules.[77]

As to the registration of a charge in the nature of a bill of sale under **s. 95** of the Act of 1948, see *ante*, p. 264, and as to industrial societies, see *ante*, p. 269.

Transfer of Debentures

A debenture to bearer is transferable by delivery. So is a debenture-stock certificate to bearer. A debenture to registered holder is transferable

[68] This seems to be the meaning of the somewhat obscure provisions of **s. 88 (3)** and **(4)**. See Appendix 1, *post*.
[69] *Hodgson* v. *Accles* [1902] W.N. 164; 51 W.R. 57.
[70] *Re Piccadilly Hotel, Ltd.* [1911] 2 Ch. 534.
[71] [1914] 1 Ch. 687.
[72] [1918] 2 Ch. 287.
[73] [1919] 2 Ch. 81, not following *Re Locke & Smith, Ltd., supra*. See, further, *Company Precedents*, Part III, 15th ed., pp. 88 *et seq.* and 338.
[74] [1891] 1 Ch. 627 (C.A.).
[75] *Re Standard Manufacturing Co., supra*; *Taunton* v. *Sheriff of Warwickshire* [1895] 2 Ch. 319; *Robson* v. *Smith* [1895] 2 Ch. 118; and *Re Opera Co.* [1891] 3 Ch. 260.
[76] *Re Marine Mansions Co.* (1867) L.R. 4 Eq. 601; *Re Asphaltic Wood, etc., Co.* (1883) 49 L.T. 159.
[77] *Re Crumlin Viaduct Works Co.* (1879) 11 Ch.D. 755; *Gorringe* v. *Irwell, etc., Works* (1886) 34 Ch.D. 129.

in the manner specified therein, subject to the provisions of s. 75 of the Act of 1948, which require an instrument of transfer to be delivered to the company. This makes it necessary to have an instrument in writing. After notice to the company of a transfer, the transferee can sue in his own name. Prima facie a transferee of a debenture not to bearer takes subject to all equities.[78] But, as appears above, the instrument usually excludes equities. As to forged transfers, see *ante*, p. 281. After a resolution to wind up voluntarily, a debenture of the company in the hands of a shareholder can only be assigned subject to future calls.[79] It is otherwise where the debenture is by its terms to be transferable free from equities.[80] But even there the terms of the debenture may be such that the transferee cannot, until registration, maintain his title to the benefit of the provision. In practice, a transfer is generally framed very much on the lines of the transfer of shares given in Table A and is signed both by the transferor and the transferee, and is taken in to the office of the company to be registered. Thereupon the company's official registers the transfer, and a note of registration is endorsed.

It was held in *Driver* v. *Broad*[81] that debentures creating a floating charge on the undertaking of a company which included land, created an interest in land, and that a contract for the sale of such a debenture was a contract for the sale of an interest in land within s. 4 of the Statute of Frauds, and therefore not enforceable unless in writing signed by the vendor or his agent. This would seem to apply to debentures to bearer charged on land as well as to registered debentures; but the solution of the difficulty is that, once delivery of a debenture to bearer is effected pursuant to the contract, the bearer is brought into direct privity with the company under whose seal the debenture is given, and his title is evidenced by writing.

Blank transfers

Where by the conditions a registered debenture is only transferable by deed, it must be borne in mind that a blank transfer—that is, a deed executed by the transferor with a blank for the name of the transferee—is, as a deed, void,[82] and the person with whom such a blank transfer is deposited cannot fill up the blank and re-deliver the instrument without a power of attorney under seal. This is very inconvenient. But where a deed is not required, a transfer in blank, though inchoate, can be made operative by filling up the blank, and the authority so to fill it up may be oral or may be implied.[83]

Under the Forged Transfer Acts, 1891 and 1892, a company is now empowered to make compensation to persons who have suffered loss from accepting in good faith forged transfers of the company's stock, shares, or securities or transfers executed under a forged power of attorney.

[78] *Ante*, p. 282.
[79] *Re China Steamship Co.* (1869) L.R. 7 Eq. 240; *Re Taunton, Delmard, Lane & Co.* [1893] 2 Ch. 175; *Partridge* v. *Rhodesia Goldfields* [1910] 1 Ch. 239.
[80] *Ante*, p. 282.
[81] [1893] 1 Q.B. 744.
[82] *Hibblewhite* v. *McMorine* (1840) 6 M. & W. 200.
[83] See *ante*, p. 114.

The stamp duty on a transfer of a debenture on sale is upon an ad valorem scale, on the basis of £1 per cent,[84] and on a contract note on a varying scale from 1s. to £2.[85]

The stamp on surrender or discharge is 1s.[86] per £100. But an indorsement on a debenture stock trust deed acknowledging that all the debenture stock had been paid off is exempt from stamp duty as a receipt under the 11th exemption to the heading ' receipt ' in the Schedule to the Stamp Act, 1891.[87]

Clogging the Equity

Where by the terms of redemption the security still remains charged, after the principal moneys and interest have been paid off, to secure to the debenture holder some collateral advantage, such a provision may be bad as a clog on the equity of redemption; *e.g.*, a clause securing to the holders of debentures a bonus of 100 per cent. payable out of profits, and providing that after the principal had been paid off, the security should still remain charged with the payment of such bonus.[88] But where the collateral advantage obtained by the debenture holder is not part of the mortgage transaction, it is not a clog on the equity of redemption.[89] And, even where the collateral advantage is contained in the same document, it is valid, provided it is not unfair or in the nature of a penalty clogging the equity of redemption or inconsistent with the legal or equitable right to redeem.[90] Where debentures have been issued, the date of redemption of which is postponed for many years, the doctrine of clogging the equity does not apply.[91]

Discount

Debentures may be issued at a discount where the directors have the general powers of the company, and there is nothing in the regulations or memorandum to prevent issue at a discount.[92] The considerations which render the issue of the shares of a limited company at a discount illegal have no application to debentures or debenture stock. But where a debenture issued at a discount contains a clause enabling the holder to call for the allotment in satisfaction of fully paid up shares equal to the full nominal amount of the debenture, that clause, it has been held, is objectionable.[93]

In *Famatina Development Corpn.* v. *Bury* [94] bonus certificates payable out of profits were issued with debentures, and it was held that to satisfy

[84] See Stamp Act, 1891, doubled by the Finance Acts, 1910 and 1920, and again by the Finance Act, 1947, s. 52 (see *Company Precedents*, Part III, 15th ed., p. 223 *et seq.*).
[85] Finance (1909–10) Act, 1910, s. 77, doubled by Finance Act, 1947.
[86] *Ibid.*
[87] *Firth & Sons* v. *Commrs. I. R.* [1904] 2 K.B. 205.
[88] *Re Rainbow Syndicate* [1916] W.N. 178.
[89] *De Beers Consolidated Mines, Ltd.* v. *British S. Africa Co.* [1912] A.C. 52.
[90] *G. & C. Kreglinger* v. *New Patagonia Meat Co.* [1914] A.C. 25; *Re Cuban Land and Development Co.* [1921] 2 Ch. 147, where debenture stock secured to the holder a share of the surplus assets on a winding up.
[91] See *ante*, p. 273.
[92] *Re Anglo-Danubian, etc., Co.* (1875) L.R. 20 Eq. 339; *Re Regent's Canal, etc., Co.* (1876) 3 Ch.D. 43; *Campbell's Case* (1876) 4 Ch.D. 470.
[93] *Mosely* v. *Koffyfontein Mines, Ltd.* [1904] 2 Ch. 108.
[94] [1910] A.C. 439.

such certificates by the issue of paid-up shares before profits had been earned was ultra vires.

But debentures may be issued as the consideration for the release of a right to share in profits, if the transaction is bona fide.[95]

Deposit of Debentures or Certificates

Sometimes money is raised by the deposit by the directors of debentures or certificates of debenture stock which they have power to issue. There is no objection prima facie to such a mode of raising money. If the instrument deposited is negotiable, the depositee gets the legal title, and if the instrument is to registered holder, the depositee obtains a good equitable title, even though the debentures deposited are only in blank.[96] If the company is insolvent, the person with whom the debentures are deposited can claim a dividend on the deposited debentures pari passu with the other debentures of the series, until the whole of the debt as security for which the debentures were deposited has been paid.[97]

Debentures agreed to be Issued

Effect of agreement only to issue debentures.

Where money is advanced to a company upon the terms that debentures charged upon the undertaking, or upon any specified property of the company, shall be issued by way of security, the lender at once obtains a charge in equity; for equity treats that as done which ought to be done.[98] The deposit by way of security of debentures containing a blank for the payee's name affords evidence of an agreement to give security by complete debentures in the form of those so deposited.[99]

Thus, where a prospectus offered for subscription £20,000 worth of mortgage debentures 'to be secured on the entire property of the company', and S. applied for debentures 'upon the terms of the company's prospectus', and a resolution to allot was passed by the directors and notified to S., but no allotment took place, and afterwards a trust deed was executed charging certain property specified 'in the schedule' in favour of the debenture holders, but no schedule was annexed, the court in the winding up held S. entitled to a charge on the entire property of the company.[1]

The operation of these cases is, however, to some extent modified by **s. 95** of the Companies Act, 1948, requiring particulars of every mortgage or charge for securing debentures or debenture stock to be registered 'within twenty-one days after the date of its creation', and in default

[95] *Investment Trust Corpn* v. *Singapore Traction Co.* [1935] Ch. 615.
[96] *Re Regent's Canal Ironworks Co.* (1876) 3 Ch.D. 43; *Re Strand Music Hall* (1865) 3 De G.J. & S. 147; *Re Hampshire Land Co.* [1896] 2 Ch. 743.
[97] *Re Regent's Canal Ironworks* (1876) 3 Ch.D. 43.
[98] *Levy* v. *Abercorris Slate Co.* (1887) 37 Ch.D. 264; *Tailby* v. *Official Receiver* (1888) 13 App.Cas. 523.
[99] *Re Strand Music Hall* (1865) 3 De G.J. & S. 147; *Re Queensland Land and Coal Co.* [1894] 3 Ch. 181; *Re Hampshire Land Co.* [1896] 2 Ch. 743; *Pegge* v. *Neath District, etc., Co.* [1898] 1 Ch. 183; *Simultaneous Colour Printing Syndicate* v. *Foweraker* [1901] 1 K.B. 771.
[1] *Re New Durham Salt Co.* (1890) 2 Meg. 360; 7 T.L.R. 13.

avoiding the charge as against creditors. Hence it is apprehended that where there is an agreement for a charge, as in the case last mentioned, the equitable charge must be registered; even where, as in the case of debentures executed in blank and deposited by way of security, there is no accompanying memorandum of deposit. But although the court would be unable to treat an unregistered agreement in writing to give a mortgage or charge as a subsisting charge,[2] it would in some cases be able to compel the company to perform the agreement by creating the requisite securities,[3] and might in such a case, if the company was solvent, allow an extension of the time for registration.[4]

Scrip certificates for debentures or debenture stock, where the debentures or trust deed are not to be issued or executed for some time, are occasionally registered so as to afford interim protection. But where there is an agreement to issue debentures in the event of certain contingencies, there is no charge, even if the agreement is registered, until the contingency arises.[5]

Irregular issues may be ratified, and debentures irregularly issued may be enforced as agreements to issue debentures.[6]

Priorities of Debenture Holders

The priorities of debentures depend on various considerations—on the true construction of the instrument or instruments creating them, on the rule that the legal estate prima facie gives priority, or the rule that prima facie he who is first in time has the better equity, and on the registration or non-registration under **s. 95** of the Act, or under the corresponding sections of earlier Acts. As a general, almost invariable, rule, debenture holders of the same series are made to rank pari passu inter se; and even if it is not so expressed, the court will, from slight indications, infer equality. Where such equality exists, no individual debenture holder is allowed to get an advantage for himself. If he gets judgment, the judgment enures for the benefit of all the debenture holders[7]; if he obtains a collateral security he holds it as trustee for all.[8] As to obtaining judgment in a separate action, see *Cleary* v. *Brazil Ry., Co.*,[9] where despite the pendency of a debenture holder's action the plaintiff obtained judgment for arrears of interest. The series constitutes, in fact, one great contributory mortgage. Whether a company can redeem some of the debentures of a series and re-issue them to rank pari passu with those left unredeemed is a nice question, which must be determined on construction of the language of the debenture, and the terms of s. 75 of the Act. The object of this section is to override the principle laid down by the

[2] *Ex p. Mackay* (1873) L.R. 8 Ch.App. 643.
[3] *Ex p. Homan, re Broadbent* (1871) L.R. 12 Eq. 598; *Ex p. Hauxwell* (1883) 23 Ch.D. 627.
[4] See **s. 101.**
[5] *Re Gregory, Love & Co.* [1916] 1 Ch. 203.
[6] *Re Fireproof Doors* [1916] 2 Ch. 142.
[7] *Bowen* v. *Brecon Ry.* (1867) L.R. 3 Eq. 541.
[8] *Small* v. *Smith* (1884) 10 App.Cas. 131; *Landowners* v. *Ashford* (1880) 16 Ch.D. 411.
[9] [1915] W.N. 178.

court,[10] according to which a debenture once paid off was extinguished, and could not be re-issued.[11]

Debentures repayable on a fixed date cannot be re-issued as perpetual debentures or as repayable at some date other than the original date.[12]

By s. 104 of the Act of 1908 the power to re-issue was only conferred on the company where it had purported to exercise the power to keep the debentures alive. It was accordingly doubtful whether the company could re-issue the debentures unless it had done something when they were redeemed to show an intention to keep them alive. Section 75 of the Act of 1929, replaced by **s. 90** of 1948, conferred the power to re-issue if the company has not manifested an intention to cancel them. This enables the company to re-issue debentures where, as often happens, the question of re-issue was not considered on their redemption.

The issue of part of a series of debentures which are all to rank pari passu does not by implication restrict the company's power as regards the terms on which the rest of the issue may be dealt with.[13] The company may even issue the balance of such debentures, although a debenture holders' action has been commenced, at any time before a receiver has been appointed in the action.[14]

Where two or more series of debentures are issued giving a floating charge, they will rank according to the date of issue, in the absence of anything to show that they are to rank pari passu.[15] Hence, where mortgage debentures of a specific series are to rank pari passu, the company cannot issue debentures of some further series to rank pari passu with the original series, unless the terms of the last-mentioned series have reserved such a power to the company, either expressly or impliedly.[16] The reservation of a power to create mortgages is not sufficient for this purpose.[17]

Current account.

The rule in *Clayton's Case* [18] applies where a company, after giving a charge to secure an overdraft on current account, creates a second charge on the same property, and, accordingly, unless some other arrangement has been made, the payments in to the credit of the account must be taken as satisfying the amounts debited to the account in the order of date.[19]

Specific property charged.

Where a company issues a series of debentures charging (but not by way of legal mortgage) *specific* property of the company, such a charge

[10] *Re Routledge (George) & Sons, Ltd.* [1904] 2 Ch. 474; *Re Tasker (W.) & Sons* [1905] 1 Ch. 283; *Re Perth Electric Tramways* [1906] 2 Ch. 216; *Re Russian Petroleum Co.* [1907] 2 Ch. 540.
[11] *Fitzgerald* v. *Persse* [1908] 1 Ir.R. 279.
[12] *Re Antofagasta (Chili) and Bolivia Ry. Co.'s Trust Deed* [1939] Ch. 732.
[13] *Re Regent's Canal Iron Works* (1876) 3 Ch.D. 43.
[14] *Hubbard* v. *Hubbard* (1898) 68 L.J.Ch. 54; *Geisse* v. *Taylor* [1905] 2 K.B. 658.
[15] *James* v. *Boythorpe Colliery Co.* (1890) 2 Meg. 55; *Gartside* v. *Silkstone Coal Co.* (1882) 21 Ch.D. 762; *Lister* v. *Henry Lister & Son* (1893) 41 W.R. 330.
[16] *Ibid.*
[17] *Re Benjamin Cope & Sons* [1914] 1 Ch. 800.
[18] (1816) 1 Mer. 572.
[19] See *Deeley* v. *Lloyds Bank* [1912] A.C. 756.

ranks prima facie in priority to any subsequent charge on the same property by the company on the principle *qui prior est tempore potior est jure*; but this rule yields to that reverence with which the law always regards the legal estate and the bona fide purchaser for value, and if, consequently, the company creates a subsequent charge, whether in favour of debenture holders, or otherwise, and the persons in whose favour such charge is created advance their money in good faith, without notice (actual or constructive) of the prior debenture charge and get the legal estate, then, by virtue of such legal estate, they take priority over the prior charge of the debenture holders. It is to prevent this danger that a legal estate is usually vested in trustees.[20]

Floating charge.

As to property comprised in a floating charge, we have already seen that debenture holders having a charge thereon may be postponed to subsequent specific mortgages,[21] and this, in some cases, even though the conditions of the charge prohibit the creation of prior mortgages.[22] If there is no such prohibition, the subsequent specific mortgage takes priority, by virtue of the fact that the floating security is a floating security, and, by its very nature, therefore, permits the company, in carrying on its business, to create charges in priority to it. If there is such a prohibition, then the subsequent mortgagee takes priority—in cases where he does so—by virtue of his good faith and the legal estate or a better equity.[23]

Sections 94 and 319 of the Act of 1948 give local rates, clerks' and servants' salaries and workmen's wages priority in a winding up over debenture holders with a floating charge.[24]

Majority Clauses

Debenture trust deeds commonly, and sometimes debentures, contain provisions enabling a majority—say three-fourths—of the holders of the debentures or debenture stock at a meeting, to assent to modifications of the rights of the holders as a class. The object of such a power is, of course, to prevent a perverse or unreasonable minority from obstructing a beneficial arrangement, *e.g.*, where it may be necessary to give the company time for payment of interest or to allow reduction of the rate, or enable it to raise further funds by a fresh issue of debentures to rank pari passu. The operation of such a clause has been discussed in a number of cases[25]; and the result of these cases may be summed up by

[20] See *Company Precedents*, Part III, 15th ed., p. 76.
[21] *Ante*, p. 299.
[22] *Ibid.*
[23] *Bower* v. *Foreign Gas Co.* [1877] W.N. 222; *Brunton* v. *Electrical Engineering Corpn.* [1892] 1 Ch. 434; *Re Castell & Brown* [1898] 1 Ch. 315; *Re Valletort Sanitary Steam Laundry* [1903] 2 Ch. 651; and see *Company Precedents*, Part III, 15th ed., pp. 141 *et seq.*
[24] See *post*, p. 398.
[25] *Follit* v. *Eddystone, etc., Co.* [1892] 3 Ch. 75; *Mercantile Co.* v. *International Co. of Mexico* [1893] 1 Ch. 484, n. (C.A.); *Mercantile Investment, etc., Trust Co.* v. *River Plate, etc., Co.* [1894] 1 Ch. 578; *Sneath* v. *Valley Gold Co.* [1893] 1 Ch. 477 (C.A.); *Cox Moore* v. *Peruvian Corporation* [1908] 1 Ch. 604; *Shaw* v. *Royce, Ltd.* [1911] 1 Ch. 138; *Northern Assurance, Ltd.* v. *Farnham United Breweries* [1912] 2 Ch. 125.

saying that the powers of the meeting depend entirely on the true construction of the provisions in question. Each class of persons may vote in accordance with their own interests, provided that the whole scheme is fair,[26] but not where there is a secret bargain to secure the vote of persons controlling the majority.[27] Persons entitled to an immediate allotment of debentures (under a scheme) are entitled to vote.[28] In several cases, the provisions of the clause were held sufficient to enable the majority to bind the class to accept shares or debentures[29] of a new company in satisfaction of the securities of the existing company, but they have been held not to enable the company to sell its assets and distribute them among those of the debenture holders who were willing to accept the lowest price for their debentures.[30] Where there is no such majority clause, the court can sanction an arrangement or compromise under **s. 206.**

Specific Performance

Specific performance of a contract to take or to subscribe for debentures could not under the old law be enforced. Thus, if A agreed to take up debentures of the company, and failed to pay, he could not be forced to pay up, the theory of law being that the company could get the loan elsewhere and did not need to invoke the special jurisdiction of equity to aid it. All that the company could do was to sue the defaulter for the damages (if any) it had sustained.[31] By s. 105, however, of the Companies Act, 1908 (replaced by **s. 92** of the Act of 1948), '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'.

Where debentures are issued payable by instalments, and the company has declared the debentures forfeited, the company cannot recover calls made before the forfeiture under this section.[32]

Books

The words 'all the property of the company' in the debenture holder's charge have been held not to extend to the ordinary books of the company,[33] and, on a winding up, the liquidator is accordingly entitled to claim possession of the minute book and share register and other books which relate to the management of the company as distinct from documents in the nature of title deeds, which may be retained by the debenture holders or their receiver.[34] There are books which, by the provisions of the Companies Acts, are to be kept at the office of the

[26] *Goodfellow* v. *Nelson Line, Ltd.* [1912] 2 Ch. 324.
[27] *British America Nickel Corporation* v. *O'Brien* [1927] A.C. 369.
[28] *Dey* v. *Rubber, etc., Corporation* [1923] 2 Ch. 528.
[29] *Re Hutchinson (W. H.) & Sons, Ltd.* (1915) 31 T.L.R. 324.
[30] *Re New York Taxicab Co.* [1913] 1 Ch. 1.
[31] *South African Territories, Ltd.* v. *Wallington* [1898] A.C. 309.
[32] *Kuala Pahi Estate* v. *Mowbray* [1914] W.N. 321.
[33] *Re Clyne Tin Plate Co.* (1882) 47 L.T. 439.
[34] *Engel* v. *South Metropolitan, etc., Co.* [1892] 1 Ch. 442; *Re Capital Fire Insurance Association* (1883) 24 Ch.D. 408.

company, such as the register of members and the register of mortgages; and for the directors to mortgage or charge these would, as Cotton L.J. pointed out,[35] be to deal with the property of the company in a way inconsistent with its objects and constitution; and the same principle applies to books which, by the articles of the company, are to be kept at its office.

Debenture Stock

In the matter of security, of payment of interest, and of transfer, debenture stock differs hardly at all from debentures; as to the time of payment it differs in being generally made payable only in the event of a winding up, and not at a fixed date. It is in its divisability that debenture stock differs mainly from debentures. A debenture is always for a fixed sum, say, £100, and this sum is only transferable as an entirety; whereas debenture stock, unless the regulations otherwise provide, can be transferred in any amounts, *e.g.*, £550, or £71 or £13, and several small holdings can be consolidated into one larger holding, a single certificate being obtained for the aggregate amount. But, to prevent complications, the articles commonly make the stock transferable in amounts of not less than £1 or £5 or £10.

Constitution by trust deed.

Debenture stock, as mentioned above, is generally constituted by a trust deed. The deed contains a covenant for the payment, either at a fixed date or in certain events (*e.g.*, a winding up), of a specified capital sum—say £100,000—which is to be called the stock, and for the payment of interest, and gives to the trustees security, by way of mortgage or charge, as in a debenture trust deed. It contains also provisions for the keeping of a register, of the beneficial owners of the stock, and for transfers and transmissions thereof, and for the issue to such owners of certificates of title, and for meetings of the stock-holders, etc., and it usually reserves to the company power to redeem at a premium before maturity.

Under the terms of the deed, there is not usually any direct contract by the company with the stock-holder; but he is a beneficiary, and, as such, the court will recognise and protect his title.[36]

Debenture stock of a company under the Companies Act, 1948, is essentially different from debenture stock issued by railway and other companies under the Companies Clauses Act, 1863.

Form of stock certificate.

The stock certificate issued to the owners usually runs as follows:—'This is to certify that —— of —— is the registered proprietor of £—— debenture stock of the above-named company', and is under seal.

[35] 24 Ch.D. at p. 418.
[36] *Re Empress Engineering Co.* (1880) 16 Ch.D. 128; *Gandy* v. *Gandy* (1885) 30 Ch.D. 57. It is not easy to reconcile with this *Re Dunderland Iron Ore Co.* [1909] 1 Ch. 446.

Remedies of Debenture and Debenture Stock-holders

Where Debenture carries no Charge.

Where the debenture is not secured by any mortgage or charge, the remedy of the holder is either to bring an action to enforce the debenture and obtain judgment and then levy execution on the property of the company; or he may, either before or after judgment, present a petition for the winding up of the company, or, if there be a winding up in progress, he can prove in the winding up for the amount due to him, but, not having any security, he has no priority either in the winding up or otherwise; he ranks merely with the ordinary creditors.

Courts (Emergency Powers) Act.

By the Courts (Emergency Powers) Acts, 1939 and 1940, as amended by the Liabilities (War-Time Adjustment) Act, 1941, s. 26, it is necessary, during the emergency which gave rise to the passing of the Acts, to obtain the leave of the court before exercising the remedies of debenture holders and other mortgagees for realising their securities. These provisions are complicated and of temporary operation, and the reader is referred to the Annual Practice and other works on procedure.

It may, however, be useful to refer to some of the decisions which relate particularly to debentures: *Re Corporate Equitable Property Society*,[37] where it was held that leave must be obtained under these Acts to move for judgment in a debenture holder's action, *Re Bellbridge Property Trust*,[38] where debenture holders appointed a receiver, and a first mortgagee of part of the property applied to the court for leave to appoint a receiver; owing to opposition, the mortgagee's receiver was not appointed until seven weeks later, and it was held that the debenture holder's receiver must account to the mortgagee's receiver for rents and profits from the date of the summons asking for leave; *Re Wood's Application*,[39] where a debenture holder obtained leave to appoint a receiver (the company not being in liquidation), and it was held that no further leave was necessary to enable the receiver to sell the property under the power of sale in the debentures; *Re S. Brown & Son (General Warehousemen), Ltd.*,[40] where the receiver was held to be the agent of the debenture holders for the purposes of these Acts after liquidation had commenced.[41]

Debentures or debenture stock carrying a mortgage or charge.

In this case, the remedies open to the debenture holder or debenture stock-holder necessarily depend on the terms of the security, and these terms must be scrutinised accordingly. Ordinarily, the remedy of a debenture holder, when the company is in default as regards principal or interest, is to bring an action against the company to obtain payment and to enforce his securities. Where a debenture holder is required to give notice to the company prior to action he must do so.[42] In such an

[37] [1940] Ch. 654
[38] [1941] W.N. 85.
[39] [1941] Ch. 112.
[40] [1940] Ch. 961.
[41] See *ante*, p. 286.
[42] *Rogers & Co. v. British, etc., Association* (1899) 68 L.J Q.B. 14.

action, the debenture holder plaintiff sues on behalf of himself and the other members of the class, and the court usually appoints a receiver (if necessary a manager also), and by its judgment declares the debentures to be a charge on the property, directs inquiries as to who are the holders, and the amount due, and either orders a sale of the property or gives liberty to apply for a sale [43] Where a receiver and manager has been appointed it is for the court to say what proceedings the receiver is to be allowed to take or continue at the cost of the company's assets.[44]

As a rule the undertaking of a company carrying on some service to the benefit of the public cannot be sold. The Crystal Palace was not, however, exempt from sale as a public undertaking.[45]

Where trust deed exists.

Where there is a trust deed, whether for securing debentures or debenture stock, the trustees can be plaintiffs in an action for enforcing the charge; but, commonly, the action is brought by a holder of the debentures or debenture stock, and the company and the trustees are made defendants. In such an action, similar relief is usually granted.[46]

Appointment of receivers and managers.[47]

Receivers and managers can be appointed either under the express powers of the debentures or trust deed, or by the court. Provisions are made as to both classes in Part VI (**ss. 366–378**) of the Act of 1948, which may be summarised as follows [48]:—

By **s. 366** a body corporate is not qualified for appointment as receiver of the property of a company; and by **s. 367** of the Act of 1948,[49] if any undischarged bankrupt acts as a receiver, he becomes liable to a fine or imprisonment, or both; but this does not apply where the appointment and the bankruptcy both took place before the commencement of the Act or where he was appointed by the court.

By **s. 368,** 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 appointed.

By **s. 369** [50] a receiver or manager appointed under the powers in the debentures may apply to the court for directions.

By **s. 370,** where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

[43] See *Company Precedents*, Part III, 15th ed., pp. 622 *et seq.*
[44] *Viola* v. *Anglo-American Cold Storage Co.* [1912] 2 Ch. 305 (see *post*, p. 316).
[45] *Re Crystal Palace Co.* [1911] W.N. 104.
[46] See *Company Precedents*, Part III, 15th ed., p. 623.
[47] See generally *Company Precedents*, Part III, 15th ed., pp. 470 *et seq.*
[48] For full details of these provisions see Appendix 1, *post.*
[49] Re-enacting s. 83 of the Act of 1947.
[50] Re-enacting s. 87 (1) of 1947.

By **ss. 372** and **373** of the **Act of 1948** [51], where a receiver or manager of all or substantially all the property of the company is appointed either under the powers of the debentures or by the court on behalf of the holders of debentures secured by a floating charge, the receiver is to send to the company notice of his appointment forthwith and the company must within (usually) fourteen days make out and submit to the receiver a statement as to the affairs of the company.

Within two months after receiving this statement the receiver must send to the registrar (and to the court if he was appointed by the court) a copy of the statement and any comments he sees fit to make, and must send to the registrar a summary of the statement and of his comments and must send to the company a copy of his comments and to the trustees and all the debenture holders a copy of the summary.

The receiver must also within two months after the end of each year, and within two months after he ceases to act as receiver or manager, send to the registrar, to the trustees, to the company and the debenture holders an abstract of his receipts and payments during the relevant period.

The statement must show the date of the receiver's appointment, particulars of the company's assets and liabilities and particulars as to the creditors, and the securities held by them. The statement must be verified by affidavit (or a statutory declaration where the receiver was appointed out of court) of a director and the secretary, and past directors, employees and officers of the company, and persons who have taken part in the formation of the company may in certain cases be required by the receiver to submit and verify the statement.

Section 374 provides for a receiver or manager delivering to the registrar abstracts showing his receipts and payments.

Section 375, containing amendments introduced by s. 86 of 1947, provides for penalties in case of default and enables the court to order the receiver to make good his default.

Remuneration.

By **s. 371** the court may, on an application made by the liquidator of a company which is being wound up, fix the remuneration of a receiver or manager. This power was, by s. 87 (3) of the Act of 1947, re-enacted by **s. 371** of the Act of 1948, extended to fixing the remuneration for any period before the making of the order or the application to the court, thus overruling the recent case of *Re Greycaine, Ltd.*,[52] and is exercisable notwithstanding that the receiver has died or ceased to act before the application. Where he has received more than the rate fixed, he may be ordered to refund the excess.

In the case last mentioned, it was held that the power might be exercised although the receiver had been receiving remuneration at a

[51] Repeating ss. 84 and 85 of the Act of 1947.
[52] [1946] Ch. 269.

rate fixed by the trustees for debenture holders by agreement with the receiver.[53]

Appointment by the court.

In an action to enforce the security, the court has power to appoint a receiver, and is usually asked to exercise it; and this power is not confined to cases in which the principal or interest on the debenture or debenture stock is in arrear. A receiver may be appointed whenever the security is in danger. Thus, where a company had become insolvent and closed its works, a receiver was appointed.[54] So, where a winding up of the company takes place or is imminent[55]; or, where a company is disposing of its undertaking in violation of the terms of the security[56]; or where there are judgments against the company[57]; or where a company is in a state of suspended animation.[58] It was held that the power to appoint a receiver included, also, power to appoint a manager in such cases[59]; and in such cases the court, after appointing a receiver, can enforce the security.[60] The mere fact that the assets would, if realised, be insufficient to pay the debenture holders in full is not a valid ground for the appointment of a receiver[61] Where the company proposed to distribute among its members a reserve fund which was its only remaining asset, a receiver was appointed.[62]

Where the company is registered in this country, it is no objection to the appointment of a receiver that the property is abroad.[63]

The appointment of a receiver by the debenture holders under their debenture does not necessarily prevent the court from appointing a receiver.[64] The fact that a liquidator appointed by the shareholders is also receiver for the debenture holders is a reasonable ground for the unsecured creditors desiring his removal as liquidator.[65]

Security.

The order usually provides for security to be given by the receiver. If a receiver is appointed 'upon his giving security', he is not entitled to take possession until he has given security, and until then he is not to be deemed to be in possession as against third parties.[66] But if the order appoints the receiver out-and-out, and orders him to give security,

[53] See further, *Company Precedents*, Part III, 15th ed., p. 780, and, as to correction of the order, where remuneration has been omitted, *Re City Housing Trust, Ltd.* [1942] 1 All E.R. 369.
[54] *McMahon* v. *North Kent Iron Works* [1891] 2 Ch. 148.
[55] *Re Victoria Steamboats Co.* [1897] 1 Ch. 158; *Hodson* v. *Tea Co.* (1880) 14 Ch.D. 859; *Wallace* v. *Universal, etc., Co.* [1894] 2 Ch. 547.
[56] *Hubbuck* v. *Helms* (1887) 56 L.T. 232; but see *Foster* v. *Borax Co.* [1901] 1 Ch. 326.
[57] *Edwards* v. *Standard Rolling Stock Syndicate* [1893] 1 Ch. 574.
[58] *Higginson* v. *German Athenæum* (1916) 32 T.L.R. 277.
[59] *Re Victoria Steamboat Co., Smith* v. *Wilkinson* [1897] 1 Ch. 158.
[60] *Re Carshalton Park Estate* [1908] 2 Ch. 62.
[61] *Re New York Taxicab Co.* [1913] 1 Ch. 1; *Lawrence* v. *West Somerset Ry.* [1918] 2 Ch. 250. But see *Re Braunstein and Marjolaine, Ltd.* [1914] W.N. 335; 58 S.J. 755, where part of the business had been closed down.
[62] *Re Tilt Cove Copper Co.* [1913] 2 Ch. 588.
[63] *Ex p. Pollard* (1838–40) 4 D. 27; *Coote* v. *Jecks* (1872) L.R. 13 Eq. 597.
[64] *Re 'Slogger' Automatic Co.* [1915] 1 Ch. 478.
[65] *Re Karamelli & Barnett, Ltd.* [1917] 1 Ch. 203.
[66] *Edwards* v. *Edwards* (1876) 2 Ch.D. 291.

the appointment takes effect at once, and he is entitled to take possession before security given, and as against third parties is to be deemed to be in possession as from the time the order is perfected.[67] So, a landlord who distrains after the making of a receivership order, but before it is drawn up, will not be disturbed.[68] If the receiver does not give security within the time limited, his appointment lapses unless the time is extended.[69]

Officer of the court.

When the court appoints a receiver of property, it in effect takes the custody of the property into its own hands—for the receiver is an officer of the court—and thus assumes the protection and safe keeping of it for the benefit of the parties interested in it. The receiver being an officer of the court, any interference with him, whether by a party to the action or by a stranger, is a contempt of court and punishable accordingly. Thus, proceedings for recovery of possession cannot be commenced by a first mortgagee without leave of the court.[70] See, however, as to independent actions by debenture holders, *Cleary* v. *Brazil Ry.*[71] This decision may be supported on the ground that there was no interference with the company's assets until execution.

Duties.

The duty of a receiver (unless he is also appointed manager) is confined to taking possession of and protecting the property over which he is appointed.[72] See, as to the powers and duties of a receiver, *Moss Steamship Co.* v. *Whinney.*[73]

Where a receiver and manager continued to manage the business after the time limited, his remuneration and part of his expenses were disallowed.[74]

The receiver must not disregard contracts made by the company where they may affect the goodwill of the business,[75] but in other cases he may be authorised to disregard them.[76]

The question whether a receiver shall take proceedings in the name of the company is entirely in the discretion of the court. The plaintiff in the debenture holders' action cannot insist on proceedings by the company against him being dropped.[77]

When a receiver and manager is appointed *by the court*, he 'accepts the appointment on the terms that he will be personally responsible to the creditors of the business, whilst he will be indemnified out of the

[67] *Morrison* v. *Skerne Ironworks Co.* (1889) 60 L T. 588, in which case the appointment was held good as against execution creditors; *Ex p. Evans* (1879) 11 Ch.D. 691; 13 Ch.D. 252.
[68] *Lee* v. *Roundwood Colliery Co.* [1897] 1 Ch. 373.
[69] *Re Sims & Woods, Ltd.*, Practice Note [1916] W.N. 223.
[70] *Re Metropolitan Amalgamated Estates, Ltd.* [1912] 2 Ch. 497.
[71] [1915] W.N. 178.
[72] *Re Manchester and Milford Ry.* (1880) 14 Ch.D. 645.
[73] [1912] A.C. 254, and *Company Precedents*, Part III, 15th ed., pp 470 *et seq.*
[74] *Re Wood Green Laundry* [1918] 1 Ch. 423.
[75] *Re Newdigate Colliery* [1912] 1 Ch. 468.
[76] *Re Thames Ironworks* [1912] W.N. 66; 28 T.L.R. 273; *Re Great Cobar, Ltd.* [1915] 1 Ch. 682.
[77] *Viola* v. *Anglo-American Co* [1912] 2 Ch. 305

estate '.[78] When the receiver is in default, he loses his indemnity to the extent of his default, and persons to whom he has incurred liabilities can only stand in his place as regards his indemnity to the same extent.[79]

A receiver carrying on a company's business may be personally liable to compensate workmen under the Workmen's Compensation Act, 1925.

Rent. Covenants in lease.

A receiver in a debenture holders' action will not, at the instance of a landlord, be ordered to pay the rent of leasehold premises mortgaged by sub-demise to the trustees for the debenture holders, there being no privity in such a case between the lessor and sub-lessees[80]; and the same rule apparently applies where a receiver is appointed for an equitable mortgagee.[81] A receiver who by agreement paid rent for the period after his appointment was held to be entitled to deduct income tax in respect of rent paid before his appointment.[82]

The same rule would appear to apply to the liability of a receiver on the covenants in a lease.

Rights as lessee.

Where the security comprises leasehold property and fixtures, and the company by passing a voluntary resolution to wind up forfeits the lease, the receiver may remove the fixtures within a reasonable time[83] A receiver for holders of debentures containing a floating charge can exercise in the name of the company the rights of a tenant under the Landlord and Tenant Act, 1927.[84]

Preferential payments.

A receiver is bound (**s. 94**) to pay out of the first assets coming to his hands creditors entitled to preferential payments[85] in priority to any claim for principal or interest in respect of the debentures. There are some modifications to adjust the rules as to preferential payments to the fact that they are being dealt with by a receiver.[86] If he distributes the assets or uses them up in carrying on the business without providing for these preferential payments, he renders himself liable.[87] It was held[88] that the costs of the winding up are payable before the preferential debts, but that if the general assets after payment of such costs are insufficient

[78] *Per* Rigby L.J., *Owen* v. *Cronck* [1895] 1 Q.B. 265; *Burt* v *Bull* [1895] 1 Q.B. 276 (C.A.); and *Gosling* v. *Gaskell* [1897] A.C. 575.
[79] *Re British Power Traction Co.* [1910] 2 Ch. 470; *Re British Tea Table* (1897) 101 L.T. 707.
[80] *Hand* v. *Blow* [1901] 2 Ch. 721.
[81] *Hay* v. *Swedish and Norwegian Ry.* (1892) 8 T.L.R. 775; see also *Justice* v. *James* (1899) 15 T.L.R. 181 (where the receiver had paid rent for a time); *Re J. W. Abbott & Co.* [1913] W.N. 284; 30 T.L.R. 13 (where the receiver was in possession); *Re Westminster Garage Co.* (1914) 84 L.J.Ch. 753 (where the lessor had recovered judgment for possession).
[82] *Re Hayman, Christy and Lilly, Ltd.* [1917] 1 Ch. 545.
[83] *Re Glasdir Copper Works, English Electro-Metallurgical Co* v. *Glasdir Copper Works* [1904] 1 Ch. 819.
[84] *Gough's Garages* v. *Pugsley* [1930] 1 K.B. 615.
[85] See *post*, pp. 398 *et seq.*
[86] See **s. 94**, Appendix 1, *post*.
[87] *Woods* v. *Winskill* [1913] 2 Ch. 303.
[88] In *Westminster Corporation* v. *Chapman* [1916] 1 Ch. 161

to pay the preferential debts, then the amount of the deficiency must be made up by the debenture holder out of the property subject to his floating charge. The costs and expenses of the receiver and his remuneration also come before the preferential creditors.[89] The word 'forthwith', which appeared in the corresponding section (107) of the Act of 1908, and was commented upon in the last mentioned case, has now been omitted. These preferential payments have no priority over property comprised in a fixed charge, even though the debenture contains also a floating charge.[90]

Where a receiver is appointed of part of the property of the company which is comprised in a floating charge, debts incurred in connection with other property of the company after the appointment of the receiver will not rank as preferential debts against the property in the hands of the receiver, since the floating charge over that property was crystallised by the appointment of the receiver.[91]

As to rates, the liability of the receiver depends upon the question whether there has been a change of possession.[92]

The appointment of a receiver and manager, if of a permanent character, operates as a discharge of the company's servants.[93] But *semble*, the appointment of a receiver by debenture holders would not have that effect if the receiver is agent of the company.[94]

A receiver or receiver and manager may be appointed in proceedings commenced by originating summons.[95]

A director appointed receiver and manager in a debenture holder's action is not thereby disentitled to be paid his fees as director.[96]

Under **s. 102** of the Act the appointment of a receiver must be registered; and as to delivering his accounts, see **s. 374** of the Act.[97]

Leave to borrow.

In debenture holders' actions the business of the company is commonly the most valuable asset, and in order to protect and preserve it as a going concern, and for this or other pressing exigencies, the court has jurisdiction—which it frequently exercises—to authorise the receiver to borrow money in priority to the debentures or debenture stock.[98] The receiver should keep within the limits allowed.[99]

The jurisdiction to raise a salvage loan of this kind is beneficial to

[89] *Re Glyncorrwg Colliery Co.* [1926] Ch. 951.
[90] *Re Lewis Merthyr Consolidated Collieries* [1929] 1 Ch. 498.
[91] *Re Griffin Hotel Co., Ltd.* [1941] Ch. 129.
[92] *National Provincial Bank* v. *United Electric Theatres* [1916] 1 Ch. 132.
[93] *Reid* v. *Explosives Co.* (1887) 56 L.J.Q.B. 388; 19 Q.B.D. 264.
[94] Compare *Robinson Printing Co.* v. *Chic, Ltd.* [1905] 2 Ch. 123, and *Parsons* v. *Sovereign Bank of Canada* [1913] A.C. at p. 167.
[95] *Re Francke* (1888) 57 L.J.Ch. 437; *Gee* v. *Bell* (1887) 35 Ch.D. 160; *Annual Practice*, notes to Ord. LV, r. 5a.
[96] *Re South Western of Venezuela Ry.* [1902] 1 Ch. 701.
[97] Appendix 1, *post*.
[98] *Greenwood* v. *Algesiras (Gibraltar) Ry.* [1894] 2 Ch. 205; *Lathom* v. *Greenwich Ferry* (1895) 72 L.T. 790.
[99] *Re Glasdir Copper Mines* [1906] 1 Ch. 365; *Re British Power Traction Co.* [1906] 1 Ch. 497.

all persons interested, and has saved many a well-known concern from destruction.[1]

The expenses of realisation rank before securities given by the receiver and manager.[2]

Foreclosure.

This is a remedy which is occasionally available in debenture holders' actions.[3] But not where the property has been conveyed to the trustees of a debenture trust deed on trust for sale.[4] All the debenture holders as well as the company are necessary parties to a foreclosure action.[5]

Remedy by winding-up petition.

A debenture holder to whom the company is indebted in a sum presently payable, can demand payment, and, if default be made, can petition for the winding up of the company, and this, whether he be the registered holder of the security, or the holder of a security to bearer.[6] And the mere fact that he has obtained the appointment of a receiver does not preclude him from applying for a winding up order.[7] As against the company he is entitled to a winding-up order *ex debito justitiæ*, but not so as against the wishes of the majority of the creditors.[8] The holder of a mortgage debenture, who applies for a winding-up order, is not bound to give up his security.[9] Where there is nothing presently due to the debenture holder, he had formerly no *locus standi* to present a winding-up petition.[10] But his position was, in this respect, altered by s. 137 of 1908 and he may now be able to petition as a contingent or prospective creditor under **s. 224** of the Act of 1948.

Remedies without aid of court.

A debenture holder is not bound to come in and enforce his rights in a winding up. He may exercise such powers of realisation as are given him by his securities, *e. g.*, appointment of a receiver or sale. As to the powers of a receiver so appointed and his agency and liabilities, see *ante*, pp. 285, 286.

Action by debenture holder.

Where it is necessary to bring an action, any holder of debentures can do so. After a winding up has commenced, the debenture holder must first apply to the court for liberty to commence the action; but the

[1] *Securities Properties Investment Corp.* v. *Brighton Alhambra* (1893) 68 L.T. 249; *Re Glasdir Copper Mines* [1906] 1 Ch. 365; *Robinson Printing Co.* v. *Chic, Ltd.* [1905] 2 Ch. 123.

[2] *Strapp* v. *Bull* [1895] 2 Ch. 1; *Re Glasdir Copper Mines* [1906] 1 Ch. 365; *Re London United Breweries* [1907] 2 Ch. 511.

[3] *Sadler* v. *Worley* [1894] 2 Ch. 170; *Elias* v. *Continental, etc., Co.* [1897] 1 Ch. 511.

[4] *Schweitzer* v. *Mayhew* (1862) 31 Beav. 37.

[5] *Wallace* v. *Evershed* [1899] 1 Ch. 891; *Elias* v. *Continental Co., supra*

[6] *Re Olathe Silver Co.* (1884) 27 Ch.D. 278; *Re Uruguay Central Ry* (1879) 11 Ch.D. 372.

[7] *Re Borough of Portsmouth Tramways* [1892] 2 Ch. 362.

[8] *Re Western of Canada Co.* (1873) L.R. 17 Eq. 1; *Re Chapel House Colliery Co.* (1883) 24 Ch.D. 259.

[9] *Moor* v. *Anglo-Italian Bank* (1879) 10 Ch.D. 681.

[10] *Re Melbourne Brewery Co.* [1901] 1 Ch. 453.

court will give liberty to bring or proceed with the action as a matter of course.[11]

A debenture holder, though suing on behalf of himself and others, is *dominus litis*, and accordingly can as a rule stop the action when he chooses, *e.g.*, on his claim being satisfied[12]; but where the plaintiff has interests conflicting with those of the other debenture holders, the court may give the conduct of the proceedings to an independent debenture holder.[13]

The court has jurisdiction to order that debenture holders who do not claim within a certain time shall be excluded from a scheme of division.[14]

Costs.

As to costs in a representative debenture holder's action, see *Re New Zealand Midland Railway, Smith* v. *Lubbock*[15]; *Re Clayton Engineering and Electrical Construction Co.*[16] These cases establish the rule that where the assets are insufficient to pay in full the series of debentures on behalf of which the plaintiff sues, the plaintiff is entitled to solicitor and client costs out of the fund. Where, however, the assets are sufficient to pay this series in full, but insufficient to pay any subsequent series in full, the plaintiff can only get party and party costs out of the assets.[17]

The company and the subsequent incumbrancers, though necessary parties,[18] must, where sued by the first debenture holders, look to the surplus for their costs.[19] They are, however, sometimes allowed costs where their presence has been beneficial to the realisation of the assets.

Proof by debenture holders.

In the case of a solvent company a debenture or debenture stockholder can prove for his principal and interest,[20] and is not bound to value his security before proving.[21] But if the company is insolvent, which it is taken prima facie to be if in winding up,[22] **s. 317** of the Companies Act, 1948, applies, and the holders of secured debentures who want to prove must value their securities, or must realise them and then prove for the balance; and for the purpose of ascertaining the balance for which he can prove, the debenture holder can only apply the proceeds of his security in payment of interest accrued up to winding up. He may then prove as an unsecured creditor for the balance of the principal

[11] *Lloyd* v. *David Lloyd & Co.* (1877) 6 Ch.D. 339 (C.A.); *Re Joshua Stubbs, Ltd.* [1891] 1 Ch. 475; *Strong* v. *Carlyle Press* [1893] 1 Ch. 268.
[12] *Ward* v. *Alpha Co.* [1903] 1 Ch. 203.
[13] *Re The Services Club Estate Syndicate, Ltd.* [1930] 1 Ch. 78.
[14] *Saragossa and Mediterrancan Ry.* v. *Collingham* [1904] A.C. 159.
[15] [1901] 2 Ch. 357.
[16] (1904) 90 L.T. 283.
[17] See also *Re W. C. Horne & Sons, Ltd.* [1906] 1 Ch. 271; and, as to trustees' costs, *Mortgage Insurance Corpn.* v. *Canadian Agricultural Coal Co.* [1901] 2 Ch. 377.
[18] *Re Wilcox & Co.* [1903] W.N. 64.
[19] *Re Clayton Engineering Co.* [1904] W.N. 28; 90 L.T. 283.
[20] *Re Colonial Trusts Corporation* (1879) 15 Ch.D. 473.
[21] *Kellock's Case* (1868) L.R. 3 Ch.App. 769.
[22] *Re Milan Tramways Co.* (1884) 25 Ch.D. 587.

and interest due at the commencement of the winding up after deducting the amount arising from realisation of his security.[23]

It has been held that s. 66 of the Bankruptcy Act, 1914, which provides that for the purposes of dividend interest is not to exceed 5 per cent. per annum, does not apply.[24]

Where a debenture is not payable when a winding up commences, the holder can nevertheless prove for the full amount of the principal subject to a rebate of interest and also value and prove the liability to pay future interest to maturity where, by the terms of the instrument, the principal carries such interest to maturity.[25]

Debenture holders and debenture stock-holders are entitled as against their securities, whether the company be solvent or insolvent, to take principal, interest up to date of payment, and costs.[26]

Interest after judgment is limited to 4 per cent. per annum,[27] unless there is a separate covenant to pay interest at a higher rate during the continuance of the security.[28]

Calls made before winding up and other debts can be set off against money due on debentures, if there are no effective provisions in the debentures to the contrary.[29]

Where a debenture is guaranteed by a guarantee company, both companies being insolvent, the holder can prove in the winding up of the guarantee company for the balance remaining after realising his security; but he is not directly entitled to the benefit of any re-insurance effected by the guarantee company.[30]

[23] *Quartermaine's Case* [1892] 1 Ch. 639.
[24] *Re Agricultural Wholesale Society* [1929] 2 Ch. 261. It is submitted that this decision is correct, notwithstanding the doubts expressed in *Re Bush* [1930] 2 Ch. 202.
[25] *Re Browne and Wingrove, ex p. Ador* [1891] 2 Q.B. 574 (C.A.).
[26] *Cotterell* v. *Stratton* (1872) L.R. 8 Ch. 302; *Re Talbott* (1888) 39 Ch.D. 567.
[27] *Re European Central Ry.* (1876) 4 Ch.D. 33; *Re Sneyd* (1883) 25 Ch.D. 338.
[28] *Popple* v. *Sylvester* (1882) 22 Ch.D. 98.
[29] *Re Taunton, Delmard, Lane & Co.* [1893] 2 Ch. 175; *Re Richard Smith & Co.* [1901] 1 Ir.R. 73; and *Partridge* v. *Rhodesia Goldfields* [1910] 1 Ch. 239.
[30] *Re Law Guarantee Trust, etc., Society* [1915] 1 Ch. 340.

CHAPTER 32

PROMOTERS

Typical promoter—his usual business.

The promoters of a company are those who form or float it, that is to say, the leading spirits of the enterprise, or principal actors, for not every members of the *dramatis personæ*, or every subordinate employed by the promoters, is to be regarded as a promoter. The typical promoter—the promoter in the fullest sense of the term—starts the scheme of forming the company, negotiates with the vendors (if any), gets together the board of directors, retains brokers, bankers, and solicitors for the company, has the memorandum and articles of association prepared, provides the registration fees, drafts the prospectus, pays for the expense of issuing it, etc.; in a word, undertakes—to use the language of Cockburn C.J.—to form a company with reference to a given project, and to set it going, and to take the necessary steps to accomplish that purpose.[1]

Constructively.

But a person may be a promoter who has taken a much less active part in the promotion proceedings Anyone who assists in the promotion, *e.g.*, by obtaining a director, or agreeing to place shares, or negotiating an agreement, for a special fee or consideration payable if the company is floated, may find himself held to be a promoter. Persons who are engaged in the promotion of a company are sometimes extremely sensitive in regard to being termed promoters A, for example, may really be taking an active part in the promotion, yet he will altogether disclaim the status of a promoter, and declare that B is the real promoter. Promotership is, however, a question of acts, not words or names; and if a man takes part—though only a subordinate part—in the promotion, he must not be surprised to find himself saddled with the responsibility attaching in law to the promoter—a responsibility of a most onerous character.[2]

The Fiduciary Relation of Promoters

The promoters of a company, as Lord Cairns said in *Erlanger* v. *New Sombrero Phosphate Co.*[3] 'stand undoubtedly in a fiduciary position They have in their hands the creation and moulding of the company. They have the power of defining how, and when, and in what shape, and under what supervision, it shall start into existence and begin to act as a trading

[1] *Twycross* v. *Grant* (1877) 2 C.P.D. 469, at p. 503.
[2] See *Lydney and Wigpool Co.* v. *Bird* (1886) 33 Ch.D. 85; and other cases cited *post*, p. 323.
[3] (1878) 3 App.Cas. 1236.

corporation'. This doctrine is now well established. See the cases below mentioned. The importance of the rule, which thus creates a fiduciary relationship between the promoter and the company he brings into existence, will be at once seen when we consider its consequences—the corollary which the law deduces from it—namely, that a promoter, being in a fiduciary position, may not make, either directly or indirectly, any profit at the expense of the company he promotes, without the knowledge and consent of the company, and that, if he does make a secret profit in disregard of this rule, the company can compel him to account for it. Thus, in *Emma Silver Mining Co.* v. *Grant*,[4] *Bagnall* v. *Carlton*,[5] *Gluckstein* v. *Barnes*,[6] *Whaley Bridge Co.* v. *Green*,[7] *Mann* v. *Edinburgh Northern Trams Co.*,[8] and *Re Leeds and Hanley Theatre of Varieties, Ltd.* (No. 1),[9] promoters were compelled to surrender secret profits; and the fact that the promoter is acting as agent for the vendors, or for other promoters, will not exonerate him from accounting to the company, when formed, for any secret profit made by him.[10] The same principle applies where a promoter desires to sell his own property to the company. He is quite entitled to do so; but he is bound to protect the company he has created by furnishing it with an independent and competent board of directors, and by disclosing his interest in the property to such directors, so that they can exercise an intelligent judgment on the transaction.[11]

The proposition of Lord Cairns must, however, be accepted with some qualification in view of the remarks of Lindley M.R. in *Lagunas Nitrate Co.* v. *Lagunas Nitrate Syndicate* [12]:

'Notwithstanding all that has been said in *Erlanger* v. *New Sombrero Phosphate Co.* about the duties of the promoters of a company to furnish it with an independent board of directors, that decision does not require, or indeed justify, the conclusion that if a company is avowedly formed with a board of directors who are not independent, but who are stated to be the intended vendors or the agents of the intended vendors of property to the company, the company can set aside an agreement entered into by them for the purchase of such property simply because they are not an independent board. After *Salomon's Case* I think it impossible to hold that it is the duty of the promoters of a company to provide it with an independent board of directors if the real truth is disclosed to those who are induced by the promoters to join the company'.

A promoter-vendor cannot evade this liability of disclosure by putting in a nominee-vendor to sell to the company,[13] or by making disclosures merely to a board of directors who are under his influence or in his pay. Lord Halsbury L.C. in *Gluckstein* v. *Barnes* [14]:

'It is too absurd to suggest that a disclosure to the parties to this transaction is a disclosure to the company of which these directors were the proper guardians

[4] (1879) 11 Ch.D. 918.
[5] (1877) 6 Ch.D. 371.
[6] [1900] A.C. 240.
[7] (1879) 5 Q.B.D. 109.
[8] [1893] A.C. 69.
[9] [1902] 2 Ch. 809.
[10] *Lydney and Wigpool Iron Ore Co.* v. *Bird* (1886) 33 Ch.D. 85.
[11] *Per* Lord Cairns, *Erlanger* v. *New Sombrero Phosphate Co.* (1878) 3 App.Cas. 1236.
[12] [1899] 2 Ch. 392, 422.
[13] *Glasier* v. *Rolls* (1889) 42 Ch.D. 442.
[14] [1900] A.C. 247.

and trustees. They were there by the terms of the agreement to do the work of the syndicate, that is to say, to cheat the shareholders; and this, forsooth, is to be treated as a disclosure to the company, when they were really there to hoodwink the shareholders'.

Lord Macnaghten said [15]:

'Disclosure is not the most appropriate word to use when a person who plays many parts announces to himself in one character what he has done and is doing in another. To talk of disclosure to the thing called the company when as yet there were no shareholders is a mere farce'.

So, too, a mere constructive disclosure will not do: that is, a promoter of a company, whose duty it is to disclose what profits he has made, does not perform that duty by making a statement, not disclosing the facts, but containing something which, if followed up by further investigation, will enable the inquirer to ascertain that profits have been made, and what they amounted to.[16]

Accordingly, to be effective, disclosure must be to the shareholders as a body, not to a select circle of the promoters' nominees. Supposing, however, all the members of the purchasing company are by the articles of association and prospectus or otherwise made aware of the real facts of the case, the want of an independent board will not invalidate the agreement. (*Volenti non fit injuria*)[17]

Where a promoter in selling his property to the company does not comply with his obligations as regards disclosure and otherwise, the sale may be set aside at the instance of the company.[18] And if for any reason rescission has become impossible, the company is entitled to damages against the promoter, and the measure of such damages is the difference in value between the price paid by the company and the actual value of the property at the date of the purchase.[19]

When a promoter acquires property after he has commenced to promote and sells it to the company, a question of fact is raised as to whether or not he acquired it as trustee for the company. There is no presumption of law that he did [20]

In relation to disclosure it must be borne in mind that a half disclosure is sometimes worse than none; for example, if the prospectus states that the promoters are making £30,000, whereas they are really making £50,000, the partial concealment falsifies the statement made [21]

In *Jubilee Cotton Mills* v. *Lewis*,[22] it was held that a promoter who received an allotment of shares which had been allotted before a statement in lieu of prospectus had been filed, was liable to account for the profit made on the re-sale of the shares.

[15] *Ibid.*, at p. 249.
[16] *Re Olympia, Ltd.* [1898] 2 Ch. 153 (C.A.); *Gluckstein* v. *Barnes* [1900] A.C. 240.
[17] *Salomon* v. *Salomon* [1897] A.C. 22; *Re British Seamless Paper Box Co.* (1881) 17 Ch.D. 467; *Lagunas Nitrate Co.* v. *Lagunas Nitrate Syndicate* [1899] 2 Ch. 392, *Re Sale Hotel and Botanical Gardens* (1898) 78 L.T. 368.
[18] See *Erlanger* v. *New Sombrero Co.* (1878) 3 App.Cas. 1236, *supra*.
[19] *Re Leeds and Hanley Theatre of Varieties* [1902] 2 Ch. 809 (C.A.)
[20] *Omnium Electric Palaces* v. *Baines* [1914] 1 Ch. 332.
[21] *Gluckstein* v. *Barnes* [1900] A.C. 240.
[22] [1924] A.C. 958.

Remuneration of Promoter

'The services of a promoter are very peculiar. Great skill, energy and ingenuity may be employed', as Lord Hatherley L.C. said, 'in constructing a plan and bringing it out to the best advantage'.[23] This is quite true; and, accordingly, when a company has obtained the benefit of such services, no one is disposed to complain of the promoters getting some substantial advantage out of the promotion. The misfortune is that promoters are rarely satisfied with a reasonable remuneration. The modes in which promoters obtain their remuneration vary considerably Sometimes the promoters agree with the owner of a going business or some other property that they will form and float a company to acquire the same, and the vendor in consideration of their doing so agrees to pay them a commission or part of the consideration for the sale when received. Sometimes the plan resorted to is for the promoters to purchase the business, concession, patent or other property, which the proposed company is formed to acquire, and then to resell to the company at a profit. In other cases the promoters form the company with part of its share capital in founders' shares, or deferred shares, and then take these founders' or deferred shares credited as paid up, in consideration of their paying the expenses of forming and floating the company.

In such cases, that is, of shares allotted as fully paid but not for cash, a contract or particulars must still be registered under **s. 52 (1) (b)**, and the shares must be entered as fully paid in the return of allotments required by the same section of the Act. In other cases the promoters are content to accept as their remuneration the privilege of subscribing for a certain number of shares of small amount carrying valuable rights, *e.g.*, founders' or deferred shares, and paying for the same in cash, relying for their profit on the likelihood of such shares largely increasing in value in the near future.

Sometimes promoters take an option to subscribe within a year for a certain portion of the company's unissued shares at par. If the shares in the company are likely to go to a premium, such an option may be of considerable value. Such an option is valid,[24] and may be given as the consideration for subscribing for, underwriting or placing shares.[25]

Sometimes the articles of association provide for the directors paying a specified sum to the promoters in respect of their services in promoting the company; but a clause of this kind gives, it must be remembered, merely an authority to the directors to pay such expenses, and does not constitute a contract on which the promoter can sue the company.[26] Nor will the presence of such a clause justify the directors in paying out money without due inquiry.[27]

Whatever be the nature of the remuneration, it must be disclosed in the prospectus if paid within the preceding two years or intended to be paid at any time (see **s. 38 (1)** and **Fourth Schedule, Part I (13)**).

[23] *Touche* v. *Metropolitan, etc., Co* (1871) L.R. 6 Ch.App. 671.
[24] *Re South African Trust Co., ex p. Hirsch* (1896) 74 L.T. 769.
[25] *Hulder* v. *Dexter* [1902] A.C. 474.
[26] *Re Rotherham Alum, etc., Co.* (1883) 25 Ch.D. 103.
[27] *Re Englefield Colliery Co.* (1877–8) 8 Ch.D. 388; *Marzetti's Case* (1889) 38 W.R. 541.

A promoter can only recover from the company what he has paid in preliminary expenses where he proves a contract by the company to pay: *Re English and Colonial Produce Co.*[28] According to that decision the promoter can, without proving a contract, recover the registration fees, but this has since been overruled.[29]

Statute of Limitations and bankruptcy.

A promoter who has abused his fiduciary position is generally held liable as a constructive trustee, and upon the footing that he has been guilty of fraud; but a claim against him will be barred by a delay of six years after the company has discovered, or could with reasonable diligence have discovered, the fraud (Limitation Act, 1939, s. 26). In case of bankruptcy of a promoter, an order of discharge does not release him from any liability incurred by fraud or fraudulent breach of trust.[30]

Liability of Promoters in respect of Prospectuses

Promoters who take part in the issue of prospectuses offering shares, debentures or debenture stock for subscription may incur serious liabilities in regard thereto. They may, if the prospectus omits to give the information required by **s. 38** and the **Fourth Schedule** of the Act, or makes any untrue statement, be held liable to compensate subscribers for any damage sustained by them.[31]

[28] [1906] 2 Ch. 135.
[29] *Re National Motor Mail Coach Co.* [1908] 2 Ch. 515.
[30] *Emma Silver Mining Co.* v. *Grant* (1880) 17 Ch.D. 122; Bankruptcy Act, 1914. s. 28 (1). See also, as to bankruptcy, *Re Kent County Gas Co.* [1913] 1 Ch. 92.
[31] See further, Chap. 34, *post*.

CHAPTER 33

UNDERWRITING

Object of.

Business men nowadays like, and quite properly, to cover all the commercial risks they can. Hence the spread of insurance in modern times. Underwriting is only an application of the same principle to company formation. It is a safeguard—a precaution: the object being to insure against the risk that shares, debentures, or debenture stock offered for subscription may not be taken up. The investing public is variable and capricious; it cannot be always relied on to appreciate even the best and soundest undertakings. It is easily alienated or put off A very trifling circumstance will at times render an appeal to the public to subscribe abortive. For instance, some enemy of the concern writes a letter to the newspapers containing untrue statements about the company. This may be sufficient to stop subscriptions, even though the directors at once contradict the statements; so, too, if, just at the time that the prospectus is issued, some other more attractive concern is appealing to the public, or if the money market happens to be depressed, the public may decline to subscribe. In order to meet contingencies like these, it is extremely common now to get the shares, debentures, or debenture stock underwritten before they are offered for public subscription.

Special circumstances, too, often demand that the success of an issue should be assured: for instance, a company may have put its 'minimum subscription' at £50,000; if the public does not come in and take up shares to that amount, the directors cannot go to allotment, and the enterprise is ruined. Or a firm may be converting its business into a company, and a large part of its assets consist of loans, deposits and other capital left in the concern by a deceased partner, and these liabilities the proceeds of the issue are intended to clear off; here, again, the failure of the issue would be disastrous Or a going company may wish to raise further funds by the issue of new shares or debentures or debenture stock; but, owing to the state of the market or other special circumstances, a risk attends the issue. Non-success would seriously damage the credit of the company. In such cases underwriting is found of great use.

Form of underwriting agreement.

Generally, the underwriting is done by a company, but sometimes by one or two persons. The underwriters now usually enter into a written contract with the company; but sometimes an underwriter writes a letter addressed to the vendor or promoter or to the company agreeing to underwrite a specified amount of what is to be offered, upon the footing

that he is only to be bound to take up his rateable proportion of what the public does not take up; and that in any event he is to be paid a commission, either in cash or paid-up shares, or an option, or in some other shape. Such a letter is generally expressed in the form of an agreement, 'I agree to underwrite,' etc., but in law it operates only as an offer; and, to become binding—to be converted into a contract—it must be accepted by the other party, and notice of such acceptance given to the underwriter.[1] The acceptance may be in writing or oral,[2] and it is prima facie no objection that the notice of acceptance is not given until after the list has closed,[3] for the court is not disposed to import into underwriting contracts implied conditions in derogation of the express terms of the contract.[4] Where the agreement is to underwrite on the terms of a specified prospectus, a serious variation of the terms of the prospectus may vitiate the contract, even though the agreement expressly allows for variations in the prospectus.[5] The underwriting contract or letter usually provides that if the underwriter makes default in applying, the other party to the underwriting agreement may apply for the shares on his behalf. This authority, if properly framed, is effective and irrevocable where there is a complete contract, as above; for, in such cases, it is one of the terms of the contract that the authority shall subsist, and it is not open to one party to a contract by any notice to the other to revoke what is a term of the contract.[6] The executors of a deceased underwriter are liable on the underwriting contract.[7]

Conditions precedent.

It happens sometimes, however, that such an authority is expressed in contingent terms, as, for instance, 'I will, *if called on by you*, subscribe, etc.' Where this is the case, the authority does not arise until after condition performed, that is, after the underwriter has been called on to subscribe; and, accordingly, if the other party exercises the authority before that has been done, the allotment will be ineffective.[8]

Even where the underwriting letter has not been accepted by the person to whom it was addressed, and there is, therefore, no contract, the underwriter may, in some cases, be held bound by an application made by the other party in professed exercise of the authority conferred by the letter in his possession.[9] So, too, a sub-underwriter cannot withdraw where he has authorised an application to be made on his behalf, even

[1] *Re Consort Deep, etc., Co.* [1897] 1 Ch. 575 (C.A.).
[2] *Re North Charterland, etc., Co.* (1896) 13 T.L.R. 80.
[3] *Re Hemp, Yarn and Cordage Co.* [1896] 2 Ch. 121 (C.A.).
[4] *Re Crown Lease Proprietary Co.* (1897) 14 T.L.R. 47.
[5] *Warner International Co., Ltd.* v. *Kilburn, Brown, etc., Co.* [1914] W.N. 61; 110 L.T. 456.
[6] *Carter* v. *White* (1883) 25 Ch.D. 666; *Re Hannan's Empress Mining Co., Carmichael's Case* [1896] 2 Ch. 643 (C.A.); *Pole's Case* [1920] 2 Ch. 341.
[7] *Warner Engineering Co.* v. *Brennan* (1913) 30 T.L.R. 191; *Ex p. Pathé Frères* [1914] 2 K.B. 299.
[8] *Ormerod's Case* [1894] 2 Ch. 474; *Brussels Palace of Varieties* v. *Prockter* (1893) 10 T.L.R. 72; *Sangster* v. *Netter* (1893) 9 T.L.R. 441.
[9] *Re Henry Bentley & Co., etc., ex p. Harrison* (1893) 69 L.T. 204; *Re Bultfontein Sun Diamond Mine* (1896) 12 T.L.R. 461.

though he repudiates before notice of acceptance of his application by the company has been received.[10]

The principle of this is that the applicant has an *apparent* authority from the underwriter to apply, and the underwriter is therefore, as against the company accepting the application in good faith and without notice of any qualification or condition affecting the authority, estopped from denying the validity of the authority. *Ex p. Harrison*[11] is a good instance, where the collateral condition qualifying the underwriting agreement was contained in a separate letter not shown to the company by the applicant for shares.

The principle would, of course, not apply if the company knew from the form of the letter or *aliunde* that the authority was qualified or conditional.

An agreement to take shares must be distinguished from an agreement to place shares.[12] One who merely agrees to place does not underwrite, and is not bound to take those he does not place.

Formerly the court had no jurisdiction in the case of a contract underwriting debentures or debenture stock to compel specific performance of the contract by the underwriter. The company's remedy—and it was a very inadequate one—was to sue the underwriter for damages.[13] But this defect was cured by s. 16 of the Act of 1907. **Section 92** of the Act of 1948 now provides as follows: 'A contract with a company to take up and pay for any debentures [or debenture stock] of the company may be enforced by an order for specific performance', *i.e.*, in the particular case of underwriting that the underwriter shall pay over to the company the purchase-money of the debentures or debenture stock he takes, and shall receive the debentures or debenture stock in return.

An underwriting contract, if under hand, requires a 6d. stamp; if under seal, a 10s. stamp The fact that the contract contains an authority to apply for shares on the underwriter's behalf does not render a power of attorney stamp requisite.[14]

Payment of underwriting commission by company.

Before January 1, 1901, the great mass of the underwriting was done by arrangement between the promoters or vendors, or persons *ejusdem generis*, and the underwriters. Companies were not much in the habit of themselves entering into direct relations with underwriters owing to the existence of grave doubts as to whether a company could properly pay an underwriting commission for getting its capital subscribed.[15] And although in *Metropolitan Coal Consumers' Association* v. *Scrimgeour*,[16] the Court of Appeal was of opinion that the payment of a small commission, *e.g.*, 2½ per cent., by a company to *brokers* for their services as such

[10] *Re Olympic Fire and General Co., Pole's Case* [1920] 1 Ch. 582.
[11] *Ex p. Harrison, supra.*
[12] *Gorrissen's Case* (1873) L.R. 8 Ch.App.Cas. 507.
[13] *South African Territories* v. *Wallington* [1898] A.C. 309.
[14] *Walker* v. *Remmett* (1846) 15 L.J. (N.S.) C.P. 174; 2 Com.B.Rep. 850.
[15] *Re Faure Electric Accumulator Co.* (1888) 40 Ch.D. 141; and *Ooregum Co.* v. *Roper*, [1892] A.C. 125.
[16] [1895] 2 Q.B. 604.

was not *ultra vires*, this decision did not by any means remove all doubts and difficulties.

The Companies Act, 1900, s. 8, however, made important alterations in the law as to payment by a company of a commission for the underwriting of its share capital. It made it lawful for a company, upon any offer of shares for public subscription, subject to certain conditions, to pay such commission, and at the same time it prohibited all payments or allotments of shares by way of commission, whether direct or indirect, other than those expressly sanctioned, and it in effect deprived vendors and promoters of the power to pay such commissions. This section was amended by s. 8 of the Companies Act, 1907, which relaxed the restrictions imposed by the Act of 1900, and not only allowed commissions to be paid when there was no offer of shares to the public, but relieved vendors and promoters from the prohibition against paying such commissions out of funds coming to them from the company. **Section 53** of the Act of 1948 has now taken the place of these enactments. It runs as follows:—

53. (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—

(*a*) the payment of the commission is authorised by the articles; and

(*b*) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) 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 delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(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 in 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.

(4) 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.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

Subsection (6) relates to gas undertakings.

Under the repealed s. 8 of 1900, it was held that articles authorising payment of commission at a certain rate per cent. did not authorise payment of a lump sum by way of commission [17]; but that the section did not prohibit the practice of remunerating underwriters by giving them the call of shares at par or at a premium.[18]

Payment of a commission out of profits is not prohibited, and premiums received on the issue of shares and carried to the share premium account may be applied in payment of underwriting commission (see **s. 56 (2)** of 1948).

On a reconstruction the new company may now pay a commission to contractors to buy from the liquidator the balance of shares required to carry through the reconstruction.[19]

The restrictions of **s. 53** apply to a private company, though it does not issue a prospectus.[20]

Section 53 (3) must be read in the light of *Metropolitan Coal Consumers' Association* v. *Scrimgeour*.[21] It covers a reasonable commission, say, as in that case, a commission not exceeding 2½ per cent. for brokerage to a broker.

Underwriting debentures.

It is not necessary to disclose a commission on underwriting debentures under **s. 53**, but the commission must be disclosed in any prospectus or statement in lieu of prospectus under **Schedules IV** and **V.** It must also be disclosed in the annual summary and balance sheet (see below) and registered under **s. 95 (9)**.

If a company agrees to pay commission to a lender for securing an advance to the company and the lender takes shares instead of debentures, the commission is not recoverable if not disclosed in the statement in lieu of prospectus.[22]

Disclosure in annual summary and balance sheets.

Section 124 and **clause 3** of the **Sixth Schedule** of the Act require that the annual summary shall state, inter alia, (*f*) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures and (*g*) the total amount allowed by way of discount in respect of any debentures since the date of the last return, and the **Eighth Schedule, cl. 3,** provides that there shall be stated under separate

[17] *Booth* v. *New Afrikander Gold Mining Co.* [1903] 1 Ch. 295.
[18] *Hilder* v. *Dexter* [1902] A.C. 474.
[19] *Barrow* v. *Paringa Mines* [1909] 2 Ch. 658.
[20] *Dominion of Canada Syndicate* v. *Brigstocke* [1911] 2 K.B. 648.
[21] [1895] 2 Q.B. 604.
[22] *Andreæ* v. *Zinc Mines, Ltd.* [1918] 2 K.B. 454.

headings, so far as they are not written off, any expenses incurred in connection with any issue of share capital or debentures.

Misrepresentation in prospectus.

An underwriter who takes up shares on the faith of a prospectus containing untrue statements has the same right to repudiate these shares as any other subscriber for shares.[23]

[23] *Karberg's Case* [1892] 3 Ch. 1 (C.A.).

CHAPTER 34

PROSPECTUS AND STATEMENT IN LIEU OF PROSPECTUS

WHEN a company is desirous of raising money by a direct appeal to the public, the usual course is for the company to issue a prospectus offering for public subscription shares in the company or debentures or debenture stock of the company.

By **s. 455** of the Act, prospectus means any prospectus, notice, circular, advertisement, or other invitation offering to the public, for subscription or purchase, any shares or debentures [or debenture stock, bonds or other securities] of a company.

Registration of Prospectuses

The Companies Act makes provision for registration of prospectuses as follows:—

Prospectus

37. A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

41.—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

[(*a*) any consent of an expert required by **s. 40.**[1]]

[(*b*) a copy of any contract required by para. 14 of the 4th Schedule to be stated in the prospectus or particulars of verbal contracts, with some modifications.[2]]

(2) Every prospectus shall, on the face of it,—

(*a*) state that a copy has been delivered for registration as required by this section; and

(*b*) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

[Subsection (4) provides penalties for default.]

Offer to public.

As to the meaning of 'the public', an offer by a promoter to a few of his friends, relations or customers has been held not to be an offer to the public.[3] But a distribution of 3,000 copies of a prospectus among the

[1] See *post*, p. 341.
[2] See **s. 41 (1)**, Appendix 1, *post*.
[3] *Sleigh* v. *Glasgow and Transvaal Options* 1904 6 F. 420 (Ct. of Sess.); ***Sherwell* v. *Combined Incandescent Mantles Syndicate*** (1907) 23 T.L.R. 482; [1907] W.N. 110.

members of certain gas companies has been held to be an offer to the public.[4] These decisions must now be considered as modified by **s. 50** of the Act of 1948 [5] under which ' public ' includes any section of the public, whether selected as members or debenture holders of the company or as clients of the person issuing the prospectus or in any other manner, but not where the offer can in all the circumstances be properly regarded as a domestic concern of the persons making and receiving it.

Form of prospectus.

The prospectus usually states by way of heading the date of registration, the name of the company, the amount of the capital, the names of the directors and other officials, what is offered for subscription—whether shares, debentures, or debenture stock—and the terms of issue. This heading is followed by a concise narrative of the circumstances in which the company is formed, and the prospects it has of success. The prospectus also states where application forms can be obtained, and offers the memorandum and articles and the form of debenture and trust deed (if any) for inspection.

Statements in prospectus

In framing the prospectus the following rules must be borne in mind:—

(1) The prospectus should not contain any misrepresentation of any material fact, or any deceptive or misleading statement, or any ambiguous statement which is not true in every sense in which it might be reasonably understood.

(2) It should disclose every material fact and contract, subject to the qualifications below mentioned.

(3) The prospectus should comply with the requirements of **s. 38** of the Act.[6]

(4) **Section 181** of the Act—as to the appointment of directors—should be borne in mind.

(5) The provisions of **s. 43** (compensation for untrue statements) should also be borne in mind, and all due precautions taken accordingly.

Neglect of these precautions may give the allottee—

(a) The right to rescind the contract and repudiate the allotment.

(b) The right to sue for damages or compensation those who have issued the prospectus, and others who are, by statute or common law, responsible.

The golden rule as to framing prospectuses.

The obligation of those who issue prospectuses inviting application for shares was long since laid down by Kindersley V.-C. in *New Brunswick, etc. Co.* v. *Muggeridge*,[7] in words which Page Wood V.-C., in *Henderson* v. *Lacon*,[8] described as a ' golden legacy ':—

[4] *Re South of England Natural Gas, etc., Co* [1911] 1 Ch. 573.
[5] Re-enacting s. 68 of the Act of 1947
[6] See **post**, p. 337.
[7] (1860) 1 Dr. & Sm. 383.
[8] (1867) L.R. 5 Eq. 249, 262

'Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as facts that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares.'

And in *Central Railway of Venezuela* v. *Kisch*,[9] Lord Chelmsford said that no misstatement or concealment of any material facts or circumstances ought to be permitted: that the public who were invited by a prospectus to join in any new venture ought to have the same opportunity of judging of everything which has a material bearing on the true character of the adventure as the promoters themselves possessed, and that the utmost candour ought to characterise their public statements; and his Lordship referred with approval to the rule laid down by Kindersley V.-C. as above mentioned.

This 'golden rule' is, perhaps, somewhat of a 'counsel of perfection'; at all events, it has been qualified by subsequent decisions, not, indeed, as regards any active misstatements in the prospectus, but as to the effect of mere non-disclosure. Thus, in *Peek* v. *Gurney*,[10] it was held that, to support an action of deceit, there must be some active misstatement of fact, or, at all events, such a partial or fragmentary statement of fact as that the withholding of that which is not stated makes that which is stated absolutely false. This, it will be observed, was said in regard to an action of deceit, in which fraud is of the essence of the action, and which differs essentially from one brought to obtain rescission on the ground of misrepresentation of a material fact[11]; but Romer J. in *McKeown* v. *Boudard, Pereril Gear Co.*[12] held that, even in an action for rescission, proof of mere non-disclosure of material facts is not enough to entitle the plaintiff to relief; for the duty of disclosure in the case of a prospectus inviting share subscriptions, as Lord Watson said in *Aaron's Reef* v. *Twiss*,[13] is not the same as in the case of a proposal for marine insurance. Thus, a prospectus not stating that the directors have been presented with their qualification by the company's contractor will not entitle a person who has taken shares on the faith of the prospectus to rescind his contract.[14] The *suppressio veri* must be such as to falsify the prospectus. A half truth, for instance, represented as a whole truth may be tantamount to a false statement.[15] Lord Chancellor Halsbury said, in *Aaron's Reef* v. *Twiss*[16]:—

'I do not care by what means it is conveyed—by what trick or device, or ambiguous language; all these are expedients by which fraudulent people seem

[9] (1867) L.R. 2 H.L. 123.
[10] (1873) L.R. 6 H.L. 377, at p. 403.
[11] *Per* Herschell L.C., *Derry* v. *Peck* (1889) 14 App.Cas. 359.
[12] (1896) 74 L.T. 310 and (C.A.), p. 712.
[13] [1896] A.C. 273.
[14] *Heymann* v. *European Central Ry.* (1868) L.R. 7 Eq. 154.
[15] *Aaron's Reef* v. *Twiss* [1896] A.C. 276.
[16] *Ibid.*

to think they can escape from the real substance of the transaction. If, by a number of statements, you intentionally give a false impression, and induce a person to act upon it, it is not the less false, although, if one takes each statement by itself, there may be a difficulty in showing that any specific statement is untrue.'

Note also the observations of Lord Watson in that case,[17] and see *Greenwood* v. *Leather Shod Wheel Co.*,[18] where the same principle was acted on.

Misleading statements.

Section 68 (3) of the Act of 1947 (now **ss. 30 (5)** and **46 (d)** of the Act of 1948) first gave statutory effect to the principle laid down in the cases mentioned above. These sections provide that a statement included in a prospectus (or statement in lieu of prospectus) is to be deemed to be untrue if it is misleading in the form and context in which it is included. The principle had already been applied in *R.* v. *Kylsant*,[19] where it was held that a prospectus which, while appearing to disclose the true position as to the profits made and the dividends declared, makes such a partial disclosure as to be misleading, may be false in a material particular.

Company not necessarily responsible for prospectus.

A company is not responsible for the statements in a prospectus unless it is shown that the prospectus was issued by the company or by someone with the authority of the company—by the board of directors, for instance. If it is, the company is responsible, and cannot keep a contract for shares obtained by it if the statements contained in it were false or misleading.[20] The company is also responsible if, though the prospectus is issued by the promoters, the board ratify and adopt the issue, for the prospectus is the basis of the contract for shares.[21] Hence, if the company, acting by the board of directors, allot shares knowing that they have been subscribed on a particular prospectus or statement of facts, the company is responsible.[22] Where a company publishes an abridged prospectus abroad, a foreigner who subscribes on the faith of it may be entitled to relief.[23]

The terms of a prospectus may form part of the contract made with the subscribers for shares.[24]

Disclosure under the Act of 1948

The requirements of the Act as to disclosures in a prospectus are now contained in **s. 38** and the **Fourth Schedule.**

[17] *Ibid.* at p. 287.
[18] [1900] 1 Ch. 421 (C.A.).
[19] [1932] 1 K.B. 442.
[20] *National Exchange Co. of Glasgow* v. *Drew* (1855) 2 Macq. 124; *Houldsworth* v. *City of Glasgow Bank* (1880) 5 App.Cas. 317.
[21] *Pulsford* v. *Richards* (1853) 17 Beav. 97; *Jennings* v. *Broughton* (1854) 17 Beav. 234.
[22] *Henderson* v. *Lacon* (1867) L.R. 5 Eq. 249; *Ross* v. *Estates Investment Co.* (1868) L.R. 3 Ch.App. 682; *Lynde* v. *Anglo-Italian, etc., Co.* [1896] 1 Ch. 178; *Karberg's Case* [1892] 3 Ch. 1.
Roussell v. *Burnham* [1909] 1 Ch. 127.
Jacobs v. *Batavia, etc., Trust* [1924] 2 Ch. 329.

They are as follows:—

38.—(1) [Subject to the provisions of s. 39] 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 the matters specified in Part I of the Fourth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company 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.

(3) [Subject to the provisions of s. 39] it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(*a*) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

(4) In the event of non-compliance with or contravention of 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 or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused.

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

(*a*) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(*b*) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange[25],

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

Subsection (6) preserves the liability at common law.

Certificate of exemption.

By **s. 39**,[26] where it is proposed to offer any shares or debentures to the public by a prospectus issued generally [27] and application is made to

[25] See **s. 455** and *ante*, p. 10.
[26] Re-enacting s. 64 (2) of the Act of 1947.
[27] See **s. 455** and *ante*, p. 9.

a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange, the stock exchange may give a certificate of exemption to the effect that having regard to the proposals, the size and other circumstances of the issue and the number and class of persons to whom the offer is made, compliance with the requirements of the **Fourth Schedule** would be unduly burdensome. If so, and if all the conditions are complied with, the prospectus shall be deemed to comply with the **Fourth Schedule** and **s. 38** [28] shall not apply.[29]

By **s. 42 (1)** a contract mentioned in the prospectus may not be varied without the consent of the statutory meeting.

FOURTH SCHEDULE

Part I

Matters required to be Stated in Prospectus

[Para. 1 of the Fourth Schedule to the Act of 1929, which required the contents of the memorandum, etc., to be stated, was repealed by s. 61 (1) of the Act of 1947.]

1. 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.

2. 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.

3. The names, descriptions and addresses of the directors or proposed directors.

4. Where shares are offered to the public for subscription, particulars as to –

(*a*) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters :—

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company ;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;

(iv) working capital ; and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

6. 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, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the

[28] *Ante*, p. 337.
[29] See **s. 39**, Appendix 1, *post*.

company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say—

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares or debentures subscribed for under it;

(*c*) the consideration (if any) given or to be given for it or for the right to it;

(*d*) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. 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.

9.—(1) As respects any property to which this paragraph applies—

(*a*) the names and addresses of the vendors;

(*b*) 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;

(*c*) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect

(2) The property to which this paragraph applies is 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 the issue of the prospectus, other than property—

(*a*) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(*b*) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) 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.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. The names and addresses of the auditors, if any, of the company.

16. 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 connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part II

Reports to be set out in Prospectus

This Part requires reports to be set out in the prospectus. These are, a report by the auditors of the company with respect to the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said five years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact. The report must relate to the assets and liabilities of the company as shown in the last balance sheet, and where the company has subsidiaries, the auditors' report, besides dealing with the company's profits or losses, must deal with the profits or losses of its subsidiaries and must deal as a whole with the assets and liabilities of the company and its subsidiaries.

If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who must be named in the prospectus upon the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus, and the assets and liabilities of the business at the last date to which the accounts of the business were made up. If any of the proceeds of the issue are to be applied in acquiring shares of another company which will become a subsidiary, further special reports must be made.[30]

Part III

Provisions applying to Parts I and II of Schedule

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

[30] For details see **Part II of the Schedule**, Appendix 1, *post*.

23. Every person shall for the purposes of this Schedule, 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 the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect 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.

25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression 'financial year' in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

By para. 29 all necessary adjustments must be made in a report, and by para. 30 the reports must be made by properly qualified accountants.

Statements by experts.

By **s. 40** of the Act of 1948,[31] where a prospectus includes a statement by an expert it shall not be issued unless the expert has given his consent to the issue of the prospectus with the statement included in the form and context in which it is included and a statement that he has given and not withdrawn his consent must appear in the prospectus.

By **s. 43 (3)** the expert is, in certain circumstances, to be liable to pay compensation in respect of untrue statements purporting to be made by him as an expert.[32]

The duty to be candid.

Here we have the latest of a series of enactments in which the Legislature has sought to compel candour on the part of directors in dealing with the public; and there is good reason for insisting on such candour. The promoters know all about the intended company, the public knows only what the promoters or directors choose to tell it. At

[31] Re-enacting s. 63 of the Act of 1947.
[32] See *post*, p. 349.

first the law contented itself, as we have seen, with declaring promoters and directors to be under a general obligation of bona fides in dealing with the public, but this having proved insufficient, the Companies Act, 1867, was passed, requiring disclosure in a prospectus of the dates and names of the parties to any contract entered into by the company; in default the prospectus was to be deemed fraudulent. Then came the Directors' Liability Act, 1890, further penalising careless statements, followed by the Companies Acts, 1900, 1907, 1908, 1929, 1947, and now 1948.

Offers for sale.

The provisions of ss. 80 and 81 of the Act of 1908 were frequently evaded by the company allotting the whole of a proposed issue to some other company or group of persons, who would thereupon issue the shares to the public. The prospectus would not then be issued ' by or on behalf of the company ', and the persons issuing it did not incur the responsibilities of directors under these sections.

This was met by s. 38 of the Act of 1929, now re-enacted in **s. 45** of 1948, as follows:—

45.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-eight of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

And section forty-one of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half

of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

Meaning of 'issued'.

Where a document was prepared and signed by the directors addressed to 'Gentlemen' and containing particulars of a proposed increase in the capital of a private company, accompanied by a form of application for shares, the jury found that this was an offer of shares to the public; but they also found that there was no proof that it had been issued to the public. The majority of the Court of Appeal held that the prospectus had been issued, since it had been shown to one person who subscribed for shares,[33] but this decision was reversed on appeal by the House of Lords.[34]

Vendors.

Paragraph (8) of the Fourth Schedule to the Act of 1929 did not require that the prospectus should, in the case of a completed purchase, disclose the amount of the purchase money paid by the vendor upon his acquisition of the property,[35] but see now **cl. 9 (1) (c)** of the **Fourth Schedule**[36] as to transactions within the previous two years.

Waiver clauses.

Before the Act of 1908 a person who took shares in a company on the faith of a prospectus might be debarred by a waiver clause in the prospectus from pursuing his remedy under s. 38 of the Companies Act, 1867, for non-disclosure of a contract in the prospectus, provided the waiver clause was honestly made.[37] But a waiver clause was rendered ineffectual so far as s. 81 of the Companies Act, 1908, is concerned, by subs. (4) of that section (now **s. 38 (2)** of the Act of 1948).

Penalty for non-compliance.

No penalty is imposed for non-compliance with **s. 38.** When the non-compliance involves the misstatement of a material fact, there will, of course, be a right of rescission under the general law (see p. 344, *post*), and in this connection it must be borne in mind that the statement of a half truth may amount to a misstatement. But where the non-compliance consists in the mere omission to state some fact which ought under this section to be stated, and the omission to make that statement does not falsify that which is stated, it has been held that the section gives no right of rescission.[38]

In *Re South of England Natural Gas, etc., Co.*,[39] Swinfen Eady J. said that, as the directors were expressly exempted from liability by the section in certain cases, the inference was that anyone aggrieved by the neglect

[33] *Lynde* v. *Nash* [1928] 2 K.B. 93.
[34] S.C., *sub nom. Nash* v. *Lynde* [1929] A.C. 158.
[35] *Brookes* v. *Hansen* [1906] 2 Ch. 129
[36] Appendix 1, *post.*
[37] *Cackett* v. *Keswick* [1902] 2 Ch. 456; *Greenwood* v. *Leather Shod Wheel Co.* [1900] 1 Ch. 421; *Macleay* v. *Tait* [1906] A.C. 24.
[38] *Re Wimbledon Olympia, Ltd.* [1910] 1 Ch. 630, followed by Swinfen Eady J. in *Re South of England Natural Gas, etc., Co.* [1911] 1 Ch. 573.
[39] *Supra.*

of the statutory duty has a right of action for damages against the directors or promoters or other the persons responsible for the prospectus. This reasoning appears to be sound; but the question was left open by the House of Lords in *Nash* v. *Lynde*.[40]

Rescission of contract to take shares, etc.

Although mere non-compliance with **s. 38** does not give rise to a claim for rescission, where shares, debentures or debenture stock are subscribed for on the faith of a prospectus containing a misrepresentation, the allottee is entitled to repudiate the shares and claim his money back, for it is a general rule that a contract induced by a material misrepresentation is voidable, and may, at the option of the party deceived, be rescinded, and it makes no difference that the misrepresentation was an innocent one.[41] The same principle applies to misrepresentations made by agents of the company and *not contained in a prospectus*.[42]

When right to rescind lost.

Though voidable, the contract is valid until rescinded, and a consequence of this principle is that an allottee of shares who discovers that he has been deceived is bound at once to make up his mind—to elect—whether he will rescind his contract or not, for, his name being on the register he is being held out as a member and a contributor to the assets.[43]

'It is difficult', as Lord Cairns said, in *Re Cachar Co.*,[44] 'to disembarrass these cases of the effect which a man's name being on the register has in inducing other persons to alter their position'.

Hence, a very short delay after discovery, say a fortnight or so, may deprive him of the right to rescind.[45] And the principle applies where he has the means of knowledge as well as actual knowledge. Thus, even if he has no absolute proof of misrepresentation, he may lose his right to rescind if, after being told that there has been a misrepresentation, he stands by inactive and takes no steps to look into the matter.[46] And if so, it is doubtful whether he can rely on other misrepresentations discovered during the trial of the action.[47]

He may also lose his right to rescind by an implied ratification; if, that is, after discovering that he has a right to rescind, he treats the contract as subsisting, for instance, by endeavouring to sell the shares,[48] or by executing a transfer,[49] or by paying calls or receiving dividends,[50]

[40] [1929] A.C. 158.
[41] *Smith's Case* (1867) L.R. 2 Ch.App. 604, 615; *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 79; *Re London and Staffordshire Co.* (1883) 24 Ch.D. 149.
[42] *Hilo Manufacturing Co.* v. *Williamson* (1911) 28 T.L.R. 164.
[43] *Ante*, p. 104.
[44] (1867) L.R. 2 Ch.App. 417.
[45] *Re Scottish Petroleum* (1883) 23 Ch.D. 413; *Taite's Case* (1867) L.R. 3 Eq. 795; *Peel's Case* (1867) L.R. 2 Ch.App. 674; *Skelton's Case* (1893) 68 L.T. 210.
[46] *Ashley's Case* (1870) L.R. 9 Eq. 269; *Scholey* v. *Central Ry. of Venezuela* (1868) L.R. 9 Eq. 266, n.
[47] *Re Christineville Rubber Estates* [1911] W.N. 216; 81 L.J.Ch. 63.
[48] *Ex p. Briggs* (1866) L.R. 1 Eq. 483.
[49] *Crawley's Case* (1869) L.R. 4 Ch.App. 322.
[50] *Scholey* v. *Central Ry.* (1868) L.R. 9 Eq. 266, n.; *Re Dunlop-Truffault Cycle Co., ex p. Shearman* (1896) 66 L.J.Ch. 25.

or by attending and voting at a general meeting in person or by proxy,[51] but he is allowed a reasonable time to obtain evidence before taking action.[52] Acting as a member is not a bar when the shareholder has previously issued a writ claiming rescission, for that is a definite election to rescind.[53] Negotiations may also excuse delay.[54] A transfer of part of the shares before discovery does not preclude relief as to the rest.[55]

Winding up a bar to rescission.

A winding up is a bar to rescission, for, on winding up, the rights of the whole body of the company's creditors have intervened. Where, therefore, an allottee of shares waits until after the commencement of the winding up, his right to rescind is gone.[56] If on the register at the commencement of the winding up, though under a voidable contract, he cannot escape, unless he has commenced legal proceedings to enforce rescission before the date of the winding up.[57]

An allottee, where the allotment is irregular under ss. 39 or 40 of the Companies Acts, 1929, is in a different position. It is enough that he gives notice of avoidance, within the month allowed, without taking legal proceedings.[58]

Prompt repudiation of shares, when effective

An allottee who repudiates is safe if the company gives in and removes his name from the register, and an order of court in such a case is not necessary,[59] for the company is not bound to fight every claim.

Injunction.

Where the shareholder is suing for rescission, the court can on terms restrain a forfeiture of the shares pending the hearing.[60]

Rescission retrospective.

Where a contract is rescinded for misrepresentation, it is rescinded *ab initio*, and accordingly the shareholder cannot, in a winding up, be placed on the list of contributories even as a past member.[61]

Misrepresentation to be of fact to entitle shareholder to relief.

A misrepresentation, to entitle an allottee to relief, must be one of fact.[62] It must be material, and the applicant for shares must have relied upon it. The following false statements were held to be material statements of fact: that more than one-half the first issue of shares had

[51] *Sharpley* v. *Louth, etc., Co.* (1876) 2 Ch.D. 663.
[52] *Central Ry., etc.* v. *Kisch* (1867) L.R. 2 H.L. 99.
[53] *Tomlin's Case* [1898] 1 Ch. 104; *Company Precedents*, Part I, 15th ed., p. 189.
[54] *Tibbatts* v. *Boulter* (1895) 73 L.T. 534.
[55] *Re Mount Morgan, etc., Ltd.* (1887) 56 L.T. 622.
[56] *Oakes* v. *Turquand* (1867) L.R. 2 H.L. 325.
[57] *Oakes* v. *Turquand, supra*; *Burgess' Case* (1880) 15 Ch.D. 507; *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 64.
[58] *Re National Motor Mail Coach Co.* [1908] 2 Ch. 228.
[59] *Wright's Case* (1871) L.R. 7 Ch.App. 55.
[60] *Lamb* v. *Sambas Rubber* [1908] 1 Ch. 845.
[61] *Wright's Case, supra.*
[62] *Eaglesfield* v. *Marquis of Londonderry* (1877) 4 Ch.D. 702.

already been subscribed for [63]; that the surplus assets as appearing by the last balance sheet amounted to upwards of £10,000 [64]; that a particular mine was in full operation and making large daily returns [65]; that patented articles were a commercial success and beyond the experimental stage [66]; that a promoter who was to get part of the purchase money was one of the vendors [67]; that the vendor was to pay all the preliminary expenses [68]; that the company was the sole manufacturer of asbestos in France and had a practical monopoly [69]; that the company's process was a commercial success [70]; that no promotion money was to be paid [71]; that the vendors of nitrate grounds had obtained, brought to them in pipes, a supply of water, and that the company would have the right of using a certain part of the water.[72]

A statement in a prospectus as to the persons who are to be directors is a material statement, and, if it is untrue, a person subscribing on the faith of it is prima facie entitled to rescind.[73]

Where a company was formed to buy a mine, and extracts from the report of an expert were set forth which gave a misleading impression of that report and induced the belief that the mine was similar to a rich adjacent mine, it was held that a subscriber was entitled to relief.[74]

It is a misrepresentation to state in a prospectus that share capital has been 'subscribed' when it has only been allotted in fully paid shares to the company's contractor,[75] or that the company has contracted for the purchase of a property when, in fact, there is only negotiation.[76]

Effect of reports referred to in prospectus.

A prospectus often refers to reports. In such a case, if the company will take upon itself to assume the authenticity of the reports and represent as facts the matters stated in those reports, it must take the consequences should they prove false.[77] If the company does not intend to issue the shares on the basis of the facts stated in the report, it must dissociate itself from the report in clear and unambiguous terms. Calculations of profits based on statements in the report may amount to a misrepresentation.[78] But if the persons issuing a prospectus merely refer

[63] *Ross* v. *Estates Investment Co.* (1868) L.R. 3 Ch.App. 682; *Kent* v. *Freehold Land Co.* (1868) L.R. 3 Ch.App. 493; *Henderson* v. *Lacon* (1867) L.R. 5 Eq. 249; *Arnison* v. *Smith* (1889) 41 Ch.D. 348.
[64] *Re London and Staffordshire Fire Insurance Co.* (1883) 24 Ch.D. 149.
[65] *Reese River, etc., Co.* v. *Smith* (1869) L.R. 4 H.L. 64.
[66] *Greenwood* v. *Leather Shod Wheel Co.* [1900] 1 Ch. 421.
[67] *Capel & Co.* v. *Sim's, etc., Co.* (1888) 58 L.T. 807.
[68] *Re Liberian Government Concessions, etc., Co.* (1892) 9 T.L.R. 136.
[69] *Hyde* v. *New Asbestos Co.* (1891) 8 T.L.R. 121.
[70] *Stirling* v. *Passburg Grains, etc., Ltd.* (1891) 8 T.L.R. 71.
[71] *Lodwick* v. *Earl of Perth* (1884) 1 T.L.R. 76.
[72] *Lagunas Nitrate Co.* v. *Lagunas Nitrate Syndicate* [1899] 2 Ch. 392, 397, 429.
[73] *Re Scottish Petroleum Co.* (1883) 23 Ch.D. 413; *Anderson's Case* (1881) 17 Ch.D. 373; *Smith* v. *Chadwick* (1882) 20 Ch.D. 50; *Ex p. Wainwright* (1890) 62 L.T. 30; *Re Kent County Gas, etc., Co.* (1906) 95 L.T. 756.
[74] *Re Mount Morgan, etc., Ltd.* (1887) 56 L.T. 622.
[75] *Arnison* v. *Smith* (1889) 40 Ch.D. 567.
[76] *Ross* v. *Estates Investment Co.* (1868) L.R. 3 Ch.App. 682.
[77] *Re Reese River Silver Mining Co.* (*Smith's Case*) (1867) L.R. 2 Ch.App. 604, at p. 611; *Rawlins* v. *Wickham* (1858) 3 De G. & J. 304; *Mair* v. *Rio Grande Rubber Estates* [1913] A.C. 853.
[78] *Re Pacaya Rubber Co.* [1914] 1 Ch. 542.

to the report, *e.g.*, of a mine, as telling all they know, and propose to send out someone to test it, they will not be treated as guaranteeing its truth.[79] Under the Companies Act, 1948, **s. 43**,[80] directors who make untrue statements in a prospectus, purporting to be extracts from reports or valuations by engineers, valuers, accountants or other experts, are exempted from liability in certain specified cases.[81]

Statement only of belief, opinion, etc.

The statement that something *will* be done is not a statement of an existing fact so much as a contract or promise. It may, however, imply the existence of facts which are non-existent, or it may be a material term in the contract[82]; and a representation of belief, expectation or intention may be a representation of fact, for 'the state of a man's mind is as much a matter of fact as the state of his digestion'.[83] But, it might have been added, both are equally difficult to prove.

Ambiguous statements.

There is no safety in ambiguous statements, which, in one sense, are true, though in another, not true, 'which keep the word of promise to the ear and break it to the hope'; for the rule is that the applicant is entitled to put any reasonable construction on such a statement, and if, according to that construction, it is untrue, he is entitled to relief.[84]

Reliance of applicant on statement of fact without trying to verify.

Another rule, which on the authorities is clear, is that if a prospectus contains statements of fact, the recipient is entitled to rely upon them. He is not bound to verify them. Thus, if the prospectus states the effect or terms of a document, or purports so to do, and offers it for inspection, he is not bound to inspect it. He is entitled to assume in either case that the prospectus is true;

> 'for when men issue a prospectus in which they make statements of the contracts made before the formation of the company, and then state that the contracts may be inspected at the office of the solicitors, it has always been held that those who accepted these false statements as true, were not deprived of their remedy merely because they neglected to go and look at the contracts'.[85]

The answer is, 'You put me off my guard'[86]; see also *Aaron's Reef* v. *Twiss*,[87] in which Lord Watson said:

> 'It was argued for the company that, inasmuch as the contracts for the purchase of the concession were generally referred to towards the end of the

[79] *Re British Burmah Lead Co.* (1887) 56 L.T. 815.
[80] *Post*, p. 348.
[81] See *post*, p. 349 *and* **s. 43 (2) (d) (ii)**, Appendix 1, *post*.
[82] *Karberg's Case* [1892] 3 Ch. 1; *Beattie* v. *Ebury* (1874) L.R. 7 Ch App. 777, at p. 804; *Alderson* v. *Maddison* (1883) 8 App.Cas. 467; *Bellairs* v. *Tucker* (1884) 13 Q.B.D. 562.
[83] *Per* Bowen L.J., *Edgington* v. *Fitzmaurice* (1885) 29 Ch.D. 459, at p. 483.
[84] *Hallows* v. *Fernie* (1868) L.R. 3 Ch.App. 467, at p. 476; *Arkwright* v. *Newbold* (1881) 17 Ch.D. 301, at p. 322; *Smith* v. *Chadwick* (1884) 9 App.Cas. 187.
[85] *Per* Jessel M.R., *Redgrave* v. *Hurd* (1881) 20 Ch.D. 4, at p. 14; *Smith* v. *Chadwick* (1882) 20 Ch.D. 27, at p. 57; 9 App.Cas. 187; *Re Mount Morgan West Gold Mine Co.* (1887) 56 L.T. 622.
[86] *Per* Lord Chelmsford.
[87] [1896] A.C. 273.

prospectus, the respondent must be held to have notice of their contents. This appears to me to be one of the most audacious pleas that ever was put forward in answer to a charge of fraudulent misrepresentation. When analysed, it means simply that a person, who has induced another to act upon a statement made with intent to deceive, must be relieved from the consequences of his deceit if he has given his victim constructive notice of a document, the perusal of which would expose the fraud'.

Prospectus to be deemed addressed to all who apply on strength of it.

Usually the object of a prospectus is to invite the public to take shares in the new company, and it is to be treated as addressed exclusively to those who subscribe for shares in response to it, and not to other persons who may read it and buy shares in the market on the faith of it.[88] But this rule does not apply where it is shown that the prospectus was intended and used to induce purchasers in the market to buy the shares.[89]

Where an allotment was made to two persons as trustees for the plaintiff, who read and relied upon the prospectus, and the allotment letter was renounced in favour of the plaintiff before registration, it was held that the plaintiff could not rescind, on the ground of misrepresentation.[90]

Section 43.—Compensation for Untrue Statements

Directors' Liability Act, 1890.

The Directors' Liability Act, 1890, was passed with a view to strengthen the supposed inadequacy of the law as declared in *Derry* v. *Peek*,[91] in respect of directors' liability. In that case it was finally decided that in order to obtain, in an action of deceit, any personal remedy in damages against directors who issued a prospectus containing untrue statements, it was necessary for the plaintiff to prove affirmatively that the statements were made fraudulently, that is to say, either with knowledge that they were false, or recklessly, *i.e.*, not caring whether they were true or false, or not believing them to be true. It was not enough to prove that the director sued had been guilty of the grossest negligence, or that he made the statement without any reasonable grounds for believing it to be true. The Act of 1890 altered this, and shifted the onus, and **s. 43** of the Act of 1948 has adopted the same rule, and under the law as it now stands, if an allottee once proves that a material statement in the prospectus is untrue, and that he took shares on the faith of the prospectus and sustained damage, he is entitled to sue every director and every person who has authorised the issue of the prospectus, and to compel them to pay compensation for his loss. The statement once proved untrue in such an action, the director is prima facie made liable. To escape, he must prove affirmatively that he had reasonable grounds to believe the statement to be true, and that he did, in fact, believe it to be true, and in addition that the statement, if made

[88] *Peek* v. *Gurney* (1873) L.R. 6 H.L. 377, at p. 403; *Nicol's Case* (1858–9) 3 De G. & J. 387.
[89] *Andrews* v. *Mockford* [1896] 1 Q.B. 372; *Duranty's Case* (1858) 26 Beav. 268.
[90] *Collins* v. *Associated Greyhound Racecourses, Ltd.* [1930] 1 Ch. 1.
[91] 14 App.Cas. 337.

on the authority of an expert, was, in fact, made on the authority of such expert and fairly represented his opinion. There are other grounds for exemption.[92]

Thus a director makes a statement which is untrue within the meaning of **s. 43** of the Act of 1948 if he states in a prospectus that the company has acquired a specified property, when in fact it has not at the time acquired it, though the director honestly believes that it has been acquired. The uncorroborated statements of a vendor afford no reasonable grounds for believing that his statements are true, still less those of a vendor-promoter.[93]

When a director knows that a prospectus is being issued inviting persons to take, *e.g.*, debentures, and abstains from asking to see it until after action brought on account of misrepresentations therein, it is too late for him to give 'reasonable public notice that it was issued without his consent', under **s. 43 (2) (b)**.[94]

Liability of expert.

By **s. 43** [95] an expert who has given his consent to a statement by him appearing in a prospectus may be liable as a person who has authorised the prospectus, but only in respect of an untrue statement purporting to be made by him as an expert, and he is not to be liable if he can prove that he withdrew his consent in writing before delivery of a copy of the prospectus for registration or before allotment, in the latter case giving also reasonable public notice of his withdrawal or that he was competent to make the statement and had reasonable ground to believe and did believe down to the date of allotment that the statement was true.[96]

Period of limitation.

An action for compensation under this section was thought to be an 'action on the case', so that the period of six years fixed by the Limitation Act, 1623, applied. It is now six years under s. 2 (1) (*a*) or (*d*) of the Limitation Act, 1939.' The cause of action first arises for the purposes of the Act when the plaintiff sustains damage by reason of the breach of statutory duty.[97]

Death of director.

It was held in *Geipel* v. *Peach* [98] that the action was an action in tort, and if the director died it would not lie against his executor unless by the tortious act property or the proceeds or value of property belonging to the person injured had been added to the director's estate, but now, by the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1, all causes of action survive against the estate of a deceased person, provided that proceedings were pending at the date of his death, or the cause of action

[92] See the words of the section, Appendix 1, *post*.
[93] *Adams* v. *Thrift* [1915] 2 Ch. 21 (C.A.).
[94] *Drincqbier* v. *Wood* [1899] 1 Ch. 393.
[95] Re-enacting s. 65 (1) of the Act of 1947.
[96] See **s. 43 (1), proviso,** and **(3)**, Appendix 1, *post*.
[97] *Thomson* v. *Lord Clanmorris* [1900] 1 Ch. 718.
[98] [1917] 2 Ch. 108.

arose not more than six months before his death and proceedings are commenced not later than six months after his personal representatives take out representation.

Claims under **s. 43** are provable in bankruptcy.[99]

The measure of damages is the loss suffered by reason of the false statement, *i.e.*, the difference between the value the shares would have had if the company had possessed the advantages stated in the prospectus (but not exceeding the price paid) and the true value of the shares at the time of allotment in the circumstances which in fact existed.[1]

Action of Deceit

The old remedy by action of deceit is not excluded, but it has now to a large extent been superseded—so far as directors are concerned—by the easier and more efficacious remedy under **s. 43** of the Act of 1948. To maintain an action of deceit, as already mentioned, fraud has to be proved against the defendant.[2]

The defendant in an action of deceit has various defences, though some once open are now closed to him under **s. 43** of the Act of 1948 Thus, he may escape if he can prove that he did believe the fact stated, even though his belief was not based on reasonable grounds, for, if he believed the statement, fraud is negatived[2]; or, again, he may escape if he can prove that the plaintiff was not, in fact, misled, *e.g.*, that he knew the statement to be false when he applied for the shares, but he cannot avail himself, as we have seen above,[4] of the 'audacious plea' that the plaintiff might easily, by inquiry or otherwise, have ascertained that the statement was untrue.

Material Contracts

Section 38 of the Companies Act, 1867, was repealed by the Companies Act, 1900; but it is desirable to refer to some of the decisions, as the views taken by the courts may throw much light on the corresponding provisions of **cl. 14 of Part I, Schedule IV,** of the Act of 1948.[5]

Statement in prospectus of contracts (*s.* 38 *of Companies Act*, 1867).

Section 38 was expressed in the widest possible terms; so wide, that the courts, in order to make it workable, were obliged to imply some limitation; for it would be practically impossible to specify in a prospectus, at any rate in some cases, all the various contracts that have been made by the directors or promoters of a company. Accordingly, after much litigation and difference of judicial opinion,[6] it was settled that what the section in effect required was, that the prospectus should state the date and parties to every *material* contract made by the

[99] Bankruptcy Act, 1914, s. 30; *Greenwood* v. *Humber & Co.* [1898] W.N. 162.
[1] *McConnell* v. *Wright* [1903] 1 Ch. 546; *Clark* v. *Urquhart* [1930] A.C. 28.
[2] *Derry* v. *Peek* (1889) 14 App.Cas. 337.
[4] *Ante*, p. 348.
[5] *Ante*, p. 339.
[6] *Sullivan* v. *Mitcalfe* (1880) 5 C.P.D. 455, at p. 465; *Gover's Case* (1875) 1 Ch.D. 182, at p. 200.

company, or by the directors or promoters thereof, meaning by material every contract which would be likely to influence the judgment of an intending applicant as to whether he should or should not take up shares.[7] If material, it made no difference whether the contract not disclosed was executed or executory.[8] Nor could a director escape liability for non-disclosure of a material contract, of the existence of which he was aware, by professing ignorance of the contents or materiality of the contract, or by alleging that he left the matter to his legal advisers.[9]

To exonerate himself he must show that he was not responsible for the prospectus; in other words, that he was defrauded or deceived into giving his sanction to it.[10]

Nor was it possible to escape the section by making the contract a merely verbal one, for it was held that a verbal contract was as much within the section as a contract in writing,[11] and where a contract was rescinded by another contract, the latter and perhaps both might require to be specified.[12]

There was, however, this saving element in the situation, that in order to obtain relief under the section the plaintiff had to show that but for the omission to disclose the contract he would not have subscribed.[13]

The expression 'knowingly issue' in s. 38 meant issuing with knowledge of the existence of the omitted contract, even if the director or promoter honestly considered the contract not to be material.[14]

The section applied not only to a full prospectus or notice but also to an abridged prospectus, even though the abridged prospectus stated where a full prospectus could be obtained.[15] But the section was confined to a prospectus offering shares for subscription and did not apply to one offering debentures or debenture stock.[16]

What is 'notice of contract' in s. 38.

Attention should be paid to the concluding words of the section, 'unless he had notice of such contract.' It seems that to be effective the notice must be of the material contents of the contract, not merely of its existence.[17]

Restrictions on offering Shares

Hawking shares.

Canvassing by house-to-house visits to obtain subscriptions for shares was prohibited by s. 356 of the Act of 1929, and where shares were not

[7] *Sullivan* v. *Metcalfe*, *supra*; *Cackett* v. *Keswick* [1902] 2 Ch. 456.
[8] *Broome* v. *Speak* [1903] 1 Ch. 586 (C.A.).
[9] *Watts* v. *Bucknall* [1903] 1 Ch. 766; *Tait* v. *Macleay* [1904] 2 Ch. 631; *Shepheard* v. *Broome* [1904] A.C. 342.
[10] *Watts* v. *Bucknall* [1902] 2 Ch. 628; [1903] 1 Ch. 766; *Hoole* v. *Speak* [1904] 2 Ch. 732.
[11] *Capel* v. *Sims Composition Co.* (1888) 36 W.R. 689; *Arkwright* v. *Newbold* (1881) 17 Ch.D. 301.
[12] *London and Northern Bank, Haddock's Case* [1902] 2 Ch. 73.
[13] *Nash* v. *Calthorpe* [1905] 2 Ch. 237; *Macleay* v. *Tait* [1906] A.C. 24.
[14] *Twycross* v. *Grant* (1877) 2 C.P.D. 469, at p. 542.
[15] *Army and Navy, etc., Society* v. *Craig* (1892) 8 T.L.R. 227.
[16] *Cornell* v. *Hay* (1873) L.R. 8 C.P. 328.
[17] *Watts* v. *Bucknall* [1903] 1 Ch. 766.

offered to the public in a prospectus, no written offer of any shares for purchase could be made unless the provisions of s. 356 were complied with. Section 356 was repealed by the Prevention of Fraud (Investments) Act, 1939, which establishes an elaborate system of licensing by the Board of Trade of dealers in 'securities', whether as principals or agents. 'Securities' includes shares, debentures, and interests of various kinds which are usually called 'units'. There are exceptions in favour of members of a recognised stock exchange,[18] and certain banks and corporations and persons acting for 'authorised unit trust schemes'. A deposit of £500 is to be required unless dispensed with by the board, which may make rules for regulating the conduct of business of holders of licences.

The Act provides penalties for fraudulent statements, promises or concealments used to induce persons to take up or deal with securities and some other matters, and prohibits the distribution of documents or circulars for similar purposes except prospectuses which comply with the provisions of the Companies Act and other similar documents, or in relation to an authorised unit trust scheme, that is a scheme declared by the Board to be an 'authorised unit trust scheme' on being satisfied that certain conditions have been fulfilled, including the execution of a deed containing the provisions set out in the Schedule to the Act. The Act creates certain offences and provides penalties. It was held that 'Founders' units' carrying a right to a share of profits and covered by a bond insuring the return of capital might be 'shares' within the meaning of s. 356.[19] The Prevention of Fraud (Investments) Act, 1939, was amended by **s. 456** and the **Sixteenth Schedule** to the Act of 1948.[20]

Debenture Prospectuses

As to prospectuses offering debentures, debenture stock, and other securities for subscription, the rules above stated apply for the most part, but subject to the following qualifications: -

(1) Mere delay after discovering misrepresentation is not so dangerous as in the case of shares, for there is no holding out as in the case of shares[21]; nevertheless, any act showing an election to affirm the contract destroys the right of rescission; thus, if a debenture holder, entitled to repudiate, after discovering the facts giving such right to repudiate, acts as a debenture holder, *e.g.*, by voting at a meeting or otherwise, he thereby disentitles himself to relief.

(2) **Section 43** (compensation for untrue statements) is applicable to debenture prospectuses.

(3) An action of deceit is available where there is a *fraudulent* misrepresentation.

(4) **Sections 37** and **38** and the **Fourth Schedule** (general requirements as to prospectuses) are also applicable.

[18] See *ante*, p. 10.
[19] *R.* v. *Findlater* [1939] 1 K.B. 594.
[20] Re-enacting s. 117 of the Act of 1917. See Appendix 1, *post*.
[21] See *ante*, p. 104.

A prospectus offering debentures or debenture stock is headed with the name of the company, states the nominal and issued capital of the company, the number and description of the debentures or debenture stock offered, the nature of the security, the terms of issue, the names of the directors, bankers, solicitors, brokers, auditors, and secretary, the objects and prospects of the company, the facts required by **s. 38** and the **Fourth Schedule** of the Act of 1948 to be stated, how applications are to be made, and where copies of the memorandum and articles of association, and of the debentures and debenture stock deed may be inspected.

Statement in Lieu of Prospectus

The obligations as to disclosures imposed on directors and promoters by s. 10 of the Companies Act, 1900, to a great extent checked the use of the prospectus for company promotion, and augmented the number of companies floated by other means, *e.g.*, by obtaining subscriptions on forms of application accompanied by oral statements, or by selling shares in the stock market through financiers and others, or by means of a pooling syndicate.

To rectify this unfortunate result, the Act of 1907 required, where a prospectus is not issued and the company is not a private company, the filing of a statement in lieu of prospectus. These provisions have now been amended and run as follows:—

48.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar of Companies for registration 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 Part I of the Fifth Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

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

(4) If a company acts in contravention of subs. (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subs. (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

On referring to the form set forth in the **Fifth Schedule** to the Act,[22] it will be seen that the disclosure required is almost as extensive as that required in the case of a prospectus inviting subscriptions for shares in a new company.

In this connection it is also necessary to bear in mind **s. 49,** which now makes allotments in contravention of the above-mentioned provisions of **s. 48** voidable, and renders directors liable, and **s. 109,** which prohibits the company from commencing business, or exercising borrowing powers, until the conditions therein specified have been complied with, and **s. 42,** which prohibits a company from varying before the statutory meeting any contract referred to in the statement in lieu of prospectus, except subject to the approval of the statutory meeting.

A person who applies for shares on the faith of statements contained in a statement in lieu of prospectus has apparently the same right of rescission, if they are false, as if they were contained in a prospectus. But such misstatements or omissions in a statement in lieu of prospectus, if not relied upon, do not render subsequent allotments void.[23]

In *Jubilee Cotton Mills* v. *Lewis* [24] it was held by the Court of Appeal that, under the provisions of the Act of 1908, if shares were issued before a statement in lieu of prospectus had been filed, the issue was void. The decision of the Court of Appeal was overruled by the House of Lords on another point and the question of the validity of the issue was left in doubt.[25] It was held, however, that an allotment made before the issue of a statement in lieu of prospectus could be confirmed by the company or the shareholder by subsequent conduct.[26]

The effect of an allotment in contravention of **s. 48** is now settled by **s. 49,** which makes the allotment voidable within one month after the statutory meeting and not later, or—where this time-limit is not applicable—within a month after allotment.

[22] See Appendix 1, *post*.
[23] *Re Blair Open Hearth* [1914] 1 Ch. 390.
[24] [1923] 1 Ch. 1.
[25] *Ibid.* [1924] A.C. 958.
[26] *Re James Burton & Son, Ltd.* [1927] 2 Ch. 132.

CHAPTER 35

PRIVATE COMPANIES

SECTION 37 of the Companies Act, 1907, for the first time defined a 'private company', and conferred on such companies exemptions from some of the provisions of the Act. This definition, as amended by the Companies Act, 1913, is now re-enacted by **s. 28** of the Act of 1948, and runs thus:—

28.—(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 to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

But though the private company has now received statutory recognition and an authoritative definition, it must not be supposed that the private company was first brought into use by the Companies Act, 1907. The term was already in use—though only to a limited extent—when the author's work on 'Private Companies' was first published more than fifty years ago. Certain it is that private companies, or incorporated partnerships as they may be called, constitute more than a third nowadays of the whole number of companies registered.

Many judicial references to the private company may be cited. As long ago as 1881, in *Re British Seamless Paper Box*,[1] Cotton L.J. said, 'when the company was formed it was intended to be a private company, that is, it was intended to carry it on without calling in the public, or issuing any shares except to then existing shareholders. And Lindley L.J. in *Re George Newman & Co.*[2] observed: 'It is true that this company was a small one, and is what is called a private company.' Lord Macnaghten also, in *Salomon* v. *Salomon & Co.*,[3] said: 'Among the principal reasons which induce persons to form private companies . . . are the desire to avoid the risk of bankruptcy, and the increased facility afforded for borrowing money'.

But the term 'private company' having been appropriated by the Legislature to a company with precisely defined incidents, is now used in its technical sense—in the sense attached to it by the Act.

[1] (1881) 17 Ch.D. 467.
[2] [1895] 1 Ch. 674, at p. 685.
[3] [1897] A.C. 22.

Not only does the Legislature recognise the private company: it may be said to bestow its benediction upon it. It grants it special privileges and immunities. It permits a private company to consist of any two persons instead of seven, and thus facilitates, in no small degree, the formation and working of small private companies. Moreover, the Act goes still further. In particular—

1. Exceptional facilities are granted in regard to the formation of a private company. Other companies have to comply with a whole series of preliminary conditions before they can commence business, including a filing of a prospectus, or of a detailed statement in lieu of a prospectus. But a private company is formed in the simplest way, by delivering to the registrar a memorandum and articles of association and paying the requisite fees; whereupon the certificate of incorporation is issued, and the company can commence business at once. See **ss. 48** (3) and **181** (8) excluding the application of the provisions of those sections.

2. Another important exemption was that s. 110 of the Act of 1929, which required every company to include in the return delivered to the registrar annually a copy of its last balance sheet, including every document required by law to be annexed thereto, did not apply to a private company; but now, by **s. 129** of the Act of 1948, a private company is only exempt from this provision if the following conditions are satisfied, and a certificate to this effect sent with the return [4]—

(a) that no body corporate is the holder of any of the company's shares or debentures and no person other than the holder has any interest in any of the company's shares or debentures; subject, however, to the exceptions set out in the **Seventh Schedule** to the Act of 1948. These are intended to permit charges in favour of the company's bankers in the ordinary course of business, and holdings by companies interested only as executors or trustees or acting for persons under disability, and employees' schemes.[5]

(b) that the number of persons holding debentures of the company is not more than fifty;

(c) that no body corporate is a director of the company and that there is no arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.

Exempt private company.

A private company which complies with these conditions is now to be known as an 'exempt private company' (see **s. 129** (4)).

The object of these provisions is to put an end to a practice by which companies in which the public are largely interested evaded the disclosures which are required in the case of public companies by various schemes, one of which was that a holding company with a large number of shareholders could, with a nominee, hold all the shares in various

[4] For the form of the certificate see the certificate at the end of the **Sixth Schedule**, Appendix 1, *post*.

[5] See **Seventh Schedule**, Appendix 1, *post*.

smaller companies which, in fact, carried on the business and made profits or losses, but as these working companies had only two shareholders, the holding company and a nominee, they were private companies, and neither the public nor the shareholders in the holding company could ascertain what profits were really being made.

A private company must (**s. 128**) send with the annual return a certificate signed by a director and the secretary that the company has not issued any invitation to the public to subscribe for shares or debentures in the form set out in the **Sixth Schedule** [6] and, if the number of members exceeds fifty, a certificate that the excess consists of persons authorised by **s. 28.**[7]

3. A private company is exempt from the provisions of **s. 130,** which requires a company to call a statutory meeting and to deliver to the registrar the report as to the position of the company.

4. A private company is exempt from the provisions of **s. 176,** which requires a company to have at least two directors, but it must have one.

5 A private company must (**s. 148**) lay before the company in general meeting each year a profit and loss account and balance sheet. Under the Act of 1929, a private company was exempt from the provisions of s. 130 (1), which required balance sheets to be sent to the members, and entitled members and debenture holders to have copies of balance sheets and all annexed documents free. This now applies to a private company, except as to balance sheets laid before it before July 1, 1948 (see **s. 158 (4)**).

6. Where a private company pays underwriting commission, a statement in prescribed form must be filed for the purposes of disclosing the amount or rate of commission (**s. 53 (1) (c) (ii)**).[8] The statement should be filed before the payment is made, as it appears doubtful from the wording of the Act whether the payment could be ratified by subsequently filing the statement.

Regard being had to these privileges and immunities, many companies existing before 1907 brought themselves within the definition of a private company by passing the requisite special resolution, and many new companies have been registered as private companies, their articles of association being framed accordingly.

In order to convert an existing company into a 'private company', it is necessary to pass a special resolution altering the company's articles so as to limit the number of members other than employees or ex-employees to fifty, to prohibit any invitation to the public to subscribe for its shares, debentures, or debenture stock, and impose restrictions on the transfer of its shares. These alterations will satisfy the statutory definition, but they are not the only alterations requisite. The articles generally must be considered, for there may be other provisions inconsistent with those indicated, and they must be altered accordingly. For example, power to issue share warrants to bearer must be struck out.

[6] See Appendix 1, *post*.
[7] For form of certificate see the **Sixth Schedule**, Appendix 1, *post*.
[8] And see the prescribed form, *Company Precedents*, Part 1, 15th ed., p. 292.

Conversion into public company.

The private character of such a company may at any time be terminated in the manner indicated in **s. 30** of the Act, by alteration of its articles so as to remove any of the restrictions required by **s. 28.**

Section 30 (1) provides as follows:—

30.—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule to this Act, and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

Before the Companies Act, 1913, there was no prohibition in the Companies Acts against disregarding the articles in so far as they bring the company within the definition. Thus, where the number of members in fact exceeded fifty, it was held that the company had not ceased to be a private company.[9]

By the Companies Act, 1929, s. 27 (re-enacted by **s. 29** of 1948), it was provided that in such a case the company should forfeit some of the privileges of a private company; but it does not appear to be turned into a public company. **Section 29** provides that where the articles of a company include the provisions which under **s. 28** are required to be included in the articles of a company in order to constitute it a private company but 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 contained in **s. 31, s. 129** (1), **s. 222** (d), and **s. 224** (1), **proviso** (a) (i). These relate to the provisions as to a balance sheet being annexed to the annual return, and the liability to be wound up if the members are less than seven. The proviso in **s. 29** enables the court to grant relief 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.

Section 181, which requires a director to sign a consent to act as director and a contract for his qualification shares, does not apply in the case of a private company which becomes a public company (**s. 181** (5) (c)).

[9] *Park* v. *Royalties Syndicate, Ltd.* [1912] 1 K.B. 330.

Different Objects sought by Conversion

Although a large number of private companies are thus formed to take over existing businesses, the main object of conversion in many cases may be of a different character. Hundreds of companies and syndicates are formed every year for the purpose of establishing and carrying on some new business or to carry out some contemplated undertaking, enterprise, or transaction, which can best be carried out by means of the formation of a private company.

One man company.

In these private companies, as already mentioned, it has in the past been common for one, two, or three members to hold the great bulk of the capital, whilst a few extra members held one share each, and were merely nominees of the principal shareholder or shareholders. These extra members were added whilst the Act required, as a condition of incorporation, that there should be seven members, each holding at least one share, and it was necessary to provide for these extra subscribers, but now two persons are sufficient to constitute a private company, and thus the extra subscribers can be dispensed with.

Thousands of companies have been formed in the last half-century in this way—*i.e.*, with extra or nominee subscribers—and since the decision of the House of Lords in *Salomon* v. *Salomon & Co.*,[10] there can be no doubt as to the regularity of such companies.

Advantages of Conversion into Private Companies

The inducements to such conversion are:—

(1) The protection of limited liability which the members obtain. This alone is the greatest possible boon to traders. 'If', says the ordinary law, 'you want to trade, you must risk all you have -every farthing.' This is bad enough in the case of an individual trader, but it is worse still in the case of a partner, for partnership is based on mutual confidence, and if one partner abuses that confidence—nay, if he is guilty only of indiscretion or want of judgment, without fraud—he may commit his co-partner to ruinous liabilities by reason of the doctrine of English law that each partner, so far as the outside world is concerned, is the unlimited agent of the other partner or partners in all matters within the scope of the partnership business. This risk is eliminated by conversion. For not only the amount at stake is limited, but the agency of the directors is restricted by articles of which all the world has notice.

The Limited Partnerships Act, 1907, allows a member of a firm to acquire the privilege of limited liability, but the privilege is qualified by statutory conditions, which put the 'limited partnership' at a great disadvantage as compared with the private company.

(2) The advantages incident to incorporation, particularly in respect of the holding of property and the continuance of the concern notwithstanding deaths, bankruptcy, transfer of shares, or other change of

[10] [1897] A.C. 22.

interest or title. Take the case of a partner dying, for instance. The learned author of *Lindley on Partnership* says:

> 'The position of the executors of a deceased partner is one of considerable hardship and difficulty: if they insist on an immediate winding up of the firm they may ruin those whom the deceased may have been most anxious to benefit; whilst if for their advantage the partnership is allowed to go on the executors may run the risk of being ruined themselves.'

With incorporation these difficulties vanish. The shares of the deceased partner form part of his estate and are bequeathed in trust or otherwise dealt with as may be convenient, and the estate is represented on the board of directors by his trustees or their nominees, who being mere agents of the company can act without incurring personal liability. The bankruptcy, again, of a partner dislocates a partnership. With a company the trustee in bankruptcy sells the shares of the bankrupt, or if worthless, disclaims; the company on its part proves for the estimated value of future calls, and there is an end of it. So, again, in the matter of contracts, in the admission of new members and the retirement of old members, in the sale, mortgage, and settlement of shares the company enjoys a striking superiority. The property, again, in the case of a partnership, is constantly having to be conveyed with the admission, retirement, death, or bankruptcy of a partner; with a company the property is vested in it as a body corporate. Shareholders may come and go, but no changes of individual membership affect the title

(3) The borrowing facilities, especially on debentures and debenture stock. By means of these securities a company can raise a large sum on easy terms by the contributions of a number of small lenders on the same co-operative principle on which a company's capital is subscribed. They are securities, too, with which the public is familiar, easily enforced and readily transferable. If issued by a company in good repute they are a very marketable security. So advantageous, indeed, is this mode of raising money found to be, that it is by no means uncommon for a business to be converted into a company solely for the purpose of raising a loan by the issue of debentures or debenture stock.

(4) The simplification of arrangements as between the members and the concern, which, in the case of an ordinary partnership, would be extremely complicated. Thus, if a shareholder is indebted to a company for money lent or in respect of a call made on his shares, the company can sue for the loan or call without difficulty. Conversely, if a shareholder lends money to the company, he can sue for it and enforce any security given him by the company, just as if he were not a shareholder, and, should the company fail, he can prove for the money lent in competition with the outside creditors. In the case of partnership one partner cannot sue another except for an account, and great inconveniences arise in seeking to enforce contracts between the members of a partnership; while, should the firm become insolvent, a member of it is disentitled to prove in competition with the outside creditors of the firm.

Formation and Constitution

A private company is constituted like any other company, namely, by registration, with a memorandum and articles of association; but there are some special provisions of the Companies Act which require attention. Thus the application to register must be signed by the subscribers and be in a special form showing that the company does not issue an invitation to the public to subscribe. It must also be accompanied by a statutory declaration as provided in **s. 15.**

The memorandum and articles must be subscribed by at least two persons, and the number must be kept up to two.

The articles must contain special provisions, as required by **s. 28.**

If the articles require a share qualification for the directors, **s. 182** applies, and the directors must not act without one.

Private companies must, like public companies, make a return of allotments to the registrar under **s. 52.**

A private company can pay underwriting commission in respect of shares in its capital (**s. 53**).

A private company may commence business immediately on its incorporation (**s. 109**).

A private company must, under **s. 132,** convene an extraordinary meeting on requisition.

A private company must register its mortgages and charges under **s. 95.**

A private company must keep a register of its directors and notify changes to the registrar (**s. 200**).

The provisions as to audit (**s. 159**) and the provisions as to annual returns in **ss. 124 and 127** also apply to private companies, except, as to exempt private companies (**s. 129**).

A private company may register articles of its own, or it can adopt **Table A** altogether or in part.

Restrictions on Transfer of Shares

It is a statutory condition of a 'private company' that its articles 'restrict the right to transfer its shares' (**s. 28 (1) (a)**). The Act does not specify the nature of the restriction; but it is submitted that any restriction is sufficient which will enable the directors to prevent the number of shareholders from increasing beyond the statutory limit.

Clauses are generally inserted in the articles with a view to preserving, as far as practicable, the private character of the concern. The general plan is to prohibit a member or his executors or administrators from transferring his shares to any outsider, unless and until the shares have first been offered to the continuing members, either at par or at a fair value to be fixed by the auditor, or ascertained by arbitration, or by some sliding scale, or at the 'current price' fixed half-yearly by a general meeting, or at, say, ten times the average yearly dividend, or at the amount paid up with an addition proportioned to the average profits during, say, the last three years past, or otherwise; and the clauses

usually go on to provide that if none of the continuing members desire to purchase, then that the shares may be transferred to an outsider; but even in that case the directors are usually given a very wide discretion as to approving of the admission of an outsider. The validity of such provisions is clear.[12]

Directors

The articles commonly vest the management in a small number of directors, or in a ' governing ' or ' permanent ' or ' life ' director. In the latter case it is a common course to insert provisions enabling such governing or permanent director to appoint, if and when he thinks fit, other persons to be ordinary directors to act under him, and to determine their powers, duties, and remuneration; also to remove any ordinary director from office. A permanent or governing director is generally given very wide powers in regard to the management of the business of the company. Sometimes two or more persons are appointed joint governing or permanent directors with like powers. **Section 176,** which requires a company to have at least two directors, does not apply to a private company. Usually, the powers of a governing or permanent director are limited to the time during which he holds a certain large proportion of the capital—*e.g.*, one-half or one-third of the issued capital—and sometimes his powers are made transmissible, in case of his death, to his executors or their nominee, but so long only as the shares or a large proportion of them remain part of his estate.

The weak point of the ordinary joint stock trading company is undoubtedly its management by deputy; but in the case of the private company the shareholders manage the business and trade with their own money. In the case, therefore, of private companies, there is the best possible guarantee that the directors will not be negligent of their duties or careless of the interests of the concern, and as a consequence their solvency, as Vaughan Williams L.J. once observed, compares very favourably with that of other companies.

Compulsory Retirement of Members

Unity of aim and unity of action is always of importance in any co-operative enterprise, and to secure this it is very common to provide that a large proportion in value of the shareholders—say nine-tenths—shall be at liberty to buy out any small shareholder by paying him the fair value of his shares; this is a safeguard which experience has shown to be desirable; for there is always a possibility that some person may be admitted into the company who may afterwards be found cantankerous, or too inquisitive, or otherwise detrimental to the harmonious working of the company.

The exercise of this power can be restrained by the court if carried out in an obviously unfair way.[13]

[12] *Borland's Trustee* v. *Steel Brothers & Co.* [1901] 1 Ch. 279; *Att.-Gen.* v. *Jameson* [1904] 2 Ir.R. 644. See, further, *Company Precedents*, Part I, 15th ed., pp 876 *et seq.*

[13] *Phillips* v. *The Manufacturers Securities, Ltd.* (1915) 31 T.L.R. 451.

Obligations of Private Company

It must be borne in mind that a private company, though it has many advantages, has also obligations under the Act. This was pointed out by Lord Macnaghten in *Trevor* v. *Whitworth*.[14] That learned judge remarked:—

> 'It is said that the company was a family company; but a family company, whatever the expression means, does not limit its trading to the family circle. If it takes the benefit of the Act it is bound by the Act as much as any other company. It can have no special privilege or immunity. It was said that the board did not want Whitworth's shares to be sold to outsiders or put on the market. Unfortunately there was nothing special in that.'

Directors, too, of a private company will be equally liable for a misapplication of the company's funds or for other misfeasance. Thus, in *Re Newman (Geo.) & Co.*,[15] one Newman had converted his business into a private company, and had applied funds of the company, with the privity and consent of the other members, to ultra vires purposes, and it was held that he was guilty of misfeasance, and that the fact that it was a private company did not in any way exempt or protect him.

A private company is subject to the restrictions of **s. 53** as to underwriting commissions.[16]

A private company must send with the annual return a certificate that the company has not issued shares or debentures to the public, and, if its members exceed fifty, that the excess consists of employees or ex-employees of the company.[17]

Conversion of Private into Public Company

Section 30 states how a private company may turn itself into a public company. The company alters its articles and must file a statement in lieu of prospectus in the form specified in the **Third Schedule.** There are now penalties in default (see **s. 30 (3)**). **Section 181** (which requires the directors who have not subscribed the memorandum for their qualification shares to sign a contract to take their qualification shares or a declaration that they already hold their qualification) does not apply (**s. 181 (5) (c)**).

See, further, as to private companies, the thirty-seventh edition of the author's work, *Private Companies and Syndicates*.

[14] (1887) 12 App.Cas. 409.
[15] [1895] 1 Ch. 674, at p. 685.
[16] *Dominion of Canada Syndicate* v. *Brigstocke* [1911] 2 K.B. 648.
[17] See p. 357, *ante*.

CHAPTER 36

COMPANIES LIMITED BY GUARANTEE

BESIDES companies limited by shares and unlimited, the Act of 1948 allows of the formation of companies limited by guarantee. Such companies may be formed, with or without a capital divided into shares.

The provisions relating to them may be found in **ss. 2** and **6** of the Act.

Section 2 is as follows:—

2.—(1) The memorandum of every company must state—

(*a*) the name of the company, with 'limited' as the last word of the name in the case of a company limited by shares or by guarantee;

(*b*) whether the registered office of the company is to be situate in England or in Scotland;

(*c*) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also 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 after he ceases to be a member, 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.

(4) In the case of a company having a share capital—

(*a*) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*b*) no subscriber of the memorandum may take less than one share;

(*c*) each subscriber must write opposite to his name the number of shares he takes.

By **s. 6**, in the case of a company limited by guarantee, there must be registered with the memorandum articles of association signed by the subscribers to the memorandum, and prescribing regulations for the company. The articles must now state the amount of share capital and the number of members which it is proposed to register (**s. 7 (2)**).[1] If the number of members is increased beyond the registered number, the company must within fifteen days give notice to the registrar (**s. 7 (3)**). A considerable number of associations have availed themselves of this form of incorporation under the various Companies Acts: for example, associations for mutual insurance, *e.g.*, for insuring against marine risks, for insuring against accidents, for indemnifying the members against liability to pay compensation to injured employees, for trade protection, for mutual information, for exploring mines, testing patents, pooling shares and debentures, and for pooling and realising produce of various

[1] Re-enacting s. 81 (1) of the Act of 1947.

kinds. The great majority of the companies which register as companies limited by guarantee are, however, associations intended to be supported by annual subscriptions or donations, and registered by licence of the Board of Trade without the word 'Limited' (see **ss. 14** and **19**).

Section 66 (as to reduction of capital) also applies.

Before the Companies Act, 1900, it was permissible to form a company limited by guarantee, with articles dividing the undertaking into shares of no nominal amount—a most convenient form of association; but s. 27 of the Act of 1900 prohibited this, and **s. 21** of the Act of 1948 continues the prohibition.

Mode of Formation

In order to form a company limited by guarantee, a memorandum and articles of association must be prepared. The memorandum and articles must be in the form prescribed in **Table C** or **Table D** in the **First Schedule** to the Act, or as near thereto as circumstances will permit (**s. 11**). In either case there is a clause by which every member of the company undertakes to contribute, in the event of winding up, a limited sum. The quantum of this undertaking varies from 1s. to £10 and upwards. If there are no defined shares, the words declaring that 'the subscribers respectively agree to take the number of shares set opposite their names' must be omitted

The articles of association will contain appropriate provisions.

For the fees payable on registration, see the **Twelfth Schedule** to the Act of 1948.

Application of Companies Acts

A company limited by guarantee is bound to keep a register of its members (**s. 110**) and of mortgages (**s. 95**), and must give notice to the registrar of special resolutions (**s. 143**). Moreover, **s. 200** of the Act of 1948 [2] provides that such a company shall keep at its office a register as to directors and secretary containing the particulars required by that section, and shall send to the registrar a copy of such register, and shall further notify any change that takes place in its directors or managers. The executive body, by whatever name called, will be the managers within the meaning of this section. Companies registered without the word 'limited' under **s. 19** of the Act of 1948, are relieved from the obligation of sending lists of members to the Registrar of Companies. Directors who are *ex officio* members of the company are not as such liable on the guarantee.[3] A company limited by guarantee, unless it has a capital divided into shares, has not to make the annual return as to its members, etc., in accordance with **s. 124**, or the return of allotments under **s. 52.** Persons who have ceased to be members of the company within a year of a winding up are not liable unless the existing members are unable to satisfy the contributions required from them.[4] **Section 132** of the Act

[2] Embodying amendments made by s. 27 (1) of the Act of 1947.
[3] *Re Premier Underwriting Association (No. 2)* [1913] 2 Ch. 81.
[4] *Re Premier Underwriting Association (No. 1)* [1913] 2 Ch. 29.

of 1948, as to requisitions of general meetings, applies to all companies whether they have a share capital or not.

Stamp Duty

Upon the registration of a company limited by guarantee, the memorandum must be stamped with duty as provided by the Table in the **Twelfth Schedule** to the Act. The amount is proportioned to its share capital or the number of members (whichever is greater) and accordingly the articles must state the number of members with which it proposes to be registered. When the number is not to exceed twenty the fee is £2; when it exceeds twenty, but does not exceed 100, the fee is £5; and so on up to £20. When the number is to be unlimited the fee is £20. Most of the observations contained in this work apply *mutatis mutandis* to companies limited by guarantee

Where the company has a capital divided into shares, the registration fees, when based on the share capital, are the same as in the case of a company limited by shares, and the company must pay the duties imposed by s. 112 of the Stamp Act, 1891, as amended by s. 41 of the Finance Act, 1933.[5]

[5] See *ante*, p. 14.

CHAPTER 37

UNLIMITED COMPANIES

COMPANIES with unlimited liability are rarely formed now. While limited companies have been increasing by 'leaps and bounds', unlimited companies have dwindled nearly to zero. Accordingly it will not be necessary here to say much about them. The statutory requirements as to such companies are contained in **ss. 2, 6, 7, 11 and 16** of the Act. An unlimited company requires a memorandum and articles of association, which must be in the form set out in **Table E** in the **First Schedule** to the Act (**s. 11**), and may have a capital divided into shares, or no such capital. The articles of an unlimited company must contain certain provisions as required by **s. 7**, which provides as follows:—

> **7.**—(1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
>
> . . . . . .
>
> (3) Where an unlimited company . . . has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.
>
> If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Unlimited companies appear to be bound by the provisions of **s. 53** regulating underwriting commissions, and also by **s. 54**, which prohibits loans on the security of shares in the company; but an unlimited company can freely reduce its capital without leave of the court, since **s. 66** does not apply, and the form of articles in **Table E** gives power to reduce capital in any way. A member can retire and cease to be a member in the manner provided by the memorandum or articles (subject, of course, to his liability as a past member under **s. 212**).[1] It would also appear that the company might purchase the shares of members.[1]

An unlimited company must make the returns required by **s. 124** if it has a share capital, or by **s. 125** if it has not. Section 112 of the Stamp Act, which (as amended) requires an ad valorem stamp of 10s. per £100 on share capital, does not apply, but the **Table in the Twelfth Schedule** applies.

Its name will not include the word 'Limited'. If the company is wound up, the liability of its members to contribute to the payment of the debts and costs of winding up will be unlimited. But policies may be issued on the terms that the members of the company shall not be liable beyond the assets of the company (**s. 212 (1) (f)**). It having been

[1] *Re Borough Commercial Society* [1893] 2 Ch. 242.

held that mutual insurance associations, consisting of more than twenty persons, are illegal unless registered, a considerable number of mutual insurance associations have been formed and registered as unlimited companies, but it is now found preferable to form and register such associations as companies limited by guarantee. Of late years a good many loan clubs have been registered as unlimited companies. Several banks and insurance companies are also so registered. Investment or estate companies are sometimes formed as unlimited companies, where no liabilities are intended to be incurred and where the advantages of incorporation are desired without the expense of the ad valorem duty on capital or the limitations on the return of capital to members.

The formation of such a company by the owner of land or investments somewhat facilitates the division of the income or the property itself among the owner's family, and has some advantages with reference to the allowance for expenses under s. 33, or Schedule A (v), r. 8 of the Income Tax Act, 1918.[2]

Companies formed under the Act of 1844, or by special Act, or otherwise, sometimes register as unlimited [3] in order at once to wind up voluntarily. This is allowable.[4]

Where an association is registered as an unlimited company, it is always open to the members to re-register it as a limited company under the provisions of **s. 16**, which are as follows:—

16.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, . . . but the registration of an unlimited company as a limited company 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 the registration, and those rights or liabilities may be enforced in manner provided by Part VIII 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 from those under which the company is registered as a limited company.

On registration as a limited company provisions may be made for creating reserve capital (**s. 64**).

[2] See *post*, p. 452.
[3] See *ante*, p. 17.
[4] *Southall* v. *British Mutual Society* (1871) L.R. 6 Ch. 614. at p. 619.

CHAPTER 38

THE ASSURANCE COMPANIES ACTS, 1909 AND 1946

THE growth of insurance companies, the accumulation of the colossal funds which they control, and the constant extension of their business to new classes of risks is one of the most striking commercial developments of the last seventy years. In a group of detached Acts—the Life Assurance Companies Act, 1870, the Life Assurance Companies Act, 1871, the Life Assurance Companies Act, 1872, and the Employers' Liability Insurance Companies Act, 1907—the Legislature had dealt in its usual piecemeal fashion with the subject, and had established a variety of salutary rules for the formation and regulation of life assurance companies and employers' liability insurance companies, designed to secure their solvency and stability. These Acts were revised and consolidated and extended by the Assurance Companies Act, 1909. This Act re-enacts with amendments and additions (see *infra*) most of the provisions contained in the repealed Acts, and it extended these provisions to companies for accident and fire insurance.

The principal points in this legislation calling for notice are: (1) the scope of the Act; (2) the requirements as to deposits; (3) the separation and appropriation of the funds; (4) balance sheets, valuations and accounts; (5) transfer of business and amalgamation; (6) winding up; (7) novation.

1. *Scope of the Assurance Companies Act*, 1909.

The Act, as extended by the Air Navigation Act, 1936, and the Assurance Companies Act, 1946, applies to all companies (exclusive of friendly societies and trade unions) whether established before or after the commencement of the Act (July 1, 1910), and whether established within or without the United Kingdom, to carry on within the United Kingdom assurance business of any of the following classes: (a) life assurance, which includes business known as 'endowment policies', *i.e.*, policies under which the right to payment on reaching a certain age is combined with the right to payment on death[1]; (b) fire insurance; (c) accident insurance; (d) employers' liability insurance; (e) bond investment business; (f) aircraft insurance, and (g) marine, aviation and transit insurance; but subject as respects any class of assurance business to the special provisions in regard to that class. These special provisions or sets of rules will be found in ss. 30, 31, 32, 33 and 34 of the Act.

2. *Requirements as to deposits.*

Section 2 of the Act of 1909 required an assurance company to deposit in court £20,000 in respect of *each class of business*—life, fire, accident,

[1] *Prudential Insurance Co.* v. *Commrs. I.R.* [1904] 2 K.B. 658; *Joseph* v. *Law Integrity Insurance Co.* [1912] 2 Ch. 581; *Gould* v. *Curtis* [1913] 3 K.B. 84.

employers' liability and bond investment business—which it transacts. The deposit in each case was to be invested and the interest paid to the company. By the Act of 1946, subject to the provisions of the Second Schedule, this deposit is no longer required: but the assurance business covered by the Acts is not to be carried on except by a company having a paid-up share capital of not less than £50,000.

Following up this principle of differentiating the various classes of insurance business carried on by one and the same company, the deposit is to become part of the assurance fund appropriated for each particular class of insurance business. Under s. 3 of the Act of 1870, the deposit was to be returned when the assurance fund accumulated out of premiums amounted to £40,000 [2]; but the Act of 1909 contains no such provision, and the deposit therefore, where it still exists, will have to remain in court as a continuing security for the policy holders.

In the event of a transfer or amalgamation where there are outstanding policies for which the company remains liable—such as paid-up policies, the holders of which have not novated with the purchaser company—the deposit made in accordance with s. 2 will be carried over to a separate account of the purchaser company 'in respect of the life assurance business of the' vendor company now dissolved.[3]

In a winding up the deposit is liable for the costs thereof, at any rate so far as the costs relate to the class of business in respect of which the deposit was made.[4]

3. *Separation and appropriation of funds.*

The same principle of differentiation is applied to the company's funds. By s. 3 of the Act, there is to be a separate fund kept for each class of assurance business, and the receipts in respect of assurance business of a class are to be placed in such separate fund, and the fund is to be 'as absolutely the security of the policy holders of the class as though it belonged to a company carrying on no other business other than assurance business of that class', and is not to be applied directly or indirectly for any purposes other than those of the class of business to which the fund is applicable. This provision does not apply to a deposit made under the Road Traffic Act, 1930, in respect of motor vehicle insurance.[5]

4. *Balance sheets, valuations and accounts.*

There is an important group of sections—ss. 4–9, as amended by s. 3 (3) of the Act of 1946—designed to secure as far as possible the financial soundness of the undertakings in the interests of the public.

Section 4 provides for an annual revenue account, profit and loss account and balance sheet framed in accordance with the scheduled forms

[2] *Re Le Phénix* (1888) 58 L.T. 512; *Ex p. Scottish Economic Life Assurance Co* (1890) 88 W.R. 684; *Re Colonial Mutual Soc.* (1882) 21 Ch.D. 837; *Re Popular Life Assurance Co.* [1909] 1 Ch. 80; *Re Life and Health Assurance Association* [1910] 1 Ch. 458.

[3] *Re City of Glasgow Life Assurance Co.* [1916] 2 Ch. 557.

[4] *Re National Standard Life Assurance Corporation* [1917] 1 Ch. 193.

[5] *Re South East Lancashire Insurance Co.* [1935] 1 Ch. 225.

Section 5 provides for periodical investigation and valuations at intervals of not more than five years.

Section 6 provides for a statement of the assurance business.

Section 7 provides for the deposit of the accounts, statements, etc., with the Board of Trade, who are to examine them, and if they find anything 'inaccurate or incomplete' to call the company's attention to it. This official criticism may well prove a valuable guarantee.

Section 8 provides for the delivery to policy holders on request of copies of the documents.

Section 9 provides for audit of the company's accounts.

Section 10 provides for the keeping of registered holders' addresses.

Section 11 provides for printing of the deed of settlement for furnishing to shareholders and policy holders.

Section 12 in effect prohibits the publication of any notice as to the capital without specifying the amount subscribed and the amount paid.

5. *Transfer and amalgamation.*

Section 13, which takes the place of s. 14 of the Act of 1870, provides in effect that no assurance company shall amalgamate with another or transfer its business to another unless the amalgamation or transfer is sanctioned by the court in accordance with the section. After the transfer or amalgamation is sanctioned, certain statements as to assets and liabilities, copies of the transfer or amalgamation agreement, etc., are to be deposited with the Board of Trade (s. 14). It will be borne in mind that s. 13, like s. 14 of the Act of 1870, does not give a company power to transfer or amalgamate where the company has no such power by its memorandum of association; but merely regulates the method of transfer.[6] Where, however, the memorandum contains this power, the transferring company can be released from its liabilities as regards the transferred business.[7] Payment out of deposit to the transferor company was directed by Maugham J.[7]

6. *Winding up.*

Section 15 of the Act of 1909 makes special provision for the winding up of an assurance company. As to the method of proof in respect of policies, see *Re Law Car and General Insurance Co.*[8]

7. *Novation.*

Section 7 of the Life Assurance Companies Act, 1872, made special provisions as to novation, and enacted that where a company has transferred its business to or has been amalgamated with another company, no policy holder of the first-mentioned company who shall pay to the other company the premiums accruing due in respect of its policy shall by reason of any such payment made after the passing of the Act, or by reason of any other act done after the passing of the Act, be deemed to

[6] *Re Sovereign Life Assurance Co.* (1889) 42 Ch.D. 540; *Company Precedents*, Part I, 15th ed., p. 1144.

[7] *Re Empire Guarantee, etc., Corpn.* [1911] S.C. 1296, followed and applied by Eve J. in *Re United British Assurance Co.* [1929] 2 Ch. 430.

[8] [1913] 2 Ch. 103.

have abandoned any claim which he would have had against the first-mentioned company on due payment of premiums to such company, or to have accepted in lieu thereof the liability of the other company, unless such abandonment and acceptance have been signified by some writing signed by him or his agent lawfully authorised. No similar provisions are to be found in the Act of 1909. The Legislature appears to have considered that the protection afforded by this section was no longer necessary, since the requirement of the sanction of the court had been in operation for so long.[9]

[9] *Cf. Re Empire Guarantee Co.* [1911] S.C. 1296

CHAPTER 39

ILLEGAL ASSOCIATIONS

THE Act of 1948, as we have seen, affords great facilities for forming companies, and it also declares illegal all large unregistered companies or associations, thus indirectly compelling associations with anything but a very small membership to avail themselves of the provisions of the Act. **Sections 429** and **434**, the sections in question, provide, in effect, as follows:—

(1) That no company, association, or partnership consisting of more than ten persons is to be formed for carrying on the business of banking unless registered under the Act or formed in pursuance of some other Act of Parliament or of letters patent.

(2) That no company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business other than banking that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered under the Act, or is formed in pursuance of some other Act of Parliament or of letters patent, or is a company engaged in working mines within the Stannaries [Devon and Cornwall].

Meaning of above provisions.

The meaning of these provisions, as interpreted by the courts, is that any company or association formed in violation of the section is an illegal association, and the policy of the enactment is well expounded by James L.J. in *Smith* v. *Anderson*[1]:—

'The object of the Act', says the Lord Justice, 'was to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies, so that persons dealing with them did not know with whom they were contracting, and so might be put to great expense, which was a public mischief to be repressed.'

And this object the Act may be said effectually to have accomplished. Thus an association which is illegal cannot be wound up under the Act at the instance either of the association, of a creditor, or of a shareholder.[2] See, however, *Re One and All Sickness Association*[3] and *Greenberg* v. *Cooperstein*,[4] where Tomlin J. ordered an account of the moneys received by the officers of such an illegal association and an inquiry who were the members. See also *Marrs* v. *Thompson*,[5] in which case the trustees of

[1] (1880) 15 Ch.D. at p. 273.
[2] *Re South Wales Atlantic, etc., Co.* (1875–6) 2 Ch.D. 763; *Re Padstow Association* (1882) 20 Ch.D. 137; *Ex p. Hargrove* (1875) L.R. 10 Ch. 542; *Re Ilfracombe Building Society* [1901] 1 Ch. 102.
[3] (1909) 25 T.L.R. 674.
[4] [1926] Ch. 657.
[5] (1902) 18 T.L.R. 565 (C.A.).

an unregistered society consisting of more than twenty members were held entitled to sue the society's treasurer for the recovery of money of the society in his hands. An action by an illegal association, whether against a member or any other person, must fail if the illegality of the association is disclosed.[6] If the association has lent money, and as security obtained a promissory note, it cannot sue thereon.[7] And, conversely, a member or outsider cannot sue such an association, for it can contract no debts,[8] and can enter into no contracts.[9] In a word, the association is a phantom. It has no legal existence.

Many attempts have been made to escape from the provisions of the section, but seldom successfully; the words are too wide. It was at one time thought, for example, that mutual assurance associations were not within the section—not 'associations for gain'; but these doubts—or hopes—were dispelled by the decision in *Re Padstow Association*.[10]

In *Re Thomas*,[11] again, it was contended that an unregistered loan society consisting of more than twenty members was not illegal, because in its inception it comprised less than twenty members, but this contention was overruled.

> 'I cannot', said Cave J., 'assent to the doctrine that, because a society is projected by less than twenty people originally, and subsequently grows to more than twenty, it is outside the Act and does not require registration. This would be making a laughing-stock of the Act.'

The cases referred to in the above paragraphs must, however, be read with *Smith* v. *Anderson*,[12] a decision of the Court of Appeal, in which it was held that an investment trust was not an illegal association although there were more than twenty beneficiaries entitled to the benefit of it, the *ratio decidendi* being that the business, if business it was, was carried on by the trustees, who were less in number than twenty.

Wigfield v. *Potter*,[13] *Re Siddall*,[14] and *Crowther* v. *Thorley*,[15] are other instances in which unregistered land companies of more than twenty members have been held to be not illegal on the ground that they were formed merely for acquiring and dividing land between the members, and not for carrying on any business of land jobbing or trafficking in land.

A superannuation fund formed by the Corporation of Liverpool was held not to be an association formed for the acquisition of gain.[16]

For a form of writ against individuals representing the members of an unregistered association, see *Ideal Films, Ltd.* v. *Richards*.[17]

[6] *Re Day* (1876) 1 Ch.D. 699.
[7] *Shaw* v. *Benson* (1883) 11 Q.B.D. 563.
[8] *Re London Marine Association* (1869) L.R. 8 Eq. 176.
[9] *Jennings* v. *Hammond* (1882) 9 Q.B.D. 225, at p. 229; *Hume* v. *Record Reign Jubilee Syndicate* (1899) 80 L.T. 404.
[10] (1882) 20 Ch.D. 137, at p. 149.
[11] (1884) 14 Q.B.D. 379.
[12] (1880) 15 Ch.D. 247, at p. 258.
[13] (1881) 45 L.T. 612.
[14] (1885) 29 Ch.D. 1.
[15] (1884) 50 L.T. 48.
[16] *Armour* v. *Corporation of Liverpool* [1939] Ch. 422.
[17] [1927] 1 K.B. 374.

CHAPTER 40

WINDING UP BY THE COURT

A COMPANY once incorporated under the Companies Acts cannot be put an end to except through the machinery of a winding up,[1] or by removal from the register as a defunct company under **s. 353** of the Act of 1948.

Acts and Rules applicable

Parts V and **IX** of the Act of 1948 and the Rules made under that Act, contain the provisions applicable to the winding up of companies.

Modes of Winding Up

The different kinds of winding up are as follows:—

1. By the court.
2. Voluntary. (1) Purely voluntary.
   (a) Members' voluntary winding up.
   (b) Creditors' voluntary winding up.
   (2) Under the supervision of the court.[2]

Of these a purely voluntary winding up is by far the most common, and this is consonant with the policy of the Companies Act, which contemplates that shareholders shall manage their own affairs, and as one of them, winding up.

Compulsory Winding Up

The Act has defined certain circumstances in which a creditor or contributory is entitled to invoke the intervention of the court and have the assets administered by the court. The provisions relating to a compulsory winding up by the court are now contained in **Part V** of the Act of 1948 and the Companies (Winding-up) Rules, 1949.[2a]

Courts having Jurisdiction to Wind Up

The following are the courts having jurisdiction to wind up companies in England and Wales: the High Court, the Palatine Courts of Lancaster and Durham, and, as a general rule, all the County Courts having bankruptcy jurisdiction. The High Court has jurisdiction to wind up all companies registered in England (**s. 218**); but, as regards companies whose registered office is within the jurisdiction of the Palatine Courts aforesaid, these courts have concurrent jurisdiction. If the paid-up capital does not exceed £10,000, the county court has concurrent jurisdiction, unless the registered office of the company is within the metropolis,

[1] *Princess of Reuss* v. *Bos* (1871) L.R. 5 H.L. 176, at p. 193.
[2] **S. 211.**
[2a] See Appendix 5, *post*.

in which case the jurisdiction is in the High Court.[3] A winding up commenced in the High Court can be transferred to the county court, even if the paid-up capital exceeds £10,000.[4] Where the county court has jurisdiction, it can deal with all matters arising in the winding up, *e.g.*, setting aside debentures, though the amount involved may be very large.[5] In such cases, however, the jurisdiction of the High Court should now be invoked. The Stannaries jurisdiction has now become vested in a county court.[6]

Appeals.

Appeals from the High Court and the Palatine Courts lie to the Court of Appeal. Appeals from the county court in the matter of the winding up of companies were before 1934 heard by a Divisional Court composed of judges exercising jurisdiction in winding up. By the Administration of Justice (Appeals) Act, 1934, appeals from county courts under s. 120 of the County Courts Act, 1888, now go to the Court of Appeal.[7]

Over what Companies Courts have Jurisdiction

The companies subject to this jurisdiction are the following:—

(a) Companies formed and registered under **Part I** or registered under **Part VII** of the Act of 1948.

(b) Existing companies as defined in **s. 455** of the Act of 1948, which says, 'existing company' means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Acts, 1862, 1908, or 1929.

(c) Companies registered but not formed under the Joint Stock Companies Acts, or under the Companies Acts, 1862, 1908, or 1929 (**s. 378**).

(d) Companies registered as limited under the Companies Act, 1879 (**s. 379**).

(e) Unregistered companies, as defined in **s. 398** of the Act, that is to say, any partnership, association, or company except (1) railway companies incorporated by Act of Parliament, except as there mentioned, (2) registered companies, (3) a partnership or association consisting of less than eight members and not being a foreign partnership, association or company, (4) a limited partnership registered in England or Northern Ireland.

Examples of unregistered companies which have been ordered to be wound up are:—

1. Companies incorporated by special Act.[8]
2. Companies incorporated by Royal Charter.[9]

[3] *Re Southsea Garage, Ltd.* (1911) 55 S.J. 314.
[4] *Re Vernon Heaton Co., Ltd.* [1936] Ch. 289.
[5] *Re F. & E. Stanton, Ltd.* [1928] 1 K.B. 464.
[6] See **s. 218**, and *Company Precedents*, Part II, 15th ed., pp. 18, 19.
[7] See *Company Precedents*, Part II, 15th ed., p. 735.
[8] *Re South London Fish Market* (1888) 39 Ch.D. 324; *Re Barton-upon-Humber Water* (1889) 42 Ch.D. 585.
[9] *Re Oriental Bank Corporation* (1884) 54 L.J.Ch. 481; *Re Bank of South Australia* [1895] 1 Ch. 578.

3. Foreign and colonial companies having assets and liabilities in England.[10]
4. Building societies formed prior to the Building Societies Act, 1874.[11]
5. Trustees' savings banks.
6. Friendly societies.[12]
7. Life assurance companies.[13]
8. An association for purchase and division of an estate.[14]

As to distribution of funds of an unregistered association, see *Re Customs and Excise Fund.*[15]

Cases for Winding Up

The following are the several grounds on which a winding-up order may be made:—

Section 222. A company may be wound up by the court if—

(*a*) the company has by special resolution resolved that the company be wound up by the Court;

(*b*) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;

(*c*) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(*d*) 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;

(*e*) the company is unable to pay its debts;

(*f*) the court is of opinion that it is just and equitable that the company should be wound up.

Inability to pay Debts

This is the usual ground for a petition. In **s. 223** the Act states the cases in which a company is to be 'deemed unable to pay its debts'.[16] In most cases the evidence is given under **paragraph (d)** of that section by proving 'to the satisfaction of the court that the company is unable to pay its debts'. The fact that the petitioner has made repeated applications for payment, and that the company has neglected to pay, affords cogent evidence that it is unable to pay its debts, and this is the evidence generally relied on. Almost the only answer open to the company is to show that the debt claimed is bona fide disputed, in which case a winding-

[10] *Re Mercantile Bank of Australia* [1892] 2 Ch. 204; *North Australian Co.* v. *Goldsborough Co.* (1889) 61 L.T. 716.
[11] *Re Queen's Building Society* (1871) L.R. 6 Ch. 815, *Re Ilfracombe P.M.B. Building Society* [1901] 1 Ch. 102.
[12] *Re Victoria Society, Knottingley* [1913] 1 Ch. 167.
[13] *Re Great Britain Mutual* (1880) 16 Ch.D. 246; *Masonic and General, Re Sharpe* [1892] 1 Ch. 154.
[14] *Re Osmondthorpe Hall Society* [1913] W.N. 243; 58 S.J. 13 (a member who had paid up all instalments due from him being treated as a contributory). And see *Company Precedents*, Part II, 15th ed., pp. 10 *et seq.*
[15] [1917] 2 Ch. 18.
[16] See Appendix 1, *post.*

up petition is not a proper mode of enforcing it.[17] Where the debt is undisputed, it is futile for the company to say, 'We are able to pay our debts, but we do not choose to pay this particular debt'. The court will not listen to such a defence.[18]

The 'Just and Equitable' Clause

It was at one time thought that these words, as appearing in s. 79 of the Act of 1862, ought to be confined to cases *ejusdem generis* with the previous cases, but this construction was subsequently held erroneous.[19] Under these words winding-up orders have been made on the grounds: that the substratum of the company was gone[20] (in one case where the substratum had gone, but the company had the widest possible powers, the court allowed the petition to stand over for a scheme to be considered by the shareholders[21]); that the company was a bubble[22]; that the company was conceived and brought forth in fraud[23]; that full investigation was necessary[24]; that there was a complete deadlock[25]; that the articles provided for a winding up in the event which had happened[26]; that one of the principal shareholders refused to produce accounts or balance sheets or to pay dividends, he having a majority of the voting power[27]; that the petitioner was excluded from all participation in the business[28]; where the principle applied was that, in case of a small private company, facts which would justify the dissolution of a partnership may be a ground for a winding-up order.[29] Where directors, holding half the shares, refused to register as members the executors of a deceased shareholder who held the other half, thus giving themselves complete control, a winding-up order was refused.[30]

Before 1948 the court would not make a winding-up order in cases where the petitioner had, or was thought to have, another remedy. For instance, where the directors were proceeding to do ultra vires acts, the proper remedy would be said to be injunction; or in the case of mismanagement by the directors, it has been said that the petitioner should call a meeting.[31] But in some cases this other remedy might be inadequate, as where the manager or managing directors could control a majority of the voting power. This defect was met by s. 90 of the Act

[17] *Re Gold Hill Mines* (1883) 23 Ch.D. 210.
[18] See *Company Precedents*, Part II, 15th ed., pp. 36, 37.
[19] *Re Australian Joint Stock Bank* [1897] W.N. 48; *Re Sailing Ship 'Kentmere' Co.* [1897] W.N. 58; *Re Newbridge Steam Laundry Co.* [1917] 1 Ir.R. 67.
[20] *Re German Date Coffee Co.* (1882) 20 Ch.D. 169; *Re Haven Gold Co.* (1882) 20 Ch.D. 151; *Re Red Rock Gold Mining Co.* (1888) 61 L.T. 785; *Re Blériot Aircraft Co* (1916) 32 T.L.R. 253; *Re Eastern Telegraph Co.* [1947] L.J.R. 1247; *Re Merchant Navy Supply Assn., Ltd.* [1947] W.N. 154; *Galbraith* v. *Merito Shipping Co.* 1947 S.C. 446.
[21] *Re Stratton's Independence, Ltd.* (1916) 33 T.L.R. 98.
[22] *Re London and County Coal Co.* (1867) L.R. 3 Eq. 355.
[23] *Re T. E. Brinsmead & Sons* [1897] 1 Ch. 45; on appeal [1897] 1 Ch. 406
[24] *Re Peruvian Amazon Co.* (1913) 29 T.L.R. 384.
[25] *Re Yenidje Tobacco Co.* [1916] 2 Ch. 426.
[26] *Re American Pioneer Leather Co.* [1918] 1 Ch. 556.
[27] *Loch* v. *John Blackwood, Ltd.* [1924] A.C. 783.
[28] *Thomson* v. *Drysdale* [1925] S.C. 311.
[29] *Re Davis & Collett, Ltd.* [1935] Ch. 693.
[30] *Re Cuthbert Cooper & Sons, Ltd.* [1937] Ch. 392.
[31] See *Re Professional, etc., Building Society* (1891) L.R. 6 Ch. 856, at p. [illegible], and p 382, *post*.

of 1947,[32] now **s. 225 (2)**, which provides that in the case of a petition by a contributory, if the court considers that the petitioner has some other remedy, but that otherwise it would be just and equitable to order a winding up, the court ' shall ' make the order unless it considers that the petitioner is acting unreasonably in asking for a winding up instead of pursuing his other remedy.

In cases of this kind it sometimes happens that a winding up would be disastrous to the petitioning members, as where the manager could be in a position to secure most of the goodwill for himself. This kind of case was provided for by s. 9 (1) of the Act of 1947, now **s. 210**.[33] This remedy might possibly now be applied in such a case as *Re Cuthbert Cooper & Sons, Ltd.*[34]

Petition for Compulsory Winding-up Order

Section 224 of the Act of 1948 provides that the application shall be by petition. A petition may be presented (1) by the company; (2) by any creditor; (3) by any contributory; (4) by the official receiver under **s. 224 (2)**. And the right to petition, being a statutory right, cannot be excluded by a clause in the articles of association.[35]

Petitions by the company are not very common; for if a company desires to wind up, it has only to pass a special resolution, or an extraordinary resolution for voluntary winding up (see **s. 278**). But if the directors find the company to be insolvent owing to matters which ought to be investigated by the court, it may well be that their proper course is to apply at once to the court by petition for a compulsory order. It has been held in Ireland that the directors cannot present a petition in the name of the company without the sanction of a general meeting[36]; but there seems to be no justification for this ruling in the words of the Act and it has not been followed in English cases. In any case a general meeting can ratify the action of the directors.[37]

Nor are petitions by contributories very common, for the scheme of the Act is that shareholders shall manage their own affairs, and winding up is one of them. The great bulk of winding-up petitions are by creditors, a petition for a winding-up order being a proper as well as effective mode of enforcing payment of a debt due from a company.

Sometimes the directors deem it advisable to get a friendly creditor to present a petition in order to gain time to pass a resolution for winding up or to proceed with a scheme of arrangement.

Creditor's Petition

Who is a Creditor.

Any person to whom the company is indebted in a sum of money presently due is indisputably a creditor, and entitled to present a petition

[32] Now **s. 225 (2)** of the Act of 1948.
[33] Now **s. 210** of the Act of 1948; *see ante*, p. 229.
[34] *Ante*, p. 378.
[35] *Re Peveril Gold Co.* [1898] 1 Ch. 122.
[36] *Re Galway and Salthills Tramways Co.* [1918] 1 Ir.R. 62.
[37] *Ibid.*

(see s. 224). In this respect the Act re-enacts the provisions of the Act of 1862, s. 82. Under that Act it was held that the following could petition: The assignee of a debt, whether at law or in equity[38]; an assignee of part of a debt[39]; the depositary by way of mortgage of debentures to bearer, the interest on which was in arrear[40]; the executor of a deceased life policy holder in respect of an admitted claim, a sum by the policy made payable out of the assets[41]; a secured creditor,[42] even after obtaining the appointment of a receiver in an action.[43]

Although a local authority cannot sue for unpaid rates, it can present a winding-up petition if under a distress warrant no goods are found which can be seized.[44]

It was at one time held that a garnishee order against a company did not make the garnishor a creditor of the company[45]; and that a person who had a claim against the company for unliquidated damages was not a creditor within the section[46]; nor was a person who had guaranteed the payment of a debt due from the company, but had not paid such debt.[47] It was also held that a landlord was not a creditor as regards future rent[48]; nor the holder of a bill of exchange not yet payable[49]; nor a holder of debentures not yet payable.[50] But the Act of 1907 in this respect modified the law, for under s. 28 (now s. 224 of 1948) a 'creditor' includes 'any contingent or prospective creditor'.[51] Such a creditor has, however, to give security for costs, and before the hearing show a prima facie case (s. 224 (1) (c)).

Creditor's right to order.

A petitioning creditor who cannot get paid a sum presently payable has, as against the company, a right, *ex debito justitiæ*, to a winding-up order[52]; even though the assets are overcharged by debentures.[53] This right to a winding-up order is, however, qualified by another rule, *viz.*, that the court will regard the wishes of the majority in value of the creditors, and if, for some good reason, they object to a winding-up order, the court in its discretion may refuse the order.[54] Moreover, securities

[38] *Re Paris Skating Rink Co.* (1877) 5 Ch.D. 959; *Re Montgomery Moore Ship Collision Doors Syndicate* (1903) 72 L.J.Ch 624.
[39] *Re Steel Wing Co.* [1921] 1 Ch. 349.
[40] *Re Olathe Silver Mining Co.* (1884) 27 Ch.D. 278.
[41] *Re Masonic and General Life Assurance Co.* (1885) 32 Ch.D. 373.
[42] *Moor* v. *Anglo-Italian Bank* (1879) 10 Ch D. 681.
[43] *Re Borough of Portsmouth Tramways Co.* [1892] 2 Ch 362.
[44] *Re North Bucks Furniture Depositories* [1939] Ch. 690.
[45] *Re Combined Weighing Machine Co.* (1889) 43 Ch.D. 99.
[46] *Re Pen-y-Van Colliery Co.* (1877) 6 Ch.D. 477.
[47] *Re Vron Colliery Co.* (1882) 20 Ch.D. 442.
[48] *Re United Club* (1889) 60 L.T. 665.
[49] *Re W. Powell & Sons* [1892] W.N. 94.
[50] *Re Melbourne Brewery Co.* [1901] 1 Ch. 453.
[51] *Re British Equitable Bond, etc., Corpn.* [1910] 1 Ch. 574.
[52] *Bowes* v. *Hope Mutual, etc., Society* (1865) 11 H.L.C. 389, at p. 402; *Re Western of Canada Oil Co.* (1873) L.R. 17 Eq. 1; *Re Chapel House Colliery Co.* (1883) 24 Ch.D 259; *Re Amalgamated Properties of Rhodesia, Ltd.* (1917) 2 Ch. 115.
[53] *Re Alfred Melson & Co.* [1906] 1 Ch. 841; *Re Crigglestone Coal Co.* [1906] 2 Ch. 327; *Re Clandown Colliery Co.* [1915] 1 Ch. 369; and see now s. 225 (1) of the Act.
[54] *Re West Hartlepool Co.* (1875) L.R. 10 Ch. 618; *Re Western of Canada Oil Co* (1873) L.R. 17 Eq. 1; *Re Chapel House Colliery Co.* (1883) 24 Ch.D. 259. See *Company Precedents*, Part II. 15th ed., p 54

may be so framed that the debenture or debenture stock holder is not a creditor capable of petitioning[55]; but query whether this decision can be supported.

Whether the court will make an order or not, does not depend solely on the wishes of the creditors. The court is invested with a wide jurisdiction in the interests of commercial morality; and if the facts disclose a strong prima facie case for investigation into the formation or promotion of the company, or the issue of debentures by it, the court will make a compulsory order irrespective of creditors' opposition.[56]

By s. 310 of the Act the voluntary winding up of a company is not to be a bar to the right of any creditor of such company to have the same wound up by the court, and a creditor who cannot get paid is entitled to a winding-up order *ex debito justitiæ*.[57] The order may, however, be refused, if the majority in value of the creditors oppose the petition; and an order has been refused where it would not benefit the creditors generally, but only the petitioning creditor.[58]

Contributory's Petition

Such petitions are comparatively rare; for the Act establishes a domestic tribunal as between the members and the company, and thus enables the members themselves, by passing the requisite resolutions, to determine whether there shall be a voluntary liquidation, or whether the court shall be asked to make a compulsory order (see **s. 278**).[59] Accordingly, a contributory, to obtain an order, must make out a special case.[60] The case usually made out is that it is just and equitable that the company shall be wound up because the substratum of the company is gone.[61] The substratum is held to be gone when the main object for which the company was formed has become impracticable.[62]

In such a case shareholders may fairly claim that they ought no longer to be forced to risk their property in going on. No contributory of a company is, by **s. 224**, to be capable of presenting a petition unless (i) either the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven, or (ii) the shares in respect of which he is a contributory or some of them were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding up, or have devolved upon him through the death of a former holder: the object, of course, being to prevent a

[55] *Re Uruguay Central Ry.* (1879) 11 Ch.D. 372; *Re Dunderland Iron Co.* [1909] 1 Ch. 446.
[56] *Re Bishop & Sons, Ltd.* [1900] 2 Ch. 254; *Re Lichtenstein* (1903) 23 T.L.R. 424; *Re Clandown Colliery Co.* [1915] 1 Ch. 369.
[57] *Re James Millward & Co., Ltd.* [1904] Ch. 333.
[58] *Re Greenwood* [1900] 2 Q.B. 306.
[59] *Re Langham Skating Rink* (1877) 5 Ch.D. 669, at p. 683.
[60] See *Re Gutta Percha Corporation* [1900] 2 Ch. 665, where resolutions had been passed for voluntary winding up with a view to reconstruction which proved abortive.
[61] *Re Suburban Hotel Co.* (1867) L.R. 2 Ch.App. 737; *Re German Date Co.* (1882) 20 Ch.D. 169; *Re Haven Gold Co.* (1882) 20 Ch.D. 151; *Re Brinsmead & Sons*, [1897] 1 Ch. 45; *Symington* v. *Symington's Quarries, Ltd.* (1905) 8 F. 121 (Ct.Sess.); *Pirie* v. *Stewart* (1904) 6 F. 847 (Ct.Sess.).
[62] *Re Suburban Hotel Co., supra.*

person buying shares in order to qualify himself to wreck the company. 'Held' means standing in the name of the contributory petitioner:[63]

Registration of a wife's shares in the name of her husband is for this purpose sufficient (**s. 224 (3)**).

Occasionally, a contributory petitions on the ground that the company is insolvent or unable to pay its debts; but in such case the petitioner, if fully paid, should, if possible, allege and prove that there will be a substantial surplus for the shareholders[64]; otherwise he has no interest in the company, and in spite of **s. 224** of the Act there is a serious risk that a petition by a fully paid up shareholder alleging that the company has no assets will be dismissed.[65]

Mismanagement by directors is not *prima facie* a ground for a shareholder petitioning. He should call a meeting.[66]

A shareholder who is in arrear with calls must make out a very special case to justify his petitioning in such circumstances, and he may be required to pay the calls into court or to give an undertaking for payment of them[67]

The fact that a voluntary winding up is in progress is prima facie a bar to a winding up on a shareholder's petition[68]; because a shareholder is bound by the wishes of the majority; but the voluntary winding up is not since the Act of 1908 (s. 197) an absolute bar to a contributory's petition, and the court will make the order if satisfied that the rights of the contributory will be prejudiced by the voluntary winding up (see now **s. 310**).[69] Even before the Act of 1908 the court had a discretion, and, if it saw cause, would examine into the composition of the majority passing the resolution and other circumstances to make sure that it was an honest exercise of the wishes of the shareholders.[70]

Petition by Official Receiver

Section 224 (2) of the Act provides that where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court having jurisdiction to wind up the company, as well as by any other person authorised in that behalf under the other provisions of the 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.[71]

[63] *Re Wala Wynaad Gold Co.* (1882) 21 Ch.D. 849.
[64] *Re Rica Gold Co.* (1879) 11 Ch.D. 36.
[65] *Re Kaslo-Slocan Co.* [1910] W.N. 13. But see *Company Precedents*, Part II, 15th ed., p. 57.
[66] *Re Professional, Commercial, etc., Building Society* (1871) L.R. 6 Ch. 856, at p. 862, but see p. 878, *ante*.
[67] *Re Diamond Fuel Co.* (1879) 13 Ch.D. 400; *Re Crystal Reef Co.* [1892] 1 Ch. 408.
[68] *Re Bank of Gibraltar* (1865) L.R. 1 Ch. 74; *Re Imperial Bank of China* (1866) L.R. 1 Ch. 339; *Re London and Mercantile Discount Co.* (1865) L.R. 1 Eq. 277; *Re Doré Gallery* [1891] W.N. 98.
[69] *Re National Company for Distribution of Electricity* [1902] 2 Ch. 34.
[70] *Re Varieties* [1893] 2 Ch. 235; *Re Haycraft Gold, etc., Co.* [1900] 2 Ch. 230.
[71] See *Re Jubilee Sites Syndicate* [1899] 2 Ch. 204.

Form of Petition

A petition to the High Court is headed:—

In the High Court of Justice.

Chancery Division.

Companies Court.

Mr. Justice ——.

In the matter of the —— Company, Limited.

and

In the matter of the Companies Act, 1948.

It then proceeds thus:—

To His Majesty's High Court of Justice

The humble petition of of — showeth as follows:—

Then follow statements as to the incorporation of the company, situation of its registered office, amount of its paid-up capital, the circumstances founding the title to relief, *e.g.*, that the company is indebted to the petitioner in a specified sum, and that he has made repeated applications for payment, but without success, that the company is unable to pay its debts, and then the petition concludes with the prayer 'that the company may be wound up by the court under the Companies Act, 1948'. There is a note at the foot to the effect that it is 'intended to serve this petition on the company'. In framing a petition, it is essential to allege a case for winding up within the Act (see **s. 222**). If no case is alleged, the petition, unless the court should give liberty to amend, is demurrable, and will be dismissed with costs [72]

Presentation and Answering

A winding-up petition to the High Court is presented at the office of the Registrar in Winding-up, who appoints the time and place at which the petition is to be heard.[73] After a petition has been presented, the petitioner must, on a day to be appointed by the registrar, not less than two days before the day appointed for the hearing of the petition, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service have been duly filed, and that the provisions of the rules as to winding-up petitions have been duly complied with by the petitioner.

Where several petitions are presented, they rank according to the date of presentation.[74]

[72] *Re Wear Engine Works Co.* (1875) L.R.10 Ch. 188.
[73] Winding-up Rules, 1949, r. 27.
[74] *Re Building Societies Trust* (1890) 44 Ch.D. 140 at p. 144: *Re Bamford* [1910] 1 Ir.R. 390.

Advertisement of Petition

Every petition is to be advertised seven clear days before the hearing.[75] If the company's registered office is within ten miles of the Royal Courts of Justice, the advertisement is to be inserted in the *London Gazette* and in one London daily morning newspaper, or in such other newspaper as the court directs; in the case of any other company, once in the *London Gazette* and once in a local newspaper.[76] Every advertisement of a petition is to contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner. Notice of intention to appear must be given by any person intending to do so,[77] and must contain names and addresses.[78]

Any error in the title, name, day or place for hearing may render the advertisement useless[79]; but a formal defect where no one is misled will not invalidate the petition.[80]

The court will restrain the issuing of the advertisements when the petition is an abuse of the process of the court.[81]

Service of Petition

The petition is to be served on the company, unless it is presented by the company itself.[82] Where it is impracticable to serve the petition in the manner therein mentioned, *e.g.*, when the company's registered office is closed or pulled down, the court will make a special order, *e.g.*, to serve upon one or two officials connected with the company, and direct that such service should be deemed to be service on the company.[83]

Evidence in Support of Petition

The Rules provide for the filing of an affidavit by the petitioner in general terms, stating, in effect, that the statements in the petition relating to his own acts and deeds are true, and that he believes the other statements to be true. This is known as the statutory affidavit, and the Rules make this affidavit prima facie evidence of the statements in the petition.[84] It must be sworn and filed within four days after the presentation of the petition. Notice of the filing need not be given to the company, but if a supplementary affidavit is filed, notice should be given to avoid necessity for adjournment.[85]

[75] *Re City and County Bank* (1875) L.R. 10 Ch 470; *Re London India Rubber* (1866) 14 W.R. 594.
[76] See Rule 28 of 1949.
[77] See Rule 34.
[78] *Re Descours, Parry & Co.* [1909] W.N. 50
[79] *Re Army and Navy Hotel* (1886) 31 Ch.D. 644; *Re London and Provincial Pure Ice* [1904] W.N. 186.
[80] *Re Broad's Patent, etc., Co.* [1892] W.N. 5. For form of advertisement, see *Company Precedents*, Part II, 15th ed., pp. 80 *et seq.*
[81] *Re A Company* [1894] 2 Ch. 349.
[82] See Rule 29 of 1949; *Re Edward Chester & Co.* (1903) 52 W.R. 189.
[83] See *Company Precedents*, Part II, 15th ed., pp. 83 *et seq.*
[84] See Rule 30 of 1949.
[85] *Re New Weighing Machine Co.* [1896] W.N. 48, as explained [1898] W.N. 7; *Re British Cycle Manufacturing Co.* (1898) 77 L T. 683.

The object of the statutory affidavit is to prevent the abuse of putting upon the file long affidavits in support of the petition which may turn out to be unnecessary.[86]

Where a company is petitioner, the affidavit must be made by some director, secretary or other principal officer.[87] An assistant secretary is not a 'principal officer' for this purpose.[88]

Affidavits, if put in in opposition to the petition, must be filed within seven days of the date of the filing of the statutory affidavit.[89] The petitioner may be cross-examined as well as the opposing deponents; but the court has a discretion as to allowing cross-examination in a winding-up petition, and refused, for example, to allow a petitioner to cross-examine the respondent company's witnesses where the petitioner had no direct evidence but the statutory affidavit, and wanted to cross-examine as to the company's business, means and bona fides.[90] If necessary, witnesses who decline to make affidavits can be called and examined at the instance of any party interested.[91]

Hearing of Petition

Upon hearing the petition the court may dismiss it with or without costs, may adjourn the hearing conditionally or unconditionally, and may make an interim order or any other order that it deems just (**s. 225**). In all matters relating to the winding up—and winding up includes the petition—the court may, by **s. 346** of the Act, have regard to the wishes of creditors and contributories, and may, if expedient, direct meetings to be summoned to ascertain such wishes. If the company is solvent, the wishes of contributories, as the persons chiefly interested in the assets, carry most weight; if the company is insolvent, the wishes of creditors. Instances in which the court has acted on this principle are *Re Western of Canada Oil Co.*,[92] *Re Chapel House Colliery*,[93] *Re Professional, Commercial, etc., Building Society*,[94] *Re City and County Bank*,[95] *Re Haven Gold Co.*,[96] *Re T. E. Brinsmead & Sons*.[97] Since the Winding-up Act, 1890, the element of public policy in regard to commercial morality has been introduced into the consideration of the question of the propriety of a winding-up order. It is illustrated in *Re Krasnapolsky Co.*,[98] *Re New Oriental Bank Corporation*,[99] *Re Medical Battery Co.*,[1] *Re Crigglestone Coal Co.*[2] See also *Re Clandown Colliery*.[3] The

[86] *Per* Lindley L.J., *Re Gold Hill Mines* (1883) 23 Ch.D. 210, at p. 214.
[87] Rule 29.
[88] *Practice Note* [1937] W.N. 350.
[89] Winding-up Rule 36 of 1949; *Re J. H. Evans & Co.* [1892] W.N. 126.
[90] *Re London Fish Market Co.* (1883) 27 S.J. 600; *Re Emma Silver Mining Co.* (1875) L.R. 10 Ch. 194; *Re West Devon Mine* [1884] W.N. 139.
[91] *Company Precedents*, Part II, 15th ed., pp. 169 *et seq.*
[92] (1873) L.R. 17 Eq. 1.
[93] (1883) 24 Ch.D. 259.
[94] (1871) L.R. 6 Ch.App. 856.
[95] (1875) L.R. 10 Ch.App. 470.
[96] (1882) 20 Ch.D. 151.
[97] [1897] 1 Ch. 45; affirmed [1897] 1 Ch. 406.
[98] [1892] 3 Ch. 174.
[99] [1892] 3 Ch. 563.
[1] [1894] 1 Ch. 444.
[2] [1906] 2 Ch. 327.
[3] [1915] 1 Ch. 369.

principle of this last case received statutory confirmation in s. 171 (1) of the Act of 1929 (now s. 226 of 1948), providing that an order is not to be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

The court will not as a rule order a petition to stand over for a lengthened period: it would not be just to the company.[4]

The court now has power, under Rule 37 of 1949, where the petitioner consents to the dismissal of his petition or does not press for an order, to substitute as petitioner any creditor or contributory who in the opinion of the court would have a right to present a petition.

Commencement of Winding Up

In the case of a winding up by the court the winding up dates from the presentation of the petition (s. 229) A voluntary winding up dates from the passing of the resolution (s. 280) Where a winding-up order is made after a voluntary winding up has commenced, the winding up now dates from the passing of the resolution (s. 229), and all proceedings taken in the voluntary winding up are deemed to have been validly taken unless the court otherwise orders.

Winding-up Order

The order is to the effect that the company be wound up by the court under the Companies Act, 1948.

The effect of a winding-up order is, by s. 227, to avoid all dispositions of the property (including things in action) of the company made between the commencement of the winding up– *i e* , the presentation of the petition—and the winding-up order, unless the court otherwise orders; but the practice of the court is to allow such payments or dispositions, pending petition, if made honestly and in the ordinary course of business.[5] A debenture issued after the commencement of the winding up may be valid, if it was for the benefit of the company, as, for instance, for payment of wages.[6]

Costs

The winding-up order usually gives the petitioning creditor and the company their costs, and also one set of costs to creditors, and one set to contributories supporting the petition,[7] but there is no hard-and-fast rule. Where the contributories and the creditors appear by the same solicitor, one set of costs only will as a rule be allowed.[8] The costs are paid in the first place (subject to incumbrances) out of the company's

[4] *Re Chapel House Colliery Co.* (1883) 24 Ch.D. 259, at p. 267.
[5] *Re Oriental Bank Corporation* (1884) 28 Ch.D. 634; *Gorringe* v. *Irwell India Rubber Works* (1886) 34 Ch.D. 128.
[6] *Re Park, Ward & Co.* [1926] Ch. 828. See *Company Precedents*, Part II, 15th ed., pp. 384, 385.
[7] *Re Humber Ironworks Co.* (1866) L.R. 2 Eq. 15; 35 Beav. 346; *Re European Banking Co.* (1866) L.R. 2 Eq. 521.
[8] *Re Silberhütte Supply Co., Ltd.* [1910] W.N. 81.

assets.[9] If creditors or contributories are served with notice of an appeal, they will be entitled to separate costs if the appeal fails; but a petitioner who does not desire to upset the order as to costs, need not serve formal notice of appeal.[10]

Where a company appeals from a winding-up order, the court may order security for costs [11]

Official Receiver and Provisional Liquidators

The court has jurisdiction to appoint a provisional liquidator before the winding-up order (**s. 238**). An appointment before winding up is often made if the assets are in jeopardy The official receiver is nearly always appointed. On the winding-up order being made, the official receiver becomes, ipso facto, provisional liquidator until a liquidator is appointed (**s. 239**).[12] The official receiver for this purpose is one of the official receivers attached to the Bankruptcy Court appointed by the Board of Trade. The court now has power to appoint some other officer to act as official receiver in the winding up of a particular company (**s. 234**). The provisional liquidator may require a statement of affairs to be made (see below). The powers of a provisional liquidator are usually restricted, more or less, by the court under **s. 238 (4)** of the Act.[13]

Proceedings following on Winding-up Order

When a winding-up order is made, a copy is forwarded to the registrar [13a] who sends to the official receiver a notice informing him that the order has been pronounced. The official receiver thus set in motion occupies a double position. He is an officer of the Board of Trade appointed by it for the purposes of winding up under the Act (see **s. 233**); but he is also answerable to the court for the performance of his duties. Notice is sent to him because on a winding-up order being made, the official receiver becomes *virtute officii* provisional liquidator (see **s. 239**) until a liquidator, if any, is appointed. As provisional liquidator it is his duty to take possession of and protect the assets, and to call on the directors to furnish him with a statement of the company's affairs, which has to be made out in accordance with a statutory form and verified by affidavit (see **s. 235**); and for the purpose of investigating the company's affairs he may require the attendance of the persons furnishing the report to answer questions. A director refusing to make out a statement may be committed for disobedience.[14] This statement of affairs may also be required where a provisional liquidator has been appointed (**s. 235 (1)**) Of this statement, when complete, the official receiver prepares a summary for the information of creditors and contributories, appending to it observations of his own on the formation, management, etc., of the company, and,

[9] Rule 192 of 1948. See further, on the subject of costs, *Company Precedents*, Part II, 15th ed., pp. 675 *et seq.*
[10] *Re Ibo Investment Trust, Ltd.* [1903] 2 Ch. 373.
[11] *Re Consolidated South Rand Mines* [1909] W.N. 66; **s. 447, Appendix 1**, *post.*
[12] And see *Re John Reid & Sons* [1900] 2 Q.B. 634.
[13] See *Company Precedents*, Part II, 15th ed., pp. 135 *et seq.*
[13a] **S. 230.**
[14] *Re New Par Consols* [1898] 1 Q.B. 669.

as soon as practicable, submits his preliminary report to the court as to the causes of failure and the necessity for inquiry (s. 336). After the winding up has commenced, every invoice, order for goods or business letter must contain a statement that the company is in liquidation (s. 338).

Appointment of Liquidator

The court may appoint a liquidator (s. 237). It may appoint a provisional liquidator at any time after the presentation of the petition and may limit or restrict his powers (s. 238). On a winding-up order being made, the official receiver becomes liquidator and he must summon separate meetings of the creditors and contributories for the purpose of determining two preliminary questions:—

1. Whether they desire a liquidator of their own choosing in place of the official receiver as liquidator (s. 239), and
2. Whether there shall be a committee of inspection; and, if so, of whom it shall consist.[15]

Creditors must show that there is a debt due to them from the company before they can vote at this first meeting.[16] Voting may be in person or by proxy. A corporation may appoint a representative to vote at a meeting of creditors (s. 139).

The result of the wishes of the meetings on the points thus submitted to them is reported to the court, and the court fixes a day for considering such wishes, and, if it approves, giving effect to them. If there is a difference of opinion, the court is to decide (s. 239 (c)). Where a person other than the official receiver is appointed liquidator the court fixes his remuneration (s. 242). He must notify his appointment to the the Registrar of Companies, and give security to the satisfaction of the Board of Trade before he can act (s. 240).[17]

The official receiver then hands over the 'property' of the company to such liquidator.[18] The expression 'property' does not include notes and memoranda representing information obtained from officers of the company.[19]

A corporation cannot be appointed liquidator (s. 335).

Bribery.

Any person who gives or agrees or offers to give to any member or creditor of the company any valuable consideration with a view to securing his own appointment, or securing or preventing the appointment of someone else, is liable to a fine of £100 (s. 336).[20]

Duties and Powers of the Liquidator.

The liquidator's principal duties—speaking generally—are to take possession of and protect the assets, to make out the requisite lists of

[15] See *post*, p. 391.
[16] See Rules of 1949, r. 121 *et seq.*, and *Ex p. Ruffle* (1873) L.R. 8 Ch.App. 997, at p. 1001; *Re Newton* [1896] 2 Q.B. 403
[17] *Company Precedents*, Part II, 15th ed., p. 243.
[18] Companies Winding-up Rules, 1949, r. 166.
[19] *Re Lake George Mines, Ltd.* [1904] 1 Ch. 803.
[20] Re-enacting s. 101 (5) of 1947.

contributories and of creditors, to have disputed cases adjudicated upon, to realise the assets subject to the control of the committee of inspection (if any) in certain matters, and to apply the proceeds in payment of the company's debts and liabilities, in due course of administration, and, having done that, to divide the surplus amongst the contributories and to adjust their rights. But before he makes any such distribution he ought to take every means to satisfy himself that all creditors are paid, not only by advertising, but by writing to those creditors of whose existence he knows, and asking them if they have any claims against the company.[21] A liquidator has been held not to be justified in relying on the ordinary advertisements where he knows of a large number of possible claims against the company under the Workmen's Compensation Act not covered by insurance.[22] He must also be careful to provide, before distribution, for income tax due to the Crown.[23] As to payment of statute-barred debts, see *Re Fleetwood and District Syndicate*.[24]

The property of the company does not vest in the liquidator unless the court makes an order under **s. 244** vesting any of the property in him. Any proceedings necessary for the protection of the property are taken by the liquidator in the name of the company, unless the court has made a vesting order, in which case he can sue in his official name in respect of property vested in him by the order.

A number of his statutory powers—not, of course, exhaustive—are specified in **s. 245.** Some of these he can exercise only with the sanction of the court or of the committee of inspection, if any; others without such sanction. For instance, the liquidator may without any such sanction sell any property of the company, prove in the bankruptcy or insolvency of any contributory, accept and make bills of exchange or promissory notes on security of the assets, take out administration to a deceased contributory, execute deeds, receipts, and other documents, and do and execute all other things that may be necessary for winding up the affairs of the company and distributing its assets: but he cannot bring or defend actions or other legal proceedings, civil or criminal, or carry on the business of the company, or compromise with creditors or contributories under **s. 206** of the Act, or make calls,[25] or employ a solicitor, without the sanction of the court or of the committee of inspection, if any (see **s. 245**). The sanction required for the employment of a solicitor must be obtained before the employment, except in cases of urgency. A liquidator cannot, without the consent of the landlord, sell a lease where there is a covenant against assignment.[26]

Disclaimer.

By s. 267 of the Act of 1929, a new power was conferred upon the liquidator with the leave of the court to disclaim land burdened with

[21] *Pulsford* v. *Devenish* [1903] 2 Ch. 625.
[22] *Re Armstrong Whitworth Securities, Ltd.* [1947] Ch. 673.
[23] *Re New Zealand Joint Stock Corporation* (1907) 23 T.L.R. 238.
[24] [1915] 1 Ch. 486.
[25] *Re North Eastern Insurance Co.* [1915] W.N. 210.
[26] *Re Farrow's Bank* [1921] 2 Ch. 164.

covenants, stocks, shares, unprofitable contracts or other property which is unsaleable because of obligations attached to it.[27] The disclaimer extinguishes the rights, interests and liabilities of the company in the property disclaimed.

If a person interested in the property makes an application to the liquidator requiring him to decide whether he will disclaim, the liquidator cannot disclaim unless he has within twenty-eight days given notice to the applicant of his intention to apply to the court. The court may make various orders as to the vesting of the property and otherwise, and anyone damaged by the disclaimer may prove in the winding up.[28] This corresponds to the power of a trustee in bankruptcy.

The court will not allow disclaimer to the prejudice of other parties, *e.g.*, a landlord entitled to sue another party on a guarantee of the rent.[29]

Liquidation account.

A liquidator must pay all moneys received by him into the Companies' Liquidation Account at the Bank of England. If he retains for more than ten days a sum exceeding £50, he may be liable to pay interest at 20 per cent. (**s. 248 (2)**).[30]

But he may be allowed to have an account with any other bank if the committee of inspection satisfy the Board of Trade that it is desirable for the purposes of the liquidation.

Board of Trade Audit.

The Board of Trade's audit of the liquidator's accounts is provided for in **s. 249** of the Act.[31]

Position of Liquidator.

A liquidator is an agent employed for the purpose of winding up the company. In some respects he is a trustee; but he is not a trustee for each individual creditor.[32] In *Re Windsor Steam Coal Co.*,[33] Maugham J. held that a liquidator is not a trustee so as to be protected by ss 30 and 61 of the Trustee Act, 1925; but the Court of Appeal left this point undecided, holding that where a liquidator paid money to the wrong person by mistake, this was not 'any other loss' within s. 30.[34]

Garnishee order.

In *Lancaster Motor Co. (London), Ltd. v. Bremith, Ltd.*,[35] where judgment had been given against a company in liquidation for costs, the judgment creditors issued a garnishee summons against a balance of a banking account standing in the name of the liquidator. The Court of Appeal held that this could not be done, as the bank was not indebted

[27] See now **s. 323** of the Act of 1948.
[28] See **s. 325**, Appendix 1, *post*.
[29] *Re Katherine et Cie* [1932] 1 Ch. 70.
[30] See *Company Precedents*, Part II, 15th ed., p. 323 *et seq.*
[31] See **s. 249**, Appendix 1, *post*, and *Company Precedents*, Part II, 15th ed., p. 295
[32] *Knowles* v. *Scott* [1891] 1 Ch. 717, at p. 723.
[33] [1928] Ch. 609.
[34] [1929] 1 Ch. 151.
[35] [1941] 1 K.B. 675.

to the company. This decision is, however, contrary to a previous decision of the Court of Appeal,[36] and is difficult to understand. The money in the bank, though legally a debt due from the banker to the customer, was the company's money, the company being beneficially entitled to the debt, which had not been vested in the liquidator under **s. 254**, *infra*.

The liquidator is not prima facie personally liable on contracts made by him while carrying on the company's business with a view to its sale as a going concern.[37]

Vesting of Property in Liquidator.

By **s. 254** the court may direct that all or any of the property of the company shall vest in the liquidator. This gives him power to bring actions in his official name. This power was also conferred by s. 272 of the Act of 1908, but only by that part of the Act which applied to unregistered companies

Removal of Liquidator.

A liquidator may be removed by the court 'on cause shown' (**s. 242 (1)**). A liquidator was removed where he insisted on acting in the interests of shareholders only, though there was no reasonable prospect of paying the debts in full.[38]

An order for removal was refused where the applicant had no support from other creditors.[39]

Remuneration of Liquidator.

The remuneration of the liquidator is fixed by the court (**s. 242 (2)**). As to the rate of remuneration see *post*, p. 429.

The Committee of Inspection.

The creditors and contributories may, at their first meetings decide to have a committee of inspection (see **ss. 252, 253**). The committee consists of a joint body of creditors and contributories, and its function is to assist the liquidator and supervise his proceedings. It is to meet at such times as the committee from time to time may appoint and is to act by a majority. General meetings of creditors and contributories may be summoned by the liquidator, and if any conflict of opinion arises between such meetings and the committee of inspection, the liquidator is to follow the directions of the meetings in preference to those of the committee. The sanction of the committee, as an alternative to leave of the court, is necessary to the exercise by the liquidator of certain of his powers under **s. 245**. The liquidator should not obtain leave of the court ex parte to appoint a solicitor or take any similar step to which he knows the committee object.[41] The court, however, is by no means bound by the decision of the committee.[42]

[36] *Gerard* v. *Worth of Paris, Ltd.* (1936) 80 S.J. 633.
[37] *Stead, Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840.
[38] *Re Rubber and Produce Investment Trust* [1915] 1 Ch. 382.
[39] *Re Amalgamated Properties of Rhodesia* (1914) 30 T.L.R. 405.
[41] *Re Consolidated Diesel Engine* [1915] 1 Ch. 192.
[42] *Re North Eastern Insurance Co.* [1915] W.N. 210; 85 L.J.Ch. 751.

On a vacancy occurring the liquidator must summon a meeting of creditors or contributories to fill the vacancy, but if he thinks it is unnecessary, he may apply to the court for an order that the vacancy be not filled up (**s. 263 (7)**).[43]

The court may order the liquidator to summon a meeting with the view to reconstitute the committee of inspection so as more fairly to represent creditors.[44]

No member of the committee of inspection can become a purchaser of the company's assets either directly or indirectly, or derive any profit out of winding-up transactions or receive any remuneration without the sanction of the court. This sanction of the court must in all cases be obtained before the business is commenced from which the profit is derived; it cannot be given after.[45]

Contributories

An important part of a liquidator's duty in getting in the company's assets is to require payment by contributories of the amount, if any, uncalled on their shares in the company.

'Contributory' means every person liable to contribute to the assets of a company under the Act in the event of the company being wound up (see **s. 213**). The liability of a contributory is defined in **ss. 212** and **215**. For the purpose of enforcing this liability the liquidator makes out a list of the persons he claims to treat, or who are entitled to be treated, as contributories, and gives such persons notice that they are included in the list and for what amount, and that he proposes on a stated day to settle the list. On the day in question the liquidator hears any objections by contributories to their being included in the list, and after such hearing settles the list one way or the other finally, and notifies the contributories. Any person who considers himself aggrieved can apply to the court by originating summons to have his name removed from the list.

A fully-paid shareholder is a contributory for many purposes and should be put on the list, if there is anything to come to him.[46]

Settlement of list.

In a compulsory winding up the court settles the list of contributories; but it has power now to dispense with this where it will not be necessary to make calls or to adjust the rights of contributories (**s. 257 (1)**). The list of contributories is made out in two parts, A and B, in accordance with **s. 212**. The A contributories are the present members and are primarily liable.

The B contributories are the past members who have ceased to be members within a year preceding the winding up, and these are only liable to contribute after the A contributories are exhausted. That is to

[43] This power to apply to the court was first introduced by s. 95 (3) of the Act of 1947.
[44] *Re Radford and Bright, Ltd.* (*No.* 1) [1901] 1 Ch. 272; see also *Re Radford and Bright* (*No.* 2) [1901] 1 Ch. 735.
[45] *Ex p. Gallard* [1896] 1 Q.B. 68.
[46] *Re Aidall, Ltd.* [1933] Ch. 323.

say, a B contributory is not liable to contribute in respect of any debt of the company contracted after he ceased to be a member, nor unless the existing members are unable to satisfy the contributions required to be made by them, and he cannot be called upon to pay more than the amount, if any, which remains unpaid on the shares which he held.[47] Where the contributions of the contributories on the B list are more than enough to pay the debts incurred before they ceased to be members, the balance must be distributed between the B contributories.[48] The list distinguishes also between persons who are contributories in their own right and persons who are contributories as representatives of others. After a scheme of arrangement providing for partial payment of creditors and releasing present members of a portion of their liability, it would appear to be impossible to place anyone on the B list.[49]

Calls.

A call can be made on contributories by the liquidator, but only with the sanction of the committee of inspection, if there is one, and if there is not, of the court (**ss. 260** and **273** and Winding-up Rule 86). It is not necessary that debts or liabilities should be established against the company before a call can be made. 'Debts and liabilities' in **s. 260** mean estimated debts and liabilities.[50] In sanctioning a call the court may allow payment by instalments.[51] A call made in winding up is in the nature of a specialty debt.[52] Payment of a call is enforced by an order of the court made in chambers on summons by the liquidator. Such an order, called a 'balance order', is a summary statutory proceeding for the purpose of enabling the liquidator to get payment from a contributory in lieu of proceeding by action.[53] A balance order is not, however, a 'final judgment' which will found a bankruptcy notice against the contributory.[54] An action lies by the liquidator in the name of the company against a contributory for calls made before the winding up, notwithstanding that the liquidator has obtained a balance order in the winding up for payment of the same moneys under s. 260 of the Act.[55] Where a director has received, in breach of trust, a present of paid-up shares from the company's vendor, he may be made liable for misfeasance, but he cannot be made liable as a contributory for unpaid shares.[56] The same principle applies to arrears of calls on forfeited shares.[57]

[47] See **s. 212**, and *Helbert* v. *Banner* (1871) L.R. 5 H.L. 28; *Webb* v. *Whiffin* (1872) L.R. 5 H.L. 711, at p. 718; *Brett's Case* (1871) L.R. 6 Ch. 800; 8 Ch. 800; and *Morris's Case* (1871) L.R. 7 Ch. 200; L.R. 8 Ch. 800, at p. 810.
[48] *Re City of London Insurance Co* [1932] 1 Ch. 226.
[49] So held by Courthope Wilson V.-C. in the Chancery Court of Lancaster in *Re Belgrave Mills*, October 13, 1927.
[50] *Re Contract Corporation* (1866) L.R. 2 Ch. 95.
[51] *Re Law Guarantee Society* (1910) 26 T.L.R. 565.
[52] *Buck* v. *Robson* (1870) L.R. 10 Eq. 629; *Re Muggeridge* (1870) L.R. 10 Eq. 443.
[53] *Ex p. Whinney, re Sanders* (1884) 13 Q.B.D. 476.
[54] *Ibid.*
[55] *Westmoreland Green, etc., Slate Co.* v. *Feilden* [1891] 3 Ch. 15.
[56] *Carling's Case* (1875) 1 Ch.D. 115; *Re Innes & Co.* [1903] 2 Ch. 254.
[57] *Ladies' Dress Association, Ltd.* v. *Pulbrook* [1900] 2 Q.B. 376.

Adjusting Rights of Contributories

Subject to the payment of the creditors and of the costs of winding up, the assets in a winding up are distributable amongst the members or contributories in accordance with their rights and interests (**s. 302**). This rule applies even though the memorandum provides that no part of the assets is to be transferred to the members.[58] The uncalled capital is part of the assets.[59]

In the absence of any special provision in the memorandum or articles the assets available for distribution amongst the members, if sufficient or more than sufficient to pay off the whole of the paid-up capital, are to be applied first in paying off such paid-up capital, and the balance is to be distributed amongst the members or contributories in proportion to the nominal amount of the share capital held by them; but, if insufficient to do this, then such assets are distributable in such manner that the loss of capital which has been sustained may be thrown on the members in proportion to the *nominal* capital held by them respectively.[60] Prima facie, preference shares are not entitled to any preference in winding up.[61] Where shares are unequally paid up, a call to equalise must, unless the articles otherwise provide, be made,[62] and on the same principle, where shares have been issued at a discount, the amount credited by way of discount is to be treated as so much uncalled capital, and the rights are to be adjusted accordingly.[63] Sometimes the memorandum or articles contain express provisions as to the distribution of assets in winding up, *e.g.*, provide that the preference shares shall rank first, sometimes that the ordinary shares shall take the whole of the surplus. In default of any such special provisions the surplus is distributable among both classes of shareholders in proportion to the nominal amount of the shares held by them.[64] 'Surplus assets' in articles has no technical meaning.[65] It may mean the fund remaining in the hands of the liquidator after all claims of outside creditors and costs of winding up have been met[66], or it may mean what remains after payment also of the capital paid up on all classes of shares.[67] The meaning must in each case be determined by the context.[68]

Where the articles provide that losses are to be borne in proportion

[58] *Re Merchant Navy Supply Association, Ltd* [1947] W.N. 154.
[59] *Re Bridgwater Navigation Co.* (1889) 14 App.Cas. 525; *Welton* v. *Saffery* [1897] A.C. 299.
[60] *Ex p. Maude* (1870) L.R. 6 Ch.App. 51; *Re Driffield Gas Light Co.* [1898] 1 Ch. 451; *Re Anglo-Continental Corporation of Western Australia* [1898] 1 Ch. 327.
[61] *Re London India-Rubber Co.* (1867–8) L.R. 5 Eq. 519; *Welton* v. *Saffery*, *supra*, and *ante*, pp. 66, 67.
[62] *Ex p. Maude*, *supra*.
[63] *Welton* v. *Saffery*, *supra*.
[64] *Re Bridgwater Navigation Co.*, *ante*, pp. 66, 67; *Re Odessa Waterworks Co.* [1897] W.N. 166; *Re Mutoscope and Biograph Syndicate* [1899] 1 Ch. 896; *Re Crichton's Oil Co.* [1902] 2 Ch. 86.
[65] *Re New Transvaal Co.* [1896] 2 Ch. 750.
[66] *Re Crichton's Oil Co.* [1902] 2 Ch. 86.
[67] *Re Ramel Syndicate, Ltd.* [1911] 1 Ch. 749, *Re Dunstable Portland Cement Co.* (1932) 48 T.L.R. 223.
[68] *Re Bridgwater Navigation Co.* [1891] 2 Ch. 317; *Re Madame Tussaud & Sons, Ltd* [1927] 1 Ch. 657.

to capital paid up, no call can be made on shares not fully-paid for the benefit of the fully-paid shares.[69]

If a contributory dies, his personal representatives take his place and if he becomes bankrupt his trustee in bankruptcy represents him.[69a] Where the liquidator proves for calls in the bankruptcy of a shareholder, that does not make the shares paid-up for the purpose of participating in surplus assets.[70]

Capital paid up in advance of calls and interest thereon, must, as a rule, be repaid before distribution of capital paid up under calls.[71]

Creditors

The remedy of a creditor is solely against the incorporated company.[72] When the Legislature introduced the principle of limited liability, it set up, as Lord Cairns said,[73] the company, and the company alone, as that with which creditors or third persons could contract.

But creditors may have a claim in damages against a liquidator personally for breach of his statutory duty, if he has not used proper diligence to ascertain their claims before the company has been dissolved, and they have thus lost their remedy against it.[74]

The company's debts and liabilities are ascertained as they exist at the date of the winding-up order.[75] 'As the tree falls, so it must lie'.[76]

Creditors entitled to Prove

The debts for which creditors are entitled to prove are specified in **s. 316** of the Act. They include all debts payable on a contingency and all claims present and future, certain or contingent, ascertained or sounding only in damages and, where necessary, a just estimate is to be made of their value. But, where the company is insolvent, this is subject to the rules of bankruptcy as to debts provable. See **s. 317**, and s. 30 of the Bankruptcy Act, 1914, under which demands in the nature of unliquidated damages are not provable unless they arise by reason of a contract, promise or breach of trust. Subject to this limitation, every kind of liability, however difficult of valuation, is provable unless declared by the court incapable of being fairly estimated,[77] the object of the Act being 'to put all unsecured creditors upon an equality, and to pay them pari passu'.[78] Accordingly, not only creditors to whom the company is indebted in sums presently due can prove, but also creditors whose debts are not yet due, and not only creditors but persons who have any claim or who may have any claim against the company, *e.g.*, a person who has

[69] *Re Kinatan (Borneo) Rubber, Ltd.* [1923] 1 Ch. 124 [69a] **Ss. 315, 316.**
[70] *Re West Coast Goldfields* [1906] 1 Ch. 1.
[71] *Re Wakefield Rolling Stock Co.* [1892] 3 Ch. 165. See further, *Company Precedents*, Part II, 15th ed., p. 561 *et seq.*
[72] *Oakes* v. *Turquand* (1867) L.R. 2 H.L. 325, at p. 357.
[73] *Re Reese River Mining Co.* (1867) L.R. 2 Ch.App. 604, at p. 616.
[74] *Pulsford* v. *Devenish* [1903] 2 Ch. 625; *Argyll's, Ltd.* v. *Coxeter* (1913) 29 T.L.R. 355.
[75] *Re General Rolling Stock Co.* (1872) 20 W.R. 762.
[76] *Warrant Finance Co.'s Case* (1869) L.R. 4 Ch.App. 643, at p. 647; *Emmerson's Case* (1866) L.R. 2 Eq. 231, at p. 236; *Re W. W. Duncan & Co.* [1905] 1 Ch. 307.
[77] *Hardy* v. *Fothergill* (1888) 13 App.Cas. 351.
[78] *Per* Lindley L.J., *Re Oak Pitts Colliery Co.* (1882) 21 Ch.D. 322, at p. 329.

a claim for damages for breach of contract,[79] or for the determination of a contract, *e.g.*, a policy of insurance, by the company's going into liquidation, or a passenger on a tramcar claiming damages for injuries under the company's contract of carriage.[80] Any liability, in fact, of the company existing at the commencement of the winding up may be proved, and not merely debts due at the commencement of the winding up.[81]

Landlord.

A landlord can prove in a winding up by the court[82] for damages for breach of a covenant not to assign a lease, but not in the case of an unregistered society where the assets vest in the liquidator.[83] As a general rule, no claim can be made for loss of commission due to winding up, unless the failure to earn the commission has been due to the wilful act of the company.[84]

Foreign exchange.

The date fixing the rate of exchange is the date when the breach occurred or when payment became due, and not the date of the commencement of the winding up.[85]

Mode of Proving

The court fixes a certain day within which creditors of the company are to prove their debts or claims (**s. 264**). A debt may be proved by delivering or sending through the post in a prepaid letter to the liquidator an affidavit in the statutory form verifying the debt.[86] A creditor may come in and prove at any time before final distribution of the assets, but he cannot disturb any dividend already paid.[87] The liquidator examines every proof tendered, and notifies the person tendering it either that he admits it or rejects the proof in whole or in part, or requires further evidence.[88] A creditor is, by the Winding-up Rules, to bear the cost of proving his debt unless the court otherwise orders A mortgagee cannot prove for mortgagee's costs on the winding up of the company which guaranteed the mortgage.[89] Where a solicitor proves for costs due before winding up, the costs may be taxed in the winding up.[90]

Set-off

By **s. 317** of the Act, in the winding up of an insolvent company the bankruptcy rules apply as regards the rights of secured and unsecured

[79] *Re Vic Mill, Ltd.* [1913] 1 Ch. 456.
[80] *Re Great Orme Tramways* (1934) 50 T.L.R. 450.
[81] See *Macfarlane's Claim* (1880) 17 Ch.D. 337, at p. 339; *Re Printing Co.* (1878) 8 Ch.D. 535, at p. 538; *Re Albion Steel Co.* (1878) 7 Ch.D. 547.
[82] *Re Farrow's Bank, Ltd.* [1921] 2 Ch 164.
[83] And see Landlord, *post*, p. 402; *Re Birkbeck Building Society* [1913] 2 Ch., at p. 38.
[84] *Re R. S. Newman, Ltd.* [1916] 2 Ch. 309, at p. 322.
[85] *Re British, American and Continental Bank* [1922] 2 Ch. 575, 589; [1923] 1 Ch. 276.
[86] Winding-up Rules, 1949, r. 92.
[87] *Re General Rolling Stock Co.* (1872) L.R. 7 Ch. 646; *Hicks* v. *May*, 13 Ch.D. 236.
[88] Winding-up Rules, 1949, rr. 91–118.
[89] *Re Law Guarantee Trust* (1913) 108 L.T. 830.
[90] *Re Palace Restaurants, Ltd.* [1914] 1 Ch. 492; and see *Company Precedents*, Part II, 15th ed., p. 341.

creditors, debts provable, valuation of annuities and future and contingent liabilities. This section incorporates into the winding up of companies s. 31 of the Bankruptcy Act, 1914, which allows set-off where there have been mutual credits, mutual debts or other mutual dealings. Where, therefore, at the commencement of the winding up A has a money claim against the company, and the company has a money claim against A, one claim can be set off against the other.[1]

Money held for a specific purpose cannot be set off.[2]

Set-off as regards creditors.

In the case of an insolvent company where there are mutual debts and credits, or mutual dealings between the company and any other person, an account, as in bankruptcy, is to be made out, and the balance only proved for.[3] But this rule only applies where the cross-claims are 'commensurable'.[4]

A surety cannot set off his contingent liability unless the principal creditor has waived his right of proof.[5]

A contributory in a limited company who is also a creditor of the company cannot on a winding up set off his debt against a call made on him by the liquidator[6] until all the creditors have been paid in full (**s. 259 (3)**); and this is so though in an action by the company, before winding up, to enforce the call the shareholder has obtained unconditional leave to defend under Order XIV[7]; or though the company has agreed that there shall be such a set-off.[8] And the liquidator cannot set off a debt due to the company from a *deceased* insolvent contributory against the amount due to the contributory in the liquidation.[9] The principle is that where a person entitled to participate in a fund is also bound to make a contribution in aid of that fund, he cannot be allowed to participate until he has fulfilled his duty to contribute[10]; and where the question of set-off arises in respect of the estate of a deceased debtor, the 'mutual dealings' section does not apply, since there were no mutual dealings between the company and his estate.[11]

The liquidator cannot set off a sum due from a firm in which the contributory was a member against a debt due to the contributory alone.[12]

Where two companies were indebted to one another and were both

[1] *Sovereign Life Assurance Co.* v. *Dodd* [1892] 2 Q.B. 573, at p. 578; *Re H. E. Thorne & Sons, Ltd.* [1914] 2 Ch. 438.
[2] *Re City Equitable Fire Insurance Co.* [1930] 2 Ch. 293.
[3] *Mersey Steel Co.* v. *Naylor* (1884) 9 App.Cas. 434; *Company Precedents*, Part II, 15th ed., p. 463 *et seq.*
[4] *Eberle's Hotels, etc., Co.* v. *Jonas* (1887) 18 Q.B.D. 459; *Re Mid-Kent Fruit Factory* [1896] 1 Ch. 567; *Re Auriferous Properties, Ltd. (No. 1)* [1898] 1 Ch. 691; *Re Leeds and Hanley Co.* [1904] 2 Ch. 45.
[5] *Re Fenton* [1931] 1 Ch. 85.
[6] *Grissell's Case* (1866) L.R. 1 Ch. 528; *Gill's Case* (1879) 12 Ch.D. 755.
[7] *Re Hiram Maxim Lamp Co.* [1903] 1 Ch. 70; *Alliance Film Corporation* v. *Knoles* (1927) 43 T.L.R. 678.
[8] *Re Law, Car and General Corporation* [1912] 1 Ch. 405.
[9] *Re Peruvian Railway Construction Co.* [1915] 2 Ch. 144.
[10] *Ibid.* at p. 150.
[11] *S.C.*, and see *Re H. E. Thorne & Sons, Ltd.* [1914] 2 Ch. 438.
[12] *Re Pennington & Owen, Ltd.* [1925] Ch. 825.

insolvent and in liquidation, the liquidator of each company was given liberty to distribute its available assets among the other creditors without regard to the claim of the other company.[13]

Payment Pari Passu

All debts due to unsecured creditors must be paid pari passu and equally.[14] Judgment creditors have no priority.[15] The Crown has no prerogative to be paid first and in full out of the assets of a company which is being wound up.[16] This is the general rule, but it has now numerous and important exceptions.

Preferential Payments

By statutory provisions passed from time to time, certain debts have been given priority in the case of a winding up. These are now codified in **s. 319** of the Act of 1948, which (incorporating amendments introduced by s. 91 of 1947) provides as follows:—

319.—(1) In a winding up there shall be paid in priority to all other debts

(*a*) the following rates and taxes,—

(i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;

(ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes 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;

(iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;

(*b*) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;

(*c*) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date;

(*d*) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;

(*e*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946;

[13] *Re National Live Stock Co.* [1917] 1 Ch. 628.
[14] *Black & Co.'s Case* (1872) L.R. 8 Ch.App. 254, at p. 262.
[15] *Re Leinster Contract Corp.* [1903] 1 Ir.R. 517.
[16] *Re H. J. Webb & Co.* [1922] 2 Ch. 369; affirmed, *sub nom.*, *Food Controller* v. *Cork* [1923] A.C. 647.

(*f*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section seven of the Workmen's Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say, the day appointed for the purposes of the National Insurance (Industrial Injuries) Act 1946);

(*g*) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.

(2) Notwithstanding anything in paragraphs (*b*) and (*c*) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds:

Provided that where a claimant under the said paragraph (*b*) is a labourer in husbandry who 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 relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*f*) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made—

(*a*) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(*b*) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) 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, 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.

(6) 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, and in the case of the debts to which priority is given by paragraph (*c*) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(7) 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.

(8) For the purposes of this section—

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period,

(b) the expression 'accrued holiday remuneration' includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

(c) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period, and

(d) the expression 'the relevant date' means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company

(9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.

For the purposes of this section an amended rate is payable when amended and not before.[17] A director who pays the rates under a guarantee can stand in the place of the principal creditor and claim preferential payment.[18] In *Re Lang Propeller, Ltd*,[19] it was held that there was no priority for income tax where a company had paid interest on debentures less tax, but had not paid the tax to the Commissioners, on the ground that the company had not been assessed, but now, by s 26 of the Finance Act, 1927, the company can be assessed. 'Assessed taxes' included corporation profits tax.[20] The assessment need not be made before the 'relevant date'.[21] Salary includes salary by way of commission.[22] A secretary of a company who devotes himself exclusively to

[17] *Kershaw, Leese & Co.* v *Stockport* [1923] 2 K.B. 129.
[18] *Re Lamplugh Iron Ore Co., Ltd.* [1927] 1 Ch. 308.
[19] [1927] 1 Ch. 120.
[20] *Re Winget, Ltd.* [1924] 1 Ch. 550.
[21] *Gowers* v. *Walker* [1930] 1 Ch. 262.
[22] *Re Earle's Shipbuilding Co.* [1901] W.N. 78; *Re Klein* [1906] W.N. 148.

the business thereof may be a clerk or servant within the section,[23] or a director employed as editor of a paper.[24] Not so a managing director,[25] nor the contributors to a paper.[26] As to the meaning of 'officer or servant', see also *Openshaw* v. *Fletcher*.[27] Under the Act of 1908, the amount payable under the Workmen's Compensation Act as a preferential payment was limited to £100; but this limit was removed in 1923.[28] See also, as to workmen's compensation claims, *Re Pethick, Dix & Co.*[29] and *Re Renishaw Iron Co.*[30] See also **s. 359** of the Act of 1948 as to club funds. As to priorities between rates and costs, see *Corporation of Westminster* v. *Chapman*.[31]

Secured Creditors

A secured creditor is one who has some mortgage, charge or lien on the company's property.

An execution creditor who has seized before the commencement of a winding up has been held to be a secured creditor[32]; but he may now be deprived of his security under **s. 325**,[33] unless the sheriff has sold. He is not a secured creditor if he has merely delivered the writ of *fi. fa.* to the sheriff.[34]

A solicitor who holds a lien on documents of a liquidating company for his costs against the company is a secured creditor, and must mention his lien in his proof.[35]

A creditor who has obtained the appointment of a receiver of land by way of equitable execution is also a secured creditor.[36]

Landlord.

A landlord is not a secured creditor because he has a power of distress[37]; nor is a creditor of a company who has obtained a garnishee order nisi attaching a debt due to the company but has not served it on the debtor before a winding up.[38] But the attachment of a debt due to a company by the service of a garnishee order nisi before the filing of a petition to wind up the company constitutes the garnishor a secured creditor with priority over the liquidator.[39]

A secured creditor has several alternatives:—

1. He may rest on his security and not prove.

[23] *Cairney* v. *Back* [1906] 2 K.B. 746.
[24] *Re Beeton & Co., Ltd.* [1913] 2 Ch. 279.
[25] *Re Newspaper Proprietary Syndicate* [1900] 2 Ch. 349.
[26] *Re Beeton & Co., ubi sup.*; *Ashley* v. *Smith, Ltd.* [1918] 2 Ch. 378; *Re G. H. Morison & Co., Ltd.* (1912) 106 L.T. 731 (chemist's assistant).
[27] (1916) 32 T.L.R. 372.
[28] *Re Clemmons Aluminium Co.* (1924) 41 T.L.R. 138.
[29] [1915] 1 Ch. 26.
[30] [1917] 1 Ch. 199.
[31] [1916] 1 Ch. 161.
[32] *Re Printing and Numerical Registering Co.* (1878) 8 Ch.D. 535, at p. 538.
[33] See *post*, p. 405.
[34] *Ex p. Nelson* (1880) 14 Ch.D. 41, at p. 45.
[35] *Re Safety Explosives, Ltd* [1904] 1 Ch. 226.
[36] *Anglo-Italian Bank* v. *Davies* (1878) 9 Ch.D. 275.
[37] *Thomas* v. *Patent Lionite Co.* (1881) 17 Ch.D. 250, at p. 257; *Re Coal Consumers' Association* (1876) 4 Ch.D. 625, at p. 629; and see **s. 319.**
[38] *Re Stanhope Silkstone Collieries Co.* (1879) 11 Ch.D. 160.
[39] *Re National United Investment Corp.* [1901] 1 Ch. 950.

2. He may realise his security and prove for the deficiency.
3. He may value it and prove for the deficiency after deduction of the assessed value, in which case the liquidator may redeem at such assessed value.
4. He may surrender his security and prove for the whole debt.[40]

If a creditor values his security, he cannot prove for more than the balance, though the security realises less than his valuation.[41] If he wilfully omits to mention his security in his proof, he will not generally be allowed to amend.[42]

Landlord

Re-entry.

If the lease contains a power of re-entry, the landlord may apply for liberty to re-enter, and the court will give him liberty to do so without putting him to the trouble of bringing an action.[43] Where the property is of greater value than the rent due, such an application in effect may compel the payment of the rent in full.

If the landlord re-enters, the liquidator cannot set off any benefit which the landlord obtains by the termination of the lease against the company's liability on the repairing covenants.[44]

The provisions of s. 146 of the Law of Property Act, 1925, placing restrictions on the right of the landlord to exercise his right of re-entry and giving the tenant a right to apply for relief apply within one year from the commencement of the liquidation.[45] Relief may be granted if proceedings are commenced within the year, though the order is not made until after the end of the year.[46]

Distress for rent due before winding up.

After the commencement of a winding up a distress is, by **s. 228,** declared to be void; and, if a landlord threatens to levy or proceeds to levy a distress for rent accrued before the commencement of the winding up, the court will restrain him. He will be left, like other creditors, to his right of proof.[47]

For rent accrued after winding up.

As regards rent accrued after the commencement of the winding up, the landlord claiming a right to distrain should apply for liberty to distrain, and the court will give him such liberty, or direct the payment of the rent, where it is shown that possession has been retained for the benefit of the winding up.[48]

[40] Bankruptcy Act, 1914, s. 7 (2), and Schedule II, Rules 10 to 18, made applicable to winding up by **s. 317** of the Act of 1948 (replacing Judicature Act, 1875, s. 10); *Re Withernsea Brick Works* (1880) 16 Ch.D. 337.
[41] *Williams* v. *Hopkins* (1881) 18 Ch.D. 370.
[42] *Re Safety Explosives* [1904] 1 Ch. 226.
[43] *General Share Trust* v. *Wetley Brick Co.* (1882) 20 Ch.D. 266.
[44] *Hanson* v. *Newman* [1934] 1 Ch. 298.
[45] Law of Property Act, s. 146 (10).
[46] *Pearson* v. *Gee and Braceborough, Ltd.* [1934] W.N. 66.
[47] See *Re Oak Pitts Colliery Co.* (1882) 21 Ch.D. 322, and the cases there cited.
[48] *Re Lundy Granite Co.* (1871) L.R. 6 Ch. 462; *Re North Yorkshire Iron Co.* (1878) 7 Ch.D. 661; and see proviso to rule 99, Winding-up Rules, 1949.

Where there is no privity between the company and the landlord (*e.g.*, where the company is sub-lessee or mortgagee by deposit), and the landlord has therefore no right of proof, he will not be restrained from distraining.[49]

Liberty to distrain will not be given where possession has been retained, with the acquiescence of the landlord, for the benefit of all parties.[50]

Similar rules apply where a mortgagee asks for liberty to distrain for interest [51]; but a mortgagee does not occupy a position so favourable as that of a landlord.[52]

Proof for rent.

The lessor can prove for rent due up to the date of the commencement of the liquidation, and he can also prove for the rent as it accrues due after the commencement of the liquidation.[53]

If the liquidator takes possession or continues in possession of leaseholds for the purpose of the better realisation of the assets, the lessor will be entitled to payment of the rent in full as part of the expenses properly incurred by the liquidator [54]; and in such a case the liquidator becomes responsible for the repairs and must perform all the obligations of the lease.[55]

A solvent company will not be permitted in winding up to distribute its assets among the shareholders without regard to the landlord's right to future rent.[56]

In the case of an insolvent company a landlord could not, before s. 10 of the Judicature Act, 1875, prove for future rent, and could only enter a claim for the amount,[57] and the existence of such claim did not prevent the distribution of the assets among the creditors regardless of such claim.[58] And it was held in 1895 [59] that this conclusion was still good law.

In a later case, however, it was held by Sir Robert Romer that the court should assist a landlord desiring to prove at once for his loss on the footing of his lease being treated as determined; and that the old cases required reconsideration.[60]

[49] *Re Lundy Granite Co, supra*; *Re Regent United Service Stores* (1878) 8 Ch.D. 616; *Re Carriage Co-operative, etc., Assocn.* (1883) 23 Ch.D. 151.
[50] *Re Progress Assurance Co.* (1870) L.R. 9 Eq. 370; *Re Bridgewater Engineering Co.* (1879) 12 Ch.D. 181; *Re Lancashire Cotton Co* (1887) 35 Ch.D. 656.
[51] *Re Brown, Bayley and Dixon, Ltd.* (1881) 18 Ch.D. 619.
[52] *Re Higginshaw Mills and Spinning Co* [1896] 2 Ch. 544
[53] *Re Oak Pitts Colliery* (1882) 21 Ch.D. 322; *Re New Oriental Bank Corpn* (*No.* 2) [1895] 1 Ch. 753.
[54] *Re Oak Pitts Colliery* (1882) 21 Ch.D. 322; *Re Lundy Granite Co* (1871) L.R. 6 Ch. 462.
[55] *Re Silkstone and Dodworth Co.* (1881) 17 Ch.D. 158; *Re National Arms, etc., Co.* (1885) 28 Ch.D. 474 (rates); *Re Lert & Co.* [1919] 1 Ch. 416 (repairs).
[56] *Gooch* v. *London Banking Assocn.* (1885-6) 32 Ch.D. 41; *Lord Elphinstone* v. *Monkland Co.* (1886) 11 App.Cas. 332; *Oppenheimer* v. *British and Foreign Bank* (1877) 6 Ch.D. 744 (where a fund was required to be set apart).
[57] *Re Haytor Granite Co.* (1865) L.R. 1 Ch.App. 77.
[58] *Re London and Colonial Co., Horsey's Claim* (1868) L.R. 5 Eq. 561.
[59] *Re New Oriental Bank Corporation (No. 2)* [1895] 1 Ch. 753.
[60] *Re Panther Lead Co.* [1896] 1 Ch. 978.

Disclaimer.

The liquidator may (since 1929) with leave of the court, disclaim the lease,[61] and the landlord can then prove for the damage he has sustained.

The measure of damages is the probable loss to the landlord, *viz.*, the difference between the present value of the amount which should have been paid by the company for rent, repairs, etc., and the present value of the rent which the landlord is likely to obtain during the unexpired period of the lease.[62]

A sheriff who seizes goods under a *fi. fa.* prior to a winding-up order should proceed with the execution under the Landlord and Tenant Act, 1709, and pay to the landlord up to one year's arrears of rent notwithstanding a subsequent winding-up order.[63]

Interest

When a company has been ordered to be wound up, the interest upon debts which carry interest ceases to run from the date of the winding-up order, unless the assets are enough to pay all debts in full.[64]

Rule 98 of the Winding-up Rules, 1948, specifies certain cases in which interest may be proved for.

If by the course of dealing between the company and the creditor there is an implied contract to pay interest, the creditor is entitled to interest on admitted debts down to the date of paying the final dividend, provided there are surplus assets.[65]

Interest continues to run on secured debts so far as the security is sufficient to cover both capital and interest; but as to proof for interest, see *ante*, pp. 320, 321.

Staying Proceedings

'The object of the winding-up provisions of the Companies Act, 1862,' said Lindley L.J., in *Re Oak Pitts Colliery Co.*,[66] 'is to put all unsecured creditors upon an equality and to pay them pari passu'. To accomplish this it was indispensable that proceedings against the company by way of action, execution, distress or other process should be suspended; otherwise the winding up would resolve itself into a scramble for the assets. Accordingly the Act of 1862 gave the court jurisdiction in various cases to restrain proceedings. Section 24 (5) of the Judicature Act, 1873, modified these provisions to some extent by providing that no proceeding in the High Court can be restrained by injunction, but this did not alter in substance the jurisdiction. Now by **s. 226** of the Act of 1948 the court can, after presentation of the petition, restrain proceedings, and by **ss. 227** and **231**, on a winding-up order being made, or a provisional liquidator appointed, proceedings are automatically stayed and cannot be proceeded with without leave of the court. In this way creditors and

[61] **S. 323.**
[62] *Ex p. Blake* (1879) 11 Ch.D. 572; *Ex p. Llynvi Coal Co.* (1871) L.R. 7 Ch.App. 28.
[63] *Re British Salicylates, Ltd.* [1919] 2 Ch. 155.
[64] *Re Humber Ironworks Co., Warrant Finance Co.'s Case* (1869) L.R. 4 Ch.App. 643, at p. 647; *Hughes' Claim* (1872) L.R. 13 Eq. 623; conf. *Ex p. Ador* [1891] 2 Q.B. 574.
[65] *Re W. W. Duncan & Co.* [1905] 1 Ch. 307.
[66] (1882) 21 Ch.D. 322, at p. 329.

others are compelled to come in and prove their claims in the winding up, and a rateable and just distribution of the company's assets is effected.[67] The court can also, in a voluntary winding up on application under **s. 307**, restrain executions and other proceedings.[68] Where the petition stands over with a view to the adoption of a scheme of arrangement, the court will restrain proceedings unless good reason to the contrary is shown.[69] All that is necessary, where an action is pending against the company in the High Court, is to apply to the particular branch of the court in which it is pending for an order to stay proceedings.[70] As regards inferior courts injunctions can be granted. This is, generally speaking, only necessary where a winding-up petition is pending (**s. 226**). Where a winding-up order has been made, the combined effect of **ss. 231** and **227** is that such order operates automatically as a stay of all actions, executions, distresses, sequestrations, etc., against the company, subject to the discretion of the court to allow such actions, executions, etc., to *proceed notwithstanding the winding up.*[71] Thus, a distress levied before winding up will not be restrained, even though it be for rent in advance[72]; but a distress may be restrained where the preferential debts will exhaust the assets.[73] **Section 231** does not apply to proceedings in a foreign country.[74]

Execution Creditors

The restrictions on the right of an execution creditor to retain the benefit of his execution are now defined by **s. 325** of the Act of 1948. By this section he cannot retain the benefit of an execution against the liquidator unless he has completed the execution before the commencement of the winding up and before he had notice of a meeting to consider resolutions for winding up.

Completing his execution means seizure *and* sale in the case of goods, receipt of a debt in case of attachment of the debt, seizure in case of land, and the appointment of a receiver in case of an equitable interest.

A person who purchases goods from a sheriff in good faith is, however, protected.

Where a sheriff has seized goods, he is bound to hand them over to the liquidator, if a notice is served on him of a winding-up order or the appointment of a provisional liquidator or the passing of a resolution to wind up (**s. 326**), and where the judgment exceeds £20 the sheriff must retain any money received (subject to deduction of costs) for fourteen days and hand it over to the liquidator in case of a winding up.[74a] The

[67] *Re International Pulp Co.* (1876) 3 Ch.D. 598. See further, *Company Precedents*, Part II, 15th ed., p. 388 *et seq.*
[68] *Anglo-Baltic, etc., Bank* v. *Barber & Co.* [1924] 2 K.B. 410. See *Company Precedents*, Part II, 15th ed., p. 772
[69] *Bowkett* v. *Fuller's United Electric Works* [1923] 1 K.B. 160.
[70] *Re Artistic Colour, etc., Co.* (1880) 14 Ch.D. 502; *Re General Service Co-operative Stores* [1891] 1 Ch 496.
[71] *Re Vron Colliery Co.* (1882) 20 Ch.D. 446.
[72] *Venner's Electrical, etc., Appliances* v. *Thorpe* [1915] 2 Ch. 404.
[73] *Re South Rhondda Colliery Co.* [1928] W.N. 126.
[74] *Re Vocalion (Foreign), Ltd.* [1932] 2 Ch. 196.
[74a] See **s. 326** and new r. 23 of 1949.

court has now power to set aside the rights of the liquidator under these sections, if it thinks fit.[76]

The costs of execution, which are by the section made a first charge, do not include the creditor's costs of issuing his writ and serving the *fi. fa.*[76]

Third Party Insurance

When a company which is being wound up is insured against liabilities to third parties, and a liability is incurred by the company to such a third party, the company's rights against the insurer are transferred to the third party.[77]

Section 1 of the Third Party (Rights Against Insurers) Act, 1930, is not retrospective.[78]

Dispositions and Transfers after Winding Up

By **s. 227**:—

In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void. The court has declined to sanction a sale by a company after the presentation of a winding-up petition, while the petition was standing over, though it was supported by the debenture holders.[79]

As to transfers, see *ante*, p. 116.

Where preference shareholders had a right to convert their shares into ordinary shares, a notice given before the winding up was held to take effect after the winding up.[80]

Debentures issued after the presentation of a petition for the purpose of paying wages were held to be good.[81]

Liberty to Proceed

The power of the court to allow actions and other proceedings to be brought, taken, or proceeded with, notwithstanding a winding-up order (**s. 226**), is often exercised. Thus secured creditors are, as a matter of course, given liberty to proceed with any action for enforcing their securities.[82] So, too, liberty to proceed is often given where outsiders are involved in some dispute with the company, and it is desirable that the dispute should be decided in an action by the ordinary tribunals: for instance, in the case of an action against the company for damages under Lord Campbell's Act[83]; or for specific performance[84]; or for trespass[85];

[75] S. 96 (4) of the Act of 1917, re enacted in **ss. 325 (1) (c)** and **326 (3)** of 1948.
[76] *Re Woods (Bristol), Ltd.* [1931] 2 Ch. 320.
[77] Third Party (Rights Against Insurers) Act, 1930, s. 1 (overruling *Re Harrington Motor Co* [1928] Ch. 105), and see Workmen's Compensation Act, 1925, s. 7.
[78] *Ward* v. *British Oak Insurance Co.* [1932] 1 K.B. 392.
[79] *Re Miles Aircraft, Ltd.* [1948] 1 All E.R. 225.
[80] *Re Blaina Colliery* [1926] W.N. 30.
[81] *Re Park, Ward & Co., Ltd.* [1926] Ch. 828.
[82] *Lloyd* v. *Lloyd & Co.* (1877) 6 Ch.D. 339.
[83] *Re Thurso New Gas Co.* (1889) 42 Ch.D. 491.
[84] *Thames Plate Glass Co.* v. *Land, etc., Co.* (1870) L.R. 11 Eq. 248.
[85] *Wyley* v. *Exhall Coal, etc., Co.* (1864) 33 Beav. 538.

or to proceed with an execution, where execution was delayed by a trick[86]; or to bring a new action for the purpose of obtaining the fruits of an earlier action.[87] The leave must not be given on an ex parte application.[88]

Costs.

Costs of unsuccessful litigation by the liquidator are payable first out of the company's assets.[89] As to costs of arbitration, see *Van den Hurk* v. *R. Martens & Co.* (in liquidation).[90] Proceedings against a company in liquidation may be transferred to the Chancery Division and assigned to the Company Judge[91] even though other parties are concerned.[92]

Wishes of Creditors and Contributories

The court should have regard to these (see **s. 346**).[93] This rule is not affected by **s. 310**, which enables a creditor to apply for a winding up order notwithstanding that a voluntary winding up has commenced.[94]

Compromises

Under **s. 245 (1) (e)** the court has a wide power of sanctioning compromises with creditors and contributories, and this power is frequently exercised. As to compromises with creditors under **s. 206**, see Arrangements, *post*, p. 439.

A conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void (**s. 320 (2)**) This has been held to include a floating charge over all the assets of a company for the benefit of all its creditors.[95]

Fraudulent and Undue Preference

Section 268 of the Act of 1929 introduced into the liquidation of companies the provisions of the Bankruptcy Act, 1914, as to fraudulent preference. These were amended as applying to companies by the Act of 1947, and **s. 320**, of the Act of 1948, now provides as follows:—

320.—(1) Any conveyance, mortgage, delivery of goods, payment, execution

[86] *Armorduct, etc., Co.* v *General Incandescent Co.* [1911] 2 K.B 143, a voluntary liquidation

[87] *Re National Provincial Insurance, etc., Co* (1912) 56 S.J. 290 *McEwen* v. *London, Bombay and Mediterranean Bank* (1867) 15 W.R 245; *Re Marine Investment Co* (1868) 17 L.T. 535; *Re Strand Hotel Co* [1868] W.N. 2, are other examples.

[88] *Western and Brazilian Telegraph Co.* v. *Bibby* (1880) 42 L.T. 821

[89] *Re Wenborn & Co.* [1905] 1 Ch. 413; *Re Pacific Coast Syndicate* [1913] 2 Ch. 26.

[90] [1920] 1 K.B. 850.

[91] Winding-up Rule 41.

[92] *Re Pacaya Rubber, etc., Co.* [1913] 1 Ch. 218. See further, *Company Precedents*, Part II, 15th ed., pp. 400 *et seq.*

[93] *Re Western of Canada Oil Lands and Works Co* (1873) L.R. 17 Eq. 5; *Re Chapel House Colliery Co.* (1883) 24 Ch D. 259; *Re West Hartlepool Ironworks Co.* (1875) L.R. 10 Ch.App. 618; *Re Great Western Forest of Dean Coal Consumers Co.* (1882) 21 Ch.D. 773; *Re Langham Skating Rink Co* (1877) 5 Ch.D. 669 *Re Suburban Hotel Co.* (1867) L.R. 2 Ch App. 737, and *ante*, p. 385.

[94] *Re Home Remedies, Ltd.* [1918] Ch 1 See further, *Company Precedents*, Part II, 15th ed., pp. 109 *et seq.*

[95] *London Joint, etc., Bank* v. *Herbert Dickinson* [1922] W.N. 13.

or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made or done before the commencement of this Act, this subsection shall have effect with the substitution, for references to six months, of references to three months.

(2) 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.

To found a case of fraudulent preference, it must appear that the transaction took place within six months[96] of the commencement of the winding up, also that the dominant motive in the mind of the company, acting by its directors, was to prefer the creditor.[98] If the payment, etc., was made by the directors with a view to shielding themselves from civil or criminal proceedings, this is not a fraudulent preference.[99]

Where the company did not oppose an application to the court to extend the time for registration of a charge, this was held by Eve J. to be a judicial proceeding within the section; but the decision was overruled on other grounds.[1] The last named case indicated that a fraudulent preference cannot be inferred from facts which raise a suspicion of fraud, if there is some other explanation of the transaction which indicates some motive other than fraud; but it has since been held by the Court of Appeal that there is no difference in law between the evidence from which an inference may be drawn of an intention to prefer and that supporting an inference of any other fact.[2]

In *Re Stenotyper, Ltd.*,[3] it was held that the rule did not apply if the payment was made with a view to giving a surety or a guarantor a preference, but this is now within s. 44 (1) of the Bankruptcy Act, 1914, and the amount paid can be recovered from the guarantor or surety, but not if the dominant motive was to draw the guarantor into further liability.[4] By **s. 321 (3)** of the Act of 1948,[5] where any person becomes liable under this section to repay money paid to him in satisfaction of a debt from the company to him on the grounds that the payment was a fraudulent preference of any surety or guarantor, powers are given to the court to determine questions arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof.

[96] Formerly three months.
[98] *Re Jackson and Bassford* [1906] 2 Ch. 467 (where the company agreed to issue a debenture to Jackson, who had guaranteed the company's overdraft but delayed issuing the debenture until the eve of insolvency.
[99] *Re Blackpool Motor Car Co.* [1901] 1 Ch. 77; *Re W. Blackburn & Co.* [1899] 2 Ch. 725; *Re Jackson and Bassford* [1906] 2 Ch. 467; but see s. 44 (1) of the Bankruptcy Act, 1914.
[1] *Re M.I.G. Trust, Ltd.* [1933] Ch. 542; *Peat* v. *Gresham Trusts, Ltd.* [1934] A.C. 252
[2] *Re M. Kushler, Ltd.* [1943] Ch. 248.
[3] [1901] 1 Ch. 250.
[4] *Re G. Stanley & Co.* [1925] Ch. 148.
[5] Re-enacting s. 92 (4) of the Act of 1947.

By s. 321 (1) [6] where a transaction is void as a fraudulent preference of a person whose property is mortgaged or charged to secure the company's debt, he is to be in the same position as if he were a surety for the debt, to the extent of the charge or the value of his interest in it.

The provision in **s. 320** of the Act, as to fraudulent preference by an insolvent company, like the analogous provision in s. 44 of the Bankruptcy Act, 1914, is for the benefit of *all* the creditors of the company, and cannot be invoked if the result of recovering the property comprised in the fraudulent instrument will not be for the benefit of the creditors at large, but only of a mortgagee or debenture holders.[7] Money recovered by the liquidator in respect of a fraudulent preference must be held by him for the benefit of the creditors generally, and is not covered by a floating charge.[8]

Section 31 of the Bankruptcy Act, 1914—the mutual debts and credits section—may, if a set-off is *bona fide*, prevent a transaction from being a fraudulent preference; but not where one of the debts could not be set off in the winding up: *e.g.*, a liability for calls.[9]

Fraudulent Trading

If in a winding up it appears that any business of the company has been carried on with intent to defraud creditors or for any fraudulent purpose, the court may declare that any of the directors who were knowingly parties to the fraud *and any other person who is knowingly a party to carrying on the business in that manner* [10] shall be personally responsible for all or any of the debts of the company. See **s. 332**, Appendix 1, *post*; and *Re Wm. C. Leitch Bros., Ltd.*,[11] where it was held that, if a company continues to carry on business and incur debts when there is to the knowledge of the directors no reasonable prospect of the creditors being paid, it is in general a proper inference that the company is carrying on business with intent to defraud. The judgment should be for a fixed sum, which becomes part of the general assets.[12]

There must, however, be enough evidence to justify a finding of fraud, *i.e.*, actual dishonesty.[13]

Where the court declares that the directors are to be responsible for fraudulent trading, it may charge their liability against any securities which they hold against the company The court may also disqualify any such director from acting in the management of companies for a period not exceeding five years. A similar order may be made on the application of the official receiver or the liquidator or any creditor or contributory (**s. 332**).

[6] Re-enacting s. 92 (2) of the Act of 1947.
[7] *Willmott* v. *London Celluloid Co.* (1886) 34 Ch.D. 147; *Ex p. Cooper* (1875) L.R. 10 Ch.App. 510.
[8] *Re Yagerphone, Ltd.* [1935] Ch. 392.
[9] *Re Washington Diamond Mining Co.* [1893] 3 Ch. 95, as explained in *Re B. P. Fowler, Ltd.* [1938] Ch. 113. See, further, *Company Precedents*, Part II, 15th ed., pp. 463 *et seq.*
[10] The words in italics were introduced by s. 101 (1) of the Act of 1947.
[11] [1932] 2 Ch. 71.
[12] *Ibid.* and *S.C.* (No. 2) [1933] 1 Ch. 261.
[13] *Re Patrick and Lyon, Ltd.* [1933] 1 Ch. 786.

Fraudulent Transfer

The transfer of the business to a company may have been an act of bankruptcy if the vendor was insolvent at the time of the transfer, and in such case the transfer may be set aside as against the trustee in bankruptcy of the vendor.[14] See also *Gonville's Trustee* v. *Patent Caramel Co.*,[15] where the sale was by two partners, only one of whom was insolvent, but the other partner knew the circumstances; and see *Re Fasey*,[16] where a fraudulent agreement for a conveyance to a company was set aside under 13 Eliz. c. 5, now s. 172 of the Law of Property Act, 1925.

Where a debenture was issued by a company to its managing director and principal shareholder, but was kept back with a view to protecting the credit of the company while preferring the managing director to other creditors, the debenture was held not to be a fraudulent assignment under the Fraudulent Conveyances, etc. Act, 1571.[17] See now s. 172 of the Law of Property Act, 1925, the language of which may have a wider operation than the statute 13 Eliz. c. 5, which it replaces; and as to fraudulent trading generally, see *ante*, p. 409.

Fraudulent transfers or gifts, fraudulent connivances at executions and fraudulent inducements to persons to give credit to a company which is subsequently wound up are now misdemeanours (**s. 330**).

Following Trust Property

Property which can be identified as belonging to or held by the company in trust for other persons may be followed and recovered from the liquidator.[18] Purchase-money paid for property which is not delivered may sometimes be recovered.[19]

Money fraudulently obtained may be followed into the banking account of a person who receives it without consideration.[20]

Misfeasance Claims

It frequently happens that the promoters, directors, managers, or other officers of a company are accountable to it for money of the company misapplied by them or wrongfully received, or for which in their fiduciary character they are accountable to the company; or the directors may have been guilty of some negligence or misfeasance for which they are answerable to the company in damages. In these cases the Companies Act, 1862, provided in s. 165 a summary remedy by misfeasance proceedings. This section was replaced by s. 10 of the Winding-up Act, 1890, which was wider in its scope than the older section. These sections have now

[14] *Re Slobodinsky, ex p. Moore* [1903] 2 K.B. 517; *Re Goldburg, ex p. Silverstone* [1912] 1 K.B. 384; *Re David and Adlard, ex p. Whinney* [1914] 2 K.B. 694.
[15] [1912] 1 K.B. 599.
[16] [1923] 2 Ch. 1.
[17] *Re Lloyds' Furniture Palace, Ltd.* [1925] Ch. 853
[18] *Re Lang Propeller, Ltd.* [1926] Ch. at p. 595; *Sinclair* v. *Brougham* [1914] A.C. 418; *Re Hallett's Estate* (1880) 13 Ch.D. 696; *Jas. Roscoe, Ltd.* v. *Winder* [1915] 1 Ch. 62; *Re Oatway* [1903] 2 Ch. 356; *Re Stenning* [1895] 2 Ch. 433.
[19] *Re Regent Finance, etc., Co.* [1930] W.N. 84.
[20] *Banque Belge pour L'Etranger* v. *Hambrouck* [1921] 1 K.B. 321.

been replaced by s. 333 of the Act of 1948. Subsection (1) runs as follows:—

(1) If 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.

It is the duty of the liquidator—as part of his general duty of collecting the assets of the company—to proceed under this section against delinquent directors and others when he sees good ground for doing so, and from the commencement of the Companies Act, 1862, the misfeasance summons has been constantly resorted to: for example, where directors have used the funds of the company for objects not sanctioned by the company's memorandum of association [21]; or paid dividends out of capital [22]; or made secret profits [23]; or sold their own property to the company.[24] Bankers of a company are not officers within the section,[25] nor prima facie is the company's solicitor [26]; but he may be when he does all the work for a fixd salary.[27]

An auditor, if an 'officer' of the company, may be proceeded against under this section.[28] But an accountant who is merely called in—*pro hac vice*—to audit the accounts of the company is not an 'officer'.[29] No set-off is allowed on a proceeding under the section. An order for payment of money under the misfeasance section constitutes a 'final judgment' within the meaning of the Bankruptcy Act, 1914, s. 1 (1) (*g*), and will found bankruptcy proceedings (by way of bankruptcy notice) against the delinquent director or officer (s. 333 (3)). An order for security for costs will not as a rule be made.[30]

The procedure under s. 333 in the High Court is by summons in the winding up, under which an application must now be made to the registrar for directions as to Points of Claim and Defence, Discovery, etc.[30a] When

[21] *Cullerne* v. *London and Suburban Building Society* (1890) 25 Q.B.D. 485; *Re Liverpool Household Stores* (1890) 59 L.J.Ch. 616, *Joint Stock Discount Co.* v. *Brown* (1869) L.R. 8 Eq. 381; *Hardy* v. *Metropolitan Land Co.* (1872) L.R. 7 Ch. 427; *Coats* v. *Crossland* (1904) 20 T.L.R. 800.

[22] *Re National Funds Assurance Co* (1872) 10 Ch.D. 118; *Flitcroft's Case* (1882) 21 Ch.D. 519; *Re Sharpe* [1892] 1 Ch. 154; *Moxham* v. *Grant* [1900] 1 Q.B. 88.

[23] *Hay's Case* (1875) L.R. 10 Ch. 593; *Carling's Case* (1875) 1 Ch.D. 116, *Pearson's Case* (1877) 5 Ch.D. 336.

[24] *Re Cape Breton Co.* (1885) 29 Ch.D. 795.

[25] *Re Imperial Land Co. of Marseilles* (1870) L.R. 10 Eq. 298.

[26] *Re Great Western Forest of Dean* (1886) 31 Ch.D. 496.

[27] *Re Liberator Building Society* (1894) 71 L.T. 406.

[28] *Re Kingston Cotton Mills Co. (No. 2)* [1896] 2 Ch. 279; *Re London and General Bank* [1895] 2 Ch. 166.

[29] *Re Western Counties Steam Bakeries* [1897] 1 Ch. 617.

[30] *Re Strand Wood Co.* [1904] 2 Ch. 1.

[30a] Evidence may be directed to be given on affidavit alone. *Re G. R. Scott & Co., Ltd.* [1938] W.N. 323.

ready, the summons is set down in the witness list before the Winding-up Judge.[31]

The procedure under this section is not applicable to every claim which the company may have against any of its officers. It is limited to claims in the nature of misfeasance or breach of trust in the performance of their duties.[32]

Deceased director.

It has been held that misfeasance proceedings under **s. 333** will not lie against the personal representatives of a deceased director,[33] and that the estate of a deceased director was not liable as for a tort, except to the extent that he had appropriated funds or property of the company and his estate had benefited.[34] But now, by the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1, on the death of any person all causes of action subsisting against him survive against his estate. This provision would appear to increase the liability of the estate of the deceased director, but it does not, it is submitted, make the procedure under **s. 333** apply to a deceased director.

Examination before the Registrar

For the purposes of misfeasance proceedings and to ascertain what assets are outstanding, the court may, at the instance of the liquidator under **s. 268,** 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 may deem capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company. This power can be exercised after the appointment of a provisional liquidator or a winding-up order (**s. 268**), or, in case of a voluntary winding up, on an application under **s. 307.** The jurisdiction of the court to make the order is discretionary.[35]

An order should not be made against a director for production of the company's books, at any rate until after the examination has been held.[36]

The pendency of an action by the liquidating company against an examinee or third party may be a ground for postponing the examination.[37] But otherwise pendency of civil proceedings in the same matter is no excuse.[38]

The fact that questions might be put to the person to be examined, which he could refuse to answer on the ground that his answers might tend to incriminate him is not a ground for refusing an order.[39]

[31] Practice Notes [1921] W.N. 356; [1922] W.N. 294.
[32] *Re Etic, Ltd.* [1928] Ch. 861.
[33] *Re British Guardian Assurance Co.* (1880) 14 Ch.D. 335.
[34] *Peek* v. *Gurney* (1873) L.R. 6 H.L. at pp. 392, 393.
[35] *Re Joseph Hargreaves, Ltd.* [1900] 1 Ch. 347.
[36] *Re Maville Hose* [1939] Ch. 32.
[37] *Re London and Northern Bank, ex p. Archer* (1901) 85 L.T. 698; *Re North Australian Territory Co.* (1890) 45 Ch.D. 87.
[38] *Re Reliance Taxi-cab* (1912) 28 T.L.R. 529.
[39] *Re Repetition Engineering Service, Ltd.* (1945) 173 L.T. 75.

The examination is held before the registrar in winding up or an examiner of the court. It is a strictly private proceeding, and, if a witness is attended by his solicitor, the registrar or examiner may, as a condition of such solicitor being present, exact an undertaking from him not to use the information acquired for any other purpose than re-examination.[40] Each deponent is, as a rule, entitled to see his own depositions for the purpose of interrogatories, but a special case must be made.[41] An examinee cannot refuse to answer any question unless it involves a question of privilege or is incriminating. He must give all the information he is capable of giving.[42] He must attend, although he has not got the documents specified.[43] The examination may be ordered to be made in open court, but this should not be done except in very exceptional circumstances.[44] As to public examination under **s. 270**, see below.

Evidence on examination can be used against the deponent,[45] *e.g.*, on cross-examination of the deponent to contradict him, but depositions given by others cannot be used for this purpose.[46] Notice of intention to read the depositions should be given, but copies should not be served.[47]

Public Examination of Directors and Others

In addition to the report of the official receiver[48] summarising the statement of affairs and commenting on the history of the company, the official receiver may present a further report stating the manner in which the company was formed and whether, in his opinion, any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company; and the court may, after consideration of any such report, direct the persons implicated, or the directors, to attend before the court and be publicly examined on oath (**s. 270**). This public examination was by the Act of 1890 imported from bankruptcy, but the analogy of a director and a bankrupt is not exact. The section[49] was at first largely resorted to, but its operation was considerably curtailed by the decision of the House of Lords in *Ex p. Barnes*,[50] and of the Court of Appeal in *Re Civil, Naval and Military Outfitters*,[51] holding that no order for public examination of a particular person can be made unless the official receiver expresses the opinion that such person had been guilty of fraud, and shows how he is connected with the facts. The time for applying to discharge an order for public examination is fourteen days from the service of the order.[52] Few examinations now take place under this jurisdiction. For

[40] *Re London and Northern Bank, Haddock's Case* [1902] 2 Ch. 73.
[41] *Re Merchants' Fire Office* [1899] 1 Ch. 432.
[42] *Re Ottoman* [1867] W.N. 164.
[43] *Re Leitner Electrical Co.* (1916) 32 T.L.R. 474.
[44] *Re Property Insurance Co.* [1914] 1 Ch. 775.
[45] *Re Hercules Insurance Co.* (1872) L.R. 13 Eq. 566; *Ex p. Hall* (1882) 19 Ch.D. at p. 583.
[46] *North Australian, etc., Co.* v. *Goldsborough Mort & Co.* [1899] 2 Ch. 381.
[47] *Ex p. Hall* (1882) 19 Ch.D. 580.
[48] Referred to *ante*, p. 387.
[49] S. 8 in the Act of 1890.
[50] [1896] A.C. 146.
[51] [1899] 1 Ch. 215.
[52] *Re National Stores* [1899] 2 Ch. 773.

all practical purposes of a winding up—as distinguished from the pillorying of delinquent directors before trial—the procedure under **s. 268** is quite sufficient.

As to the control of the court over questions to be put at a public examination, see *Re London and Globe Finance Co.*[53]

A liquidator will not be ordered personally to pay the costs of a director-examinee who has exculpated himself, unless the liquidator has accepted the position of a litigant[54]; but the court may order the person procuring the examination to pay the witnesses their costs.[55]

Prosecution of Directors and Promoters

The court has power under **s. 334** of the Act of 1948 to direct a prosecution of delinquent directors, managers, officers, or members of the company, and in a proper case will do so.[56] The court also has power to direct the liquidator to prosecute.

Release of Liquidator

This is provided for in **s. 251** of the Act of 1948, and Winding-up Rules, 1949, r. 205.

See *Company Precedents*, Part II, 15th ed., p. 712 *et seq.*

Unclaimed or Undistributed Assets

Section 343 of the Act of 1948 makes special provision as to these. If undistributed for more than six months, they have to be paid into the Bank of England to the Companies Liquidation Account. The liquidators are bound to furnish accounts to the Board of Trade, and there are stringent provisions for enforcing payment.[57] This now applies to unclaimed dividends or other money held in trust for shareholders.[58]

Staying Winding-up Proceedings

Section 256 of the Act gives the court a discretion, on the application of the liquidator or official receiver, or any creditor or contributory, to stay the proceedings under a winding-up order. In exercising this discretion the court will be guided by the analogy of bankruptcy in rescinding a receiving order—that is to say, it will consider the interests of commercial morality and not merely the wishes of creditors, and will refuse a stay if there is evidence of misfeasance or of irregularities demanding investigation.[59] A copy of the order staying proceedings must be forwarded by the company to the registrar (**s. 256 (3)**).[60]

Dissolution of the Company

When the affairs of the company have been completely wound up, the court is, by **s. 274** of the Act *if the liquidator makes an application on*

[53] (1802) 50 W.R. 253.
[54] *Re Tweddle & Co.* [1910] 2 K.B. 697.
[55] *Re Appleton, French and Scrafton, Ltd.* [1905] 1 Ch. 749.
[56] *Re London and Globe Finance Corporation* [1903] 1 Ch. 728.
[57] See *Company Precedents*, Part II, 15th ed., p. 823 *et seq.*, and *Re Land Mortgage Bank of Florida* [1898] 1 Ch. 444.
[58] An amendment introduced by s. 98 of the Act of 1947.
[59] *Re Telescriptor Syndicate, Ltd.* [1903] 2 Ch. 174.
[60] Re-enacting s. 97 (1) of the Act of 1947.

that behalf,[61] to make an order that the company be dissolved from the date of such order, and the company is dissolved accordingly. A copy of the order is to be sent by the liquidator to the registrar within fourteen days, and the registrar is to make a minute of the order (**s. 275 (2)**).[62]

Under the old practice, it was the usual course, when a winding up was completed, to make an order for dissolution and for the destruction of the books, but, of late years, such orders have been less commonly made.[63]

Upon dissolution, all the property of the company now vests in the Crown as bona vacantia, subject to the power of the Crown to disclaim (**ss. 354, 355**). This includes an equity of redemption to leasehold property.[64] The Act of 1908 contained no such provision, and accordingly the real assets reverted to the donors or their heirs,[65] leases determined,[66] and only personal assets vested in the Crown as bona vacantia.[67] By **s. 355**,[68] the Crown may disclaim such property by notice signed by the Treasury Solicitor.[69] Apart from disclaimer, where land subject to a rent charge vests in the Crown by operation of law, no obligation is incurred by the Crown (**s. 356**).[70]

Section 354 does not apply to property held on trust, and where a company which holds property in trust is dissolved, a vesting order may be made.[71]

Dissolution declared void.

The dissolution may within two years be declared to have been void (**s. 352**). Property which has vested in the Crown as bona vacantia on dissolution re-vests or remains vested in the company if the order is made.[72]

An order may be made after the expiration of two years, if the application is made within two years.[73]

An order of the court declaring the dissolution to have been void does not render valid proceedings taken against the company after its dissolution and before the date of the order.[74]

A company some of whose shares were held by the dissolved company was held to be 'a person interested' under the Act for the purpose of enforcing a call on the shares.[75]

[61] Words in italics added by s. 96 (3) of the Act of 1947.
[62] Incorporating amendment by s. 97 (2) of the Act of 1947.
[63] See *Company Precedents*, Part II, 15th ed., p. 723.
[64] *Re Wells, Swinburne-Hanham* v. *Howard* [1933] Ch. 29.
[65] Co.Litt. 23 b.
[66] *Hastings Corporation* v. *Letton* [1908] 1 K.B. 378.
[67] *Re Higginson, etc., ex p. Att.-Gen.* [1899] 1 Q.B. 329.
[68] Re-enacting s. 100 of the Act of 1947.
[69] For the procedure and other details see **s. 355**, Appendix 1, *post*.
[70] Re-enacting s. 99 of the Act of 1947
[71] *Re General Accident Corp.* [1901] 1 Ch. 147; *Re Richard Mills & Co., Smith* v. *The Co.* [1905] W.N. 36; *Re No. 9 Bomore Road* [1906] 1 Ch. 359; *Re Dutton's Patent* [1923] W.N. 64.
[72] *Re C. W. Dixon, Ltd.* [1947] Ch. 251; *Re Henderson's Nigel, Ltd.* [1911] W.N. 159 (undistributed assets, the Crown not claiming them as bona vacantia).
[73] *Re Scad, Ltd.* [1941] Ch. 386.
[74] *Morris* v. *Harris* [1927] A.C. 252.
[75] *Re Spottiswoode, Dixon and Hunting, Ltd.* [1912] 1 Ch. 410.

CHAPTER 41

VOLUNTARY WINDING UP

OF the companies which come to be wound up, by far the larger number —about 90 per cent.—are wound up voluntarily; and this is in accordance with the Companies Acts, which contemplate voluntary winding up as the normal mode of liquidation. Unregistered companies cannot wind up voluntarily under the Act, but they can register under Part VIII of the Act,[1] and then wind up voluntarily. The proceedings in a voluntary winding up are now subject to many statutory and official regulations—as will be seen below—from which they were formerly exempt, and if the articles of association contain provisions restricting the rights of aliens, a resolution for voluntary winding up will be void unless sanctioned in writing by the Board of Trade. Voluntary winding up is initiated by a resolution of the shareholders (see **s. 278**). This may be either a special resolution, defined by **s. 141**, resolving that the company be wound up voluntarily, or an extraordinary resolution to the effect that it has been proved to the satisfaction of the shareholders that the company cannot, *by reason of its liabilities*, continue its business, and that it is advisable to wind up the same. Of these two the extraordinary resolution is the more convenient as being rather the quicker, where the company is insolvent and being pressed by creditors; but it is inapplicable where the company desires to wind up for reasons other than inability to carry on its business by reason of its liabilities, *e.g.*, with a view to reconstruction; hence, in these cases the special resolution must be resorted to. In either case the commencement of the winding up dates from the passing of the resolution (see **s. 280**). Proper notices must be given, otherwise the resolution will not be valid. Thus a resolution for voluntary winding up is not valid if passed at an extraordinary general meeting convened by the secretary on his own initiative without the authority of the board of directors.[2] As to the proceedings at the meetings, see *Company* Precedents, Part II, 15th ed., p. 756 et seq. The resolution, when passed, must be advertised in the *Gazette* within fourteen days; there are penalties for default (**s. 279**).[3]

A resolution to wind up voluntarily is not necessarily invalid because it is followed by other resolutions which are ultra vires.[4]

After commencement of a voluntary winding up the company is to cease to carry on its business, except so far as may be required for the beneficial winding up thereof, but the corporate powers are to continue until dissolution (**s. 281**). A liquidator is to be appointed, and with his

[1] *Southall* v. *British Mutual Life Assurance Society* (1871) L.R. 6 Ch.App. 614.
[2] *Re Haycraft Gold Reduction, etc., Co.* [1900] 2 Ch. 230; *Re State of Wyoming Syndicate* [1901] 2 Ch. 431.
[3] S. 97 (3) of the Act of 1947 substituted fourteen days for seven days in s. 226 of the Act of 1929.
[4] *Thomson* v. *Henderson Transvaal Estates* [1908] 1 Ch. 765.

appointment the directors' powers are to cease. He can be appointed as soon as the resolution for winding up has been passed even, without notice.[5]

Meeting of creditors.

The Act of 1907 contained provisions for calling a meeting of creditors by the liquidator within seven days after his appointment to consider the question of appointing another liquidator and other matters. This was re-enacted by s. 188 of the Act of 1908. It was found, however, that, in the case of a solvent company, a meeting of creditors was unnecessary, and in the case of an insolvent company it was inconvenient for a liquidator to be appointed by the shareholders and to continue in office for several days before the creditors were consulted, and the Act of 1929 repealed s. 188 and contained provisions for calling a meeting of creditors contemporaneously with the resolutions for winding up, except where the company is thought to be solvent.

Declaration of solvency.

In the case of a solvent company, by **s. 283,** a majority of the directors may make and file a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and having so done, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up. Such a declaration has no effect unless it is made within five weeks preceding the resolution to wind up and must contain a statement of the company's assets and liabilities (**s. 283 (2)**).[6] Any director making a declaration without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the time specified in the declaration is made liable to a fine or imprisonment or both (**s. 283 (3)**).[7]

A declaration of solvency results in 'a members' voluntary winding up'. It does not prevent a winding up by the court, but it may delay the proper protection of the rights of the creditors. By **s. 288,**[8] if in a members' voluntary winding up the liquidator is of the opinion that the company will not be able to pay its debts in full within the period stated, he must summon a meeting of creditors and lay before the meeting a statement of the assets and liabilities of the company, and thereafter (which **ss. 299** and **300** provide for yearly meetings of creditors and the final meeting and dissolution) are to apply as if the liquidation were a creditors' voluntary liquidation (**s. 291**). After the passing of the Act of 1929, directors sometimes made a declaration without any real justification. This sometimes led to serious inconvenience, or worse, where the company afterwards turned out to be insolvent. These amendments are intended to put an end to such practices.

[5] *Bethell* v. *Trench Tubeless Tyre Co.* [1900] 1 Ch. 408.
[6] Re-enacting s. 94 (1) of the Act of 1947.
[7] Re-enacting s. 94 (2) of the Act of 1947.
[8] Re-enacting s. 94 (3) of the Act of 1947.

Members' Voluntary Winding up

Appointment of liquidator.

The company in general meeting appoints a liquidator and fixes his remuneration. On the appointment all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanction their continuance (**s. 285**).

If a vacancy occurs, the company in general meeting may fill the vacancy. Any contributory can call the meeting (**s. 286**).

Accounts.

If the winding up continues for more than one year, the liquidator must summon a general meeting of the company at the end of the first year and each successive year and lay before the meeting an account (**s. 289**).

Dissolution of company.

When the company's affairs are fully wound up, the liquidator must make up a final account and call a general meeting of the company, which must be advertised in the *Gazette*. Within a week after the meeting the liquidator must send the registrar a copy of the accounts and make a return of the holding of the meeting. The registrar registers the accounts and returns, and at the end of three months from the date of registration the company is dissolved (**s. 290**).

Creditors' Voluntary Winding Up

Meeting of creditors.

In any case where the declaration of solvency has not been made, the company must call a meeting of the creditors for the same day as, or on the next day after, the meeting at which the resolution for voluntary winding up is to be proposed. The meeting must be advertised in the *Gazette*, and the directors must lay before the meeting of the creditors a statement of the position of the company with a list of its creditors, and there are penalties in default (**s. 293**).

Appointment of liquidator.

The creditors and the company may each nominate a liquidator, but the nomination of the creditors will prevail, subject to an application to the court (**s. 294**); and see *Re Karamelli and Barnett, Ltd.*,[9] where a liquidator who was also receiver for the debenture holders was removed at the instance of the creditors (under s. 188 of 1908).

The liquidator must, within *fourteen days* of his appointment, *publish in the Gazette and* deliver to the Registrar of Companies notice of his appointment in the form prescribed by the Board of Trade (**s. 305**).[10]

Committee of inspection.

The creditors at their meeting may appoint a committee of inspection, and the company may appoint not more than five persons to be members

[9] [1917] 1 Ch. 203.
[10] Embodying amendments introduced by s. 97 (3) of the Act of 1947.

of the committee, subject to the power of the creditors to disapprove of any persons so appointed (**s. 295**).

The committee of inspection or the creditors may sanction the remuneration of the liquidator, and, on the appointment of the liquidator, all the powers of the directors cease, except so far as the committee of inspection or the creditors sanction their continuance.

In case of a vacancy, the creditors may fill up the vacancy (**s. 297**).

The powers of **s. 287** (sale of the undertaking for shares) cannot be exercised except with the sanction of the court or the committee of inspection (**s. 298**).

Dissolution of company.

If the winding up continues more than a year, the liquidator must summon a general meeting of the company and a meeting of the creditors at the end of the first year and of each successive year and lay before the meetings an account (**s. 299**).

When the affairs of the company are fully wound up, the liquidator must make up an account and call a meeting of the company and the creditors, which must be advertised in the *Gazette*, and lay the account before the meetings. Within a week after the meetings, the liquidator must send to the registrar a copy of the account and a return which will be registered, and on the expiration of three months from the registration the company is dissolved (**s. 300**).

Powers and Duties of Liquidators in Voluntary Winding Up

The liquidator is, as we have seen, appointed by the members or creditors.[11]

The following is an alphabetical list of his powers and duties.

ACCOUNTS AND BOOKS

A voluntary liquidator must keep proper books of account, showing all receipts and payments made by him in the course of the liquidation. He may take as a guide Rules 171 to 181, as to the books to be kept by liquidators in a winding up by the court. He should also keep a diary or minute-book, containing notes of all his transactions and negotiations, and books showing the dates at which all notices to creditors and shareholders are sent out and posted, and by whom the same were posted. Such last-mentioned persons should initial the entries or the summary thereof, so that, if it becomes necessary to make an affidavit as to the service of any notice or circular, the person who directed the notice and posted it may be able to swear to the facts after refreshing his memory by referring to the book.

ACTIONS

The liquidator can without any sanction bring or defend any action or other legal proceeding in the name and on behalf of the company (**ss. 245 (1) (a) and 303 (1) (b)**).

If there is a committee of inspection, he should, however, as a rule,

[11] See *ante*, pp. 417, 418.

obtain their consent. If there is none, it is safer in a case of any doubt to apply for liberty to commence proceedings, and, if there is a doubt whether the assets will be sufficient, the liquidator should obtain an indemnity in respect of his cost from the shareholders or creditors.[12]

APPEALS FROM LIQUIDATOR

Rule 108, which gives a contributory or creditor who is dissatisfied with any decision of the liquidator in respect of a proof power to apply to the court, applies to a voluntary liquidator; but the time limit fixed by that rule does not apply.

Applications should be made by summons in chambers.[13]

APPLICATIONS TO THE COURT

It does not necessarily follow that, because a company is in course of voluntary winding up, any application will have to be made to the court; but an application may become necessary, *e.g.*, for the purpose of restraining actions against the company, or fixing the liquidator's remuneration, or for examination of directors, or misfeasance proceedings. **Section 307** enables the court to determine 'any question' arising in the voluntary winding up, and the powers of the section have been liberally construed, though it is doubtful whether the court has jurisdiction under **s. 307** to set aside a contract, and if it has such jurisdiction, the jurisdiction is discretionary.[14] A creditor has under the section the same power of applying to the court as the liquidator or a contributory.[15]

ARRANGEMENTS

Section 306 enables arrangement to be made between a company in voluntary liquidation and its creditors, subject to appeal; but the operation of this section is limited to cases where the voluntary liquidation is to continue,[16] and the power given by **s. 206** can, in most cases, be more readily and effectually exercised for this purpose.

BOARD OF TRADE

The voluntary liquidator is not subject to the control of the Board of Trade as in the case of a winding up by the court, except as to such matters as investments (see Rule 173) and payment into the Companies Liquidation account of moneys representing unclaimed or undistributed assets (**s. 343**). The power of the Board of Trade to issue orders and regulations under Rule 224 appears to apply to voluntary winding up.

BOOKS

See ACCOUNTS, *supra*, and POSSESSION OF BOOKS AND ASSETS, *infra*.

[12] See further, *Company Precedents*, Part II, 15th ed., pp. 257 and 267 to 269.
[13] Rule 5 (3). And see *Company Precedents*, Part II, 15th ed., p. 257.
[14] *Re Centrifugal Butter Co.* [1913] 1 Ch. 188.
[15] See further, *Company Precedents*, Part II, 15th ed., p. 782 *et seq.*
[16] *Re Contal Radio, Ltd.* [1932] 2 Ch. 66.

BORROWING

Under **ss. 245 (2) (e)** and **303 (1) (b)**, the liquidator has power to raise upon the security of the assets of the company from time to time any required sum or sums of money, *e.g.*, by mortgage of land, or of a call made by the liquidator, or of a debt due to the company, or a claim which the liquidator has for misfeasance against a director. Sometimes it is expedient to obtain the sanction of the court to raising money; but a liquidator cannot raise money in priority to the company's mortgages or other incumbrances even with the sanction of the court.

For orders of court sanctioning borrowing, see *Company Precedents*, Part II, 15th ed., Chap. 28.

CALLS

When the liquidator has settled the list of contributories he will proceed forthwith to make a call on the contributories so far as may be necessary. Where there is a considerable amount to be called up, he may think it best to call it up by degrees; but where it is clear that the whole amount will have to be called up, he should, as a general rule, make a call of the full amount unpaid on the shares held by the contributories, and send out notices accordingly.

Sometimes the liquidator, before making a call, sends out notice that he proposes to make a call, and fixes a time and place at which he will consider the matter. He can then within the time mentioned consider any objections made. A call, if and when the liquidator determines to make it, will be made by instrument in writing under his hand, and notice of the making of the call should forthwith be sent to the contributories. Those contributories who do not pay should be given further notice that unless they pay forthwith the liquidator will apply to the court. Subsequently the liquidator should apply by summons to the court for an order against all defaulting contributories, compelling them to pay the amount due with interest.

If the amount recoverable from the contributories settled on the A list will not suffice to pay the debts and costs of winding up, it will be necessary to settle the B list of contributories. This will include those persons who ceased within one year before the commencement of the winding up to be members and their representatives.[17]

A general meeting, under **s. 303 (1) (e)**, may appoint directors and sanction their making calls.[18] A call may be made in pursuance of an agreement to amalgamate[19]; or in pursuance of an agreement for the sale of the assets to another company.[20]

CARRYING ON BUSINESS

One of the powers which the liquidator may exercise without the sanction of the court is 'to carry on the business of the company so far as may be necessary for the beneficial winding up thereof' (**ss. 245 (1) (b)** and

[17] See *Company Precedents*, Part II, Chap. 38.
[18] *Ladd's Case* [1893] 3 Ch. 450.
[19] *New Zealand Gold, etc., Co.* v. *Peacock* [1894] 1 Q.B. 622.
[20] *Re Bank of South Australia (2)* [1895] 1 Ch. 578.

303 (1) (b)). This power must be exercised with caution and under advice; but the carrying on of the business will be held to be justified if the liquidator bona fide and reasonably forms the opinion that the carrying on of the business is necessary for the beneficial winding up of the company, even though he was mistaken.[21]

If the liquidator is in doubt as to the advisability of carrying on the business, it is desirable to get the sanction of the court to carry it on. The court in giving leave to carry on business usually imposes some limit —*e.g.*, that the business may be carried on for a period, say three or six months—and if the liquidator proposes to carry on the business for longer than that, or even as long, he should certainly go to the court or to the creditors. Where the liquidator carries on the business, he can do all things reasonably necessary for carrying it on, and accordingly he can buy and sell and make contracts, and draw, accept, and indorse bills of exchange. All debts and liabilities incurred in the course of carrying on the business—being in the nature of salvage—will rank for payment in priority to the general debts and liabilities of the company. In carrying on the business the liquidator is not prima facie liable on the contracts which he makes[22]; but he should be careful to act in the name of the company, and to disclose the fact that the company is in liquidation, so that no one may be misled.

Any application to the court should be made by originating summons under **s. 307**, *ante*, p. 420. For orders giving liberty to carry on business, see *Company Precedents*, Part II, 15th ed., Chap. 26.

COMMITTEE OF INSPECTION

There is no committee of inspection in a members' voluntary winding up; but the creditors at their meeting in case of a creditors' voluntary winding up may appoint a committee of inspection. If so, **s. 253** except subs. (1) applies.[23]

COMPANIES LIQUIDATION ACCOUNT

See UNDISTRIBUTED ASSETS, *infra*.

COMPROMISES

A compromise may be made, with the sanction of the company in a members' voluntary winding up, or in a creditors' voluntary winding up of the committee of inspection under **s. 303**, or of the court, under **s. 307.**

For example, a compromise may be arranged if a contributory cannot pay the full amount of a call made on him, or if a debtor to the company cannot pay the whole of his debt to the company, or if the company has claims against anyone for breach of contract or misfeasance, which it is considered safer to compromise.

Where a compromise is proposed, the liquidator sometimes makes a provisional agreement for compromise, and then calls a meeting or applies

[21] *Re Great Eastern Electric Co., Ltd.* [1941] Ch. 241.
[22] *Stead, Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840.
[23] See **s. 295** and *ante*, p. 418.

to the court to sanction the same. If the court is asked to sanction a compromise, evidence that the compromise is beneficial must be forthcoming.

In the case of a compromise with a contributory, the liquidator after taking out the summons for liberty to compromise, generally requires the contributory to make an affidavit as to his means, and, if necessary, cross-examines him on it.[24]

CONTRIBUTORIES

The voluntary liquidator may exercise the power of the court under the Act of settling a list of contributories and of making calls.[25] The list of contributories is prima facie evidence of the liability of the persons named therein as contributories. (See **s. 303 (1) (c)** and **(d)**, and **ss. 213, 215** and **267.**)

COSTS

All costs, charges and expenses properly incurred in the voluntary winding up, including the remuneration of the liquidator, are payable out of the assets of the company in priority to all other claims (**s. 309**). This may include costs incurred between the date of a resolution to wind up and the date of a compulsory order.[26]

As the costs of winding up form a first charge, the liquidator can from time to time make payments of these on account. In most cases the liquidator pays the solicitor's bill without taxation, but he may at any time be called on to bring in his account, and if he has overpaid the solicitor, may be held responsible for the difference. Accordingly, in some cases the solicitor gives the liquidator an undertaking that, if he should at any time be disallowed any part of the bill, the amount shall be refunded. Occasionally the parties think it more prudent to get the bill taxed before payment. In order to obtain taxation, a summons should be taken out under **s. 307.** The liquidator is not personally responsible to his solicitor for the costs of the winding up. The solicitor looks to the assets for payment.[27]

The liquidator's costs have no priority over secured creditors of the company except so far as the liquidator's costs are costs of preservation or realisation, of which the secured creditor has had the benefit.[28] A solicitor employed by the company is entitled to his solicitor and client costs, if the company is solvent.[29]

The company's solicitor has a lien for costs of recovering a fund by proceedings taken before the voluntary liquidation.[30]

[24] See *Company Precedents*, Part II, Chap. 44.
[25] See *ante*, p. 392, *et seq.*
[26] *Re William Adler & Co.* [1935] 1 Ch. 138.
[27] *Re Trueman's Estate* (1872) L.R. 14 Eq. 278; *Re Massey* (1870) L.R. 9 Eq. 367; *Re Anglo-Moravian, etc., Ry., ex p. Watkin* (1875) 1 Ch.D. 130, 136.
[28] *Re Regent's Canal Ironworks Co., ex p. Grissell* (1875) 3 Ch.D. 411; *conf. Re Anglo-Austrian Printing, etc., Union* [1895] 2 Ch. 891.
[29] *Re C. B. & M. (Tailors), Ltd.* [1932] 1 Ch. 17.
[30] *Re Meter Cabs, Ltd.* [1911] 2 Ch. 557.

CREDITORS

The rights and remedies of the creditors are the same as in a winding up by the court.[31]

DISCLAIMER

Section 323 applies to a voluntary winding up.[32]

DUTY OF LIQUIDATOR TO CREDITORS

A liquidator is, in some respects, a trustee for the creditors; but he is not a trustee for each individual creditor.[33] He may be liable for negligence if he does not properly perform his statutory duties. In *Pulsford* v. *Devenish*,[34] Farwell J. strongly emphasised the duty of a liquidator in regard to the payment of creditors of the company. It is not enough for him, the learned judge held, to advertise for creditors; he must write to any creditors of whose existence he knows, and who have not sent in claims, and ask them if they have claims. If the liquidator fails to perform his statutory duty and the company is dissolved, so that the creditor loses his remedy against it, the liquidator is personally liable to the creditor in damages; and if the liquidator by mistake pays money to a person who claims to be a creditor, but is held to have no legal claim against the company, the liquidator may be made liable for misfeasance under **s. 333.**[35] So, where a company, liable as lessee for rent under a lease, assigned the lease, and the liquidator distributed the assets without making provision for the contingent liability of the company for rent, he was held liable to the lessors.[36] Where the liquidator knew that there was a large number of possible claims by workmen under the Workmen's Compensation Act for injuries not covered by insurance, he was held not to have been sufficiently protected by the usual advertisement for creditors, and the distribution of undistributed funds was held up for the liability to workmen to be ascertained.[37] The court has, however, a discretion as to the amount which the liquidator will be ordered to pay.[38]

EXAMINATIONS

Public examination cannot take place in a voluntary liquidation, as **s. 270** only applies where the official receiver has made a report. Private examinations can, however, take place.[39]

INVESTMENTS

The liquidator should invest any substantial cash balances in his hands and in the case of a creditors' voluntary winding up the committee of

[31] See *ante*, p. 395, *et seq.*
[32] See *ante*, p. 389, *et seq.*
[33] *Knowles* v. *Scott* [1891] 1 Ch. 717.
[34] [1903] 2 Ch. 625.
[35] Replacing s. 276 of the Act of 1929. *Re Windsor Steam Coal Co.* [1929] 1 Ch. 151.
[36] *James Smith & Sons (Norwood), Ltd.* v. *Goodman* [1936] Ch. 216.
[37] *Re Armstrong Whitworth Securities, Ltd.* [1947] Ch. 673. See this case also for the position arising where some funds had been distributed to some of the shareholders which might turn out to be in excess of their rights.
[38] *Re Home and Colonial Insurance Co.* [1930] 1 Ch. 102
[39] See PRIVATE EXAMINATIONS, *infra*.

inspection may sign a " certificate and request " if they think that there are funds requiring investment, and the liquidator must transmit the certificate and request to the Board of Trade.[40]

A similar request and certificate are sent if the committee of inspection think that any securities should be sold. If there is no committee, or in a members' voluntary winding up, the liquidator sends to the Board of Trade a certificate of the facts and a request, where he desires any investment or sale affecting balances in the Companies Liquidation account (see **s. 362**).

LANDLORDS

The same rules as to the liability of the liquidator to rent, etc., apply as in the case of a winding up by the court.[41] A landlord may prove for damages for breach of a covenant not to assign.[42]

LITIGATION

See ACTIONS, *supra*.

MEETINGS OF MEMBERS AND CREDITORS

As to the meetings of the company or the creditors which *must* be called by the liquidator, see *ante*, p. 418.

The liquidator does not often require to summon meetings to pass special or extraordinary resolutions, but cases sometimes arise, *e.g.*, where it is desirable to sell the whole or part of the undertaking in consideration of shares in a new company, in which case a special resolution is required by **s. 287.** Again, where the liquidator requires to make a compromise or arrangement, an extraordinary resolution may be requisite under **s. 245 (1).**

A vacancy in the office of liquidator may, in a members' voluntary winding up, be filled up under **s. 286** by simple resolution of a general meeting, and in a creditors' winding up, under **s. 297,** by the creditors.

A meeting called under **s. 285 (2)** in a members' voluntary winding up may appoint directors and sanction the exercise by them of the power of enforcing calls, and selling, transferring, and forfeiting shares under the articles.[43]

When summoning a meeting, the liquidator should send out the notice to the registered addresses of the members or contributories, or to their last-known places of abode, and should state in the notice the object for which the meeting is convened.

The Act makes express provision for the calling of the first meeting of creditors under **s. 293,** and under **s. 299,** for the calling of annual meetings to explain the position of affairs; it is usual to call special meetings when the liquidator desires to consult the creditors as to some important step in the liquidation, *e.g.*, a sale or composition or a proposal for reconstruction.

[40] Rule 173 (1).
[41] See *ante*, p. 402.
[42] *Cohen* v. *Popular Restaurants* [1917] 1 K.B. 480.
[43] *Ladd's Case* [1893] 3 Ch. 450.

In addition to the above the court can, by the joint operation of ss. 346 and 307 of the Act, at any time direct meetings of creditors or contributories to be held for the purpose of ascertaining their wishes as to any matter.

MISFEASANCE

One of a voluntary liquidator's most important duties is to look into the affairs of the company and ascertain whether any misfeasance, fraudulent preference, or breach of trust has been committed by any of its officers, and if necessary he must take proceedings in respect thereof. The matter is dealt with in **s. 333,** which is applicable to voluntary as well as to compulsory liquidations.[44]

OFFICIAL RECEIVER

The requirements as to information to be given to the official receiver only apply to a winding up by the court. If it is necessary for the liquidator to exercise any powers which cannot be exercised except under a winding up by the court, or with the intervention of the official receiver, the official receiver can apply to the court for a winding-up order (**s. 224 (2)**).[45]

POSSESSION OF BOOKS AND ASSETS

The liquidator in a voluntary winding up is not an officer of the court[46]; but, subject to this, his position as regards taking possession of the assets is the same as in the case of a winding up by the court.

The liquidator should at once take possession of the books, deeds, and documents of the company, and ascertain by inquiry the whereabouts of any which are missing and apply for the delivery thereof. He should also with all convenient speed obtain possession of the assets of the company, but, of course, there are some assets of which physical possession cannot be obtained, *e.g.*, book debts owing to the company and property of the company in possession of mortgagees or a receiver. In these cases the liquidator should perfect his title as far as possible, by giving notice to the debtors or to the mortgagees or receiver, as the case may be.

Where a solicitor or other person is in possession of books or documents, and claims a lien or charge thereon for money due, the validity of the lien or charge should at once be examined into, and if it appears that the lien or charge is valid and effective, and the books or documents are wanted, an arrangement should be made to obtain delivery on some reasonable terms, *e.g.*, that the amount of the lien or charge shall be paid off out of the first available assets coming into the hands of the liquidator. The liquidator may, however, consider it expedient to raise the requisite funds and discharge the lien. If the lien is by a solicitor for a bill of costs, he should be required to send in such bill, and it may be expedient to have it taxed, and in some cases it may be desirable to obtain

[44] See *Company Precedents*, Part II, Chap. 44.
[45] *Re 1897 Jubilee Sites Syndicate* [1899] 2 Ch. 204.
[46] Rule 78.

delivery before taxation. This can generally be obtained if the liquidator is prepared to pay the amount claimed into court.

There are some books and documents upon which the company cannot give a lien or charge, *e.g.*, the register of members, the register of mortgages, and any documents which the regulations expressly provide are to be kept at the office of the company.[47] Where a lien is claimed on such books, the liquidator should press for delivery.

Where the books or assets are in the possession of a contributory, trustee, receiver, banker, or agent or officer of the company, the liquidator may apply to the court under **s. 307** for an order under **s. 258**, to deliver up the same.

When the company holds leaseholds and is insolvent, and its interest in the leaseholds is worthless, by reason of their being held at a very high rent, or being subject to onerous covenants or heavy mortgages, there is danger in taking possession, because the landlord may become entitled to claim payment in full for rent accrued during the liquidation, and recover the full amount required to repair the premises under a covenant to repair, whilst the liquidator may derive little or no benefit from keeping on the premises. Whereas, if the liquidator does not take possession and does not keep on the premises for the purposes of the liquidation, the landlord can only prove and take his dividend pari passu with other creditors.[48]

POWERS OF LIQUIDATOR

The powers of a liquidator in a voluntary winding up are defined by **s. 303** as follows:—

303.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section two hundred and forty-five of this Act to a liquidator in a winding up by the court[49];

(*b*) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;

(*c*) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories:

(*d*) exercise the power of the court of making calls;

(*e*) 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 purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

[47] *Re Capital Fire Insurance Association* (1883) 24 Ch.D. 408; *Re Rapid Road Transit Co.* [1909] 1 Ch. 96.

[48] See *ante*, p. 403.

[49] These are—(*d*) to pay any classes of creditors in full; (*e*) and (*f*) to make compromises. *See* **s. 245**, and *ante*, p. 389.

(3) When several liquidators are appointed, any power given by this Act 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.

PRIVATE EXAMINATION

The liquidator can, under **s. 268** of the Act, have directors and contributories and other persons examined as to the affairs of the company. The application is by originating summons under **s. 307** for liberty to examine, and then the directors or other persons to be examined will be directed by the court to appear and will have to answer on oath.

In the High Court, the examination is to be held in court or chambers, as the court directs.[50]

PROOF OF DEBTS

It is not necessary for the liquidator in a voluntary winding up to require the creditors to prove their debts. Rule 91 does not apply.

But rule 106 applies to every winding up and the liquidator should therefore give notices and advertise as there required.

PROSECUTION OF DIRECTORS

The voluntary liquidators, with the previous sanction of the court, may prosecute delinquent directors, and all expenses properly incurred in such prosecution are payable out of the assets of the company in priority to all other liabilities (see **s. 334**).

PURCHASE OF PROPERTY BY LIQUIDATOR

A liquidator cannot himself purchase any property of the company except by leave of the court.[51]

RATES AND TAXES

The position of the voluntary liquidator is the same as that of the liquidator in a winding up by the court as regards the preferential payment of rates and taxes.[52]

RELEASE

Section 251, which enables a liquidator to apply to the Board of Trade for his release, only applies to a winding up by the court.[53]

REMOVAL AND FILLING VACANCIES

Section 304.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

The court may appoint, under **s. 304,** either on the removal or retirement of a liquidator,[54] and in any other case where due cause is

[50] Rule 5 (2). See further as to such examination, *Company Precedents*, Part II, Chap. 42.
[51] Rule 161.
[52] See *ante*, p. 398, *et seq.*
[53] *Pulsford* v. *Devenish* [1903] 2 Ch. at p. 633.
[54] *Re Sheppey Portland Co.* [1892] W.N. 184.

shown, *e.g.*, when an additional liquidator is required. The appointment may be made on the application of the existing liquidator.[55]

As to the principles on which the court acts in removing a liquidator, see *Re Sir John Moore Gold Mining Co.*,[56] *Re Adam Eyton, Ltd.*,[57] *Re Amalgamated Properties of Rhodesia, Ltd.*[58] (where the application was refused where the ground of the application was that the liquidator was not independent, but the directors whose conduct was impeached had ceased to be directors, and there was no support for the application), and *Re Rubber and Produce Investment Trust*[59] (where the application was granted where a company, thought to be solvent, proved to be insolvent, and the liquidator disregarded the wishes of the creditors).

Misconduct will justify removal, and so may the existence of interests or connections which may be in conflict, or may be likely to interfere with the performance of his duties. See *Re Charterland Goldfields*,[60] where the liquidator had intimate business relations with the directors, and *Re Karamelli and Barnett, Ltd.*,[61] where, however, the application was under s. 188 of 1908; and the fact that removal will, in the opinion of the court, be for the benefit of the winding up will amount to 'due cause shown'; but immoral conduct is insufficient as a ground for removal.[62]

When the company is insolvent, the court should be asked to fill up any vacancy.

If three or more liquidators are appointed, and one dies, it is apprehended that the continuing liquidators (being two or more) may act notwithstanding the vacancy.

REMUNERATION

In a members' voluntary winding up the remuneration of the liquidator may be fixed by the company in general meeting (**s. 285**). But in a creditors' voluntary winding up it may be fixed by the committee of inspection, or, if there is none, by the creditors (**s. 296**).

By **s. 309,** the remuneration is included among the costs payable out of the assets of the company in priority to all other claims. Sometimes the remuneration is fixed at the meeting at which the liquidator is appointed. More commonly nothing is said about remuneration at the meeting at which the liquidator is appointed. The matter is left open, and later on the remuneration is fixed by a general meeting or by the court, on the application of the liquidator or some other party interested. Sometimes the liquidator takes such remuneration as he considers proper, and then at the final meeting the accounts are passed including the appropriation of this remuneration.

Where an application to the court is made for the purpose of fixing the remuneration, the court considers the circumstances of the particular

[55] *Re Sunlight Incandescent Gas Lamp Co.* [1900] 2 Ch 728.
[56] (1879) 12 Ch.D. 325.
[57] (1887) 36 Ch.D. 299.
[58] (1914) 30 T.L.R. 405.
[59] [1915] 1 Ch. 382.
[60] 26 T.L.R. 132.
[61] [1917] 1 Ch. 203.
[62] *Re Urmston Grange Steamship Co.* (1901) 17 T.L.R. 553.

case and determines what, in those circumstances, is a fair remuneration to pay.[63] The scale adopted by the Chancery judges and sanctioned by the Lord Chancellor in 1868 does not apply; and in *Re Amalgamated Syndicates, Ltd.*,[64] the court refused to sanction an alleged practice of accountants to charge for all letters written irrespective of their character, as having taken half-an-hour of the principal's time. The present practice, in the absence of special circumstances, is to be guided by the scale of fees fixed for the remuneration of trustees in bankruptcy.[64] Where the company is insolvent, there is an obvious advantage in getting the court to fix the remuneration, for thereby all questions as to the propriety of the amount are avoided. Occasionally the court has ordered a meeting of creditors to be convened to consider the remuneration of the liquidator. Where there are two or more liquidators the court can, under **s. 242 (2)**, determine the proportions in which the remuneration assigned shall be distributed between them; but such an order is not usually made.[65] The court has a discretion as to the priority in which the remuneration will be paid,[66] and may review the remuneration of the liquidator, where the voluntary liquidation is followed by compulsory liquidation.[67]

RESTRAINING ACTIONS

Where a compulsory or supervision order has been made or a provisional liquidator appointed, no action or proceeding can be proceeded with or commenced against the company except with the leave of the court (see **s. 231**). This section does not apply to a purely voluntary winding up; but the court will in general, under **ss. 226** and **307**, restrain actions and proceedings against the company, the plaintiff being permitted to add his claim to his debt and prove for the amount.[68] Where the action is pending in the High Court, the application must be to stay further proceedings, and should be made to the Division in which the action or proceeding is pending.[69]

The court acts upon similar principles as to restraining a distress for rent due after winding up as in the case of a compulsory order.[70]

The court will usually give the creditor his costs of action down to the time when he had notice of the winding up.[71] But where the action is brought after notice of the winding up, the plaintiff, except in special circumstances, will not be allowed to add the costs to his debt, and may be ordered to pay the costs of the action.[72]

[63] *Re Amalgamated Syndicates, Ltd.* [1901] 2 Ch. 181.
[64] *Re Carlon* (1923) 39 T.L.R. 191; 128 L.T. 629.
[65] *Re Langham Hotel Co.* (1869) 17 W.R. 463; 20 L.T. 163.
[66] *Re Beni Felkai Mining Co.* [1934] Ch. 406.
[67] *Re Mortimers, Ltd.* [1937] W.N. 142.
[68] *Re Thurso New Gas Co.* (1889) 42 Ch.D. 491; *Westbury* v. *Twigg & Co.* [1892] 1 Q.B. 77.
[69] *Walker* v. *Banagher Distillery Co.* (1875) 1 Q.B.D. 129; *Re Artistic Colour Printing Co.* (1880) 14 Ch.D. 502.
[70] As to which see *ante*, pp. 402, 403. *Re South Rhondda Colliery Co.* [1928] W.N. 126.
[71] *Walker* v. *Banagher Distillery Co.* (1875) 1 Q.B.D. 129; *Re Thurso New Gas Co.* (1889) 42 Ch.D. 492.
[72] *Re East Kent Shipping Co.* (1868) 18 L.T. 748; *Rose & Co.* v. *Gardden Lodge, etc., Co.* (1878) 3 Q.B.D. 235.

SALES OF PROPERTY

The liquidator may without the sanction of the court sell the real and personal property and things in action of the company by public auction or private contract (**ss. 245** (2) (**a**) and **303** (1) (**b**)).

The liquidator should proceed with all convenient speed to sell the property, either as a going concern or otherwise. If he does not sell the undertaking as a going concern, he must decide what parts to sell and what to realise by collection or otherwise.

For the purposes of any sale the liquidator can employ auctioneers, brokers, and other agents, and may remunerate them for their services. When necessary, a sale must be made subject to special conditions as to title, etc. Great care should be taken in preparing the conditions of sale, and a reserve price should be fixed. Application to the court may be made under **s. 307** to sanction a sale. If thought desirable, an order can be obtained for sale with the approval of the judge, in which case the sale will be carried out by the court. A liquidator cannot, except under **s. 287,** sell the property for shares in another company; but where it is found desirable to effect such a sale, he should take steps under that section.

The liquidator can, in the name of the company, make all necessary contracts for the purposes of the winding up, and can execute and sign all necessary conveyances, assignments, surrenders, deeds, and documents.

SECURITY

Section 240, which requires security from a liquidator, does not apply to a voluntary winding up. Hence no security is necessary; but, if the court appoints a liquidator, it usually requires security.

SOLICITORS AND AGENTS

The liquidator can appoint a solicitor without any sanction (see **ss. 303** and **245** (1) (**c**)).

STATEMENT OF ACCOUNTS

See ACCOUNTS AND BOOKS, *supra*.

STATUS OF LIQUIDATOR

The voluntary liquidator is not, strictly speaking, a trustee, either for the creditors or the contributories; he is 'more rightly described as the agent of the company'.[73] Nor is he an officer of the court.[74] Nevertheless, he has statutory duties towards the creditors and contributories, including the administration of a fund—the assets of the company—impressed with a trust for them, and, if he neglects these duties, he may be held personally liable in an action by the party prejudiced,[75] or by misfeasance proceedings under **s. 333.**[76] The liquidator should therefore, in all cases of

[73] *Knowles* v. *Scott* [1891] 1 Ch. 717.
[74] *Re Hills Waterfall, etc., Co.* [1896] 1 Ch. 946, 954.
[75] *Pulsford* v. *Devenish* [1903] 2 Ch. 625, Farwell J.
[76] *Re Windsor Steam Coal Co.* [1929] 1 Ch 151.

doubt, make use of the opportunity given to him by **s. 307** to apply to the court.

TWO OR MORE LIQUIDATORS

Where several liquidators are appointed in a voluntary liquidation, any of their powers may be exercised by one or more of them as determined by the meeting which appoints them at the time of their appointment. If no such determination is made, any two can act (**s. 303 (3)**).

UNDISTRIBUTED ASSETS

Section 243 [77] applies to all liquidations.

In addition to this, all money, besides unclaimed dividends representing undistributed assets, which the liquidator must pay into the Companies Liquidation Account as having been in his hands or under his control, are to be ascertained at the date of his half-yearly statement, and the amount is the minimum balance which has been in his hands during the six months, except so much as the Board of Trade may authorise him to retain for the purpose of the liquidation.[78]

All moneys remaining undistributed at the date of dissolution of the company must be paid into the Companies Liquidation Account.[79]

Investments are deemed to be money under his control for the purposes of Rule 199 and must be paid or transferred into the Companies Liquidation Account.[80]

The Board of Trade may require the liquidator in a voluntary liquidation to submit and verify accounts of undistributed money or assets.[81]

VESTING ORDERS

Section 244, which enables the court to make an order vesting the company's property in the liquidator, only applies in terms to a winding up by the court; but the liquidator can apply to the court under **s. 307** to exercise this power in a voluntary liquidation.

Staying Proceedings

The court has power to stay proceedings against the company after a voluntary winding up has commenced (**s. 228**).[82]

Staying Winding Up

The court has power to stay a voluntary winding up, so that the company may resume business, and the power is often exercised, *e.g.*, upon any arrangement with creditors.[83]

[77] See *ante*, p. 414.
[78] **Ss. 243, 360 to 362,** and rr. 199–204.
[79] Rule 199.
[80] Rule 199 (5).
[81] Rule 201.
[82] *Westbury* v. *Twigg & Co.* [1892] 1 Q.B. 77; *Armorduct, etc., Co.* v. *General Incandescent Co., Ltd.* [1911] 2 K.B. 143.
[83] *Re S.S. Titian* (1888) 36 W.R. 347; *Re Hafna Mining Co.* (1888) 84 L.T. (o.s.) 403

Petition by Official Receiver

If a voluntary winding up is unduly protracted, or is not being conducted with a due regard to the interests of the creditors or contributories, the official receiver may present a petition to have the company wound up by the court (see **s. 224 (2)**).

Compulsory Order after Resolution for Voluntary Liquidation

By **s. 310**, the voluntary winding up of a company is not to be a bar to the right of any creditor or contributory of such company to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of such contributory will be prejudiced by a voluntary winding up. Since 1929 it has been unnecessary to show prejudice in the case of a petition by a creditor.[84] But the wishes of the creditors must still be considered.[85] Before the Act of 1929 a creditor, after a voluntary winding up had commenced, had to allege and prove prejudice,[86] unless he had the support of the majority of the creditors.[87] Under the old practice a petition by a creditor, to which there was otherwise no answer, might be defeated by resolutions for voluntary winding up, even after the presentation of the petition.

Dissolution of Company

As soon as the liquidator has done his work and the affairs of the company are fully wound up, the liquidator makes up an account showing the manner in which the winding up has been conducted and the property of the company disposed of, and calls, by advertisement in the *Gazette*, a general meeting of the company and a meeting of creditors where required[88] for the purpose of laying the account before the meetings and giving them any explanation that may be required. The liquidator within a week after the meeting must send to the registrar a copy of the account and a return of the meeting having been held and the date of it, or if there is no quorum present, a return to that effect, and on the expiration of three months from the registration of the return the company is to be deemed to be dissolved.[89] But the court is given power by **s. 352**, at any time within two years, on the application of the liquidator or any person interested, to declare the dissolution to have been void.

[84] See *ante*, p. 381.
[85] See *ante*, p. 407.
[86] *Re New York Exchange* (1888) 39 Ch.D. 415; *Re Russell, Cordner & Co.* [1891] 3 Ch. 171.
[87] *Re Bishop & Sons* [1900] 2 Ch. 254.
[88] See *ante*, p. 419.
[89] *Ibid.*

CHAPTER 42

WINDING UP UNDER SUPERVISION

WHEN a resolution has been passed by a company to wind up voluntarily, the court may—by **s. 311** of the Act—make an order directing that the voluntary winding up shall continue, but subject to the supervision of the court, and on such terms and conditions as the court thinks just. In making or refusing a supervision order the court has regard, as in the case of a petition for a compulsory order, to the wishes of creditors and contributories (**s. 346**). Thus the court will not make the order on a shareholder's petition against the wishes of a majority of the other shareholders; but if a resolution for voluntary winding up is passed by the preponderating influence of a shareholder whose conduct is impeached,[1] or if the petition is supported by creditors, the case is different[2]; so, too, a supervision order may be made where investigation is required and the assets are large.[3] The fact that creditors were enabled by a supervision order to apply to the court was a good reason at one time for making the order; but since the Companies Act, 1900, s. 25 (now **s. 307** of the Act of 1948), giving creditors power to apply to the court in a purely voluntary winding up, this ground no longer exists.

Practical advantage.

There are, however, three other grounds on which a supervision order is still useful—

(i) it operates automatically as a stay of actions and other proceedings against the company just as a winding-up order does (see **s. 231**);

(ii) it is competent to the court on making a supervision order to appoint an additional liquidator or liquidators to act with the existing liquidator (see **s. 314**) This is a valuable power, because in a large number of cases in which a supervision order is asked the cause is dissatisfaction on the part of either shareholders or creditors with the appointment or conduct of the acting liquidator; and

(iii) in making a supervision order the court commonly inserts as conditions of the order (1) that the liquidator shall file with the registrar a quarterly[4] report in writing as to the position and progress made with the winding up and with the realisation of the assets, and as to any other matters connected with the winding up, as the court may from time to time direct, and (2) that no bills of costs, charges, or expenses, or special remuneration of any solicitor employed by the liquidator, and no remuneration, charges, or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person are to be paid out of the

[1] *Re Varieties, Ltd.* [1893] 2 Ch. 235; *Re Medical Battery Co.* [1894] 1 Ch. 444.
[2] *Re Lonsdale Vale Ironstone Co.* (1868) 16 W.R. 601.
[3] *Re Barned's Banking Co.* (1866) 14 W.R. 722.
[4] *Re Horner & Co.* (1898) 5 Manson 355.

assets of the company unless such costs, charges, expenses or remuneration have been taxed or allowed by the registrar.[5]

The taxed costs of the solicitor employed by the liquidator incurred during the period down to the date of the supervision order must be paid out of the assets before any remuneration due to the liquidator up to that time. So also must any costs properly incurred after the date of the order in getting in assets of the company or in work done on the instructions of the liquidator.[6]

Separate costs of the company and the liquidators will not be allowed as a rule on the petition.

A supervision order does not affect the commencement of the winding up, which is still the date of the resolution.

As to the powers of the liquidator, see **s. 315.**

[5] *Re Civil Service Brewery Co.* [1893] W.N. 5; 37 S.J. 194; *Re Waterproof Materials Co.* [1893] W.N. 18; 37 S.J. 231; *Re Pritchard, Offer & Co.* [1893] W.N. 153.
[6] *Re Sanitary Burial Association* [1900] 2 Ch. 289.

CHAPTER 43

RECONSTRUCTION AND AMALGAMATION

Reconstruction.

A COMPANY at times finds itself embarrassed by something in its constitution prejudicial to the successful carrying on of its business. It may have started with too restricted an objects clause in its memorandum of association, and the desired extension may not fall within the scope of relief afforded by s. 5 of the Act, or, being at an end of its financial resources, it may need further capital to work the undertaking In these and other cases it is common for the company to reconstruct. There are, roughly speaking, four ways of doing this: (1) By a sale and transfer of assets under **s. 287** of the Act. (2) By a sale under the memorandum, followed by a winding up.[1] (3) By proceedings under **s. 206** of the Act (4) By a sale of all or most of the shares to another company.

Under **s. 287.**

Where the reconstruction is to be under **s. 287** of the Act, a special resolution should be passed that it is desirable to reconstruct, that the company accordingly be wound up voluntarily, appointing liquidators, and authorising them, under **s. 287,** to transfer the undertaking to a new company on the terms of a specified draft agreement in consideration—say—of paid-up, or partly paid-up, shares in the new company, to be distributed amongst the members of the old company or those who elect to take them. The sale must be *to a company,*[2] or an agent for a proposed company,[3] not to an individual The distribution is worked out in the subsequent winding up.

Subject to certain exceptions, any member may, under the section, dissent from the sale and claim payment in cash of the value of his interest. If this value cannot be agreed, it must be assessed by arbitration (**s. 287 (6)**).[4] A dissentient member will not be given liberty to examine the officers of the company under **s. 268,** with a view to obtaining evidence to enhance the value of his interests.[5] The notice of dissent must expressly give the liquidator notice either to abstain from carrying the resolution into effect or to purchase the dissentient member's interest [6] The liquidator may, however, waive technical informalities, such as incorrect service of the notice of dissent.[7] The executors of a deceased member may exercise the right of dissent.[8]

[1] See *Company Precedents*, Part II, 15th ed., p. 977 *et seq.*
[2] *Bird* v. *Bird's Patent, etc., Sewage Co.* (1874) L.R. 9 Ch.App. 358.
[3] *Re Hester & Co.* (1875) 44 L.J.Ch. 757.
[4] *Re Mysore Gold, etc., Co.* (1889) 42 Ch.D. 535.
[5] *Re British Building Stone Co.* [1908] 2 Ch. 450.
[6] *Re Union Bank of Kingston-upon-Hull* (1880) 13 Ch.D. 808, 810; *Re Demerara Rubber Co.*, [1913] 1 Ch. 331.
[7] *Brailey* v. *Rhodesia Consolidated* [1910] 2 Ch. 95.
[8] *Llewellyn* v. *Kasintoe Rubber Estates* [1914] 2 Ch. 670.

Sale to foreign company.

Under s. 162 of the Act of 1862, a sale could be made to a foreign company [9]; not so under s. 192 of 1908, for by s. 285 'company' was defined so as not to include a foreign company.[10] A sale to a foreign company could, however, be carried out by means of a scheme of arrangement under s. 120 of 1908,[11] and can now be carried out under **s. 287** of the Act of 1948.

Right to dissent.

It seems that a clause in the articles negativing the right of a member to dissent is not valid.[12]

If the company proceeds under **s. 287**, members who do not assent or dissent may get nothing.[13] It is no objection that the sale is to be for shares with liability on them—that is, for partly paid-up shares.[14] The notice convening the meetings must show that the proceeding is under **s. 287.** The agreement may limit the time within which the members must come in and claim their shares in the new company; if no time is fixed they have only a reasonable time to exercise their option.[15] A general meeting can only decide on the nature of the consideration to be accepted from the new company. It cannot (unless the regulations of the old company so provide) direct a distribution of the consideration, *e.g.*, the shares, etc., in the new company, otherwise than in accordance with the rights of the contributories of the old company.[16] To effect this it is necessary to take proceedings under **s. 206** of the Act. A reconstruction agreement may provide compensation for outgoing directors, but the notice of the meetings must fully and clearly disclose the same.[17]

Amalgamation.

Where two or more companies desire to unite their undertakings, the operation is commonly carried out under **s. 287** of the Act. In some cases the amalgamation is effected by the registration of a new company which takes over the several undertakings of the existing companies; in other cases, one of the existing companies takes over the undertaking or undertakings of the other concern; but the company must be expressly authorised by its constitution before it can do this; for it is not within the ordinary scope of a company's objects to purchase the goodwill of

[9] *Ex p. Fox* (1871) L.R. 6 Ch.App. 176.
[10] *Thomas* v. *United Butter Companies of France* [1909] 2 Ch. 484.
[11] *Re Anglo-Continental Supply Co.* [1922] 2 Ch. 723.
[12] *Payne* v. *The Cork Co., Ltd.* [1900] 1 Ch. 308; *Baring Gould* v. *Sharpington, etc., Syndicate* [1899] 2 Ch. 80.
[13] *Higg's Case* (1865) 2 H. & M. 657.
[14] *Re City and County Investment Co.* (1879) 13 Ch.D. 475; *Postlethwaite* v. *Port Phillip, etc., Co.* (1889) 43 Ch.D. 452.
[15] *Postlethwaite* v. *Port Phillip, etc., Co., supra*; *Burdett-Coutts* v. *True Blue, etc.* [1899] 2 Ch. 616.
[16] *Griffith* v. *Paget* (1876) 5 Ch.D. 894.
[17] *Kaye* v. *Croydon Tramways Co.* [1898] 1 Ch. 358; *Tiessen* v. *Henderson* [1899] 1 Ch. 861; *Southall* v. *British Mutual, etc., Soc.* (1871) L.R. 6 Ch.App. 614.

another.[18] Amalgamation denotes such a blending of two or more separate undertakings as to fuse them into one.[19]

Reconstruction or Amalgamation by Sale under a Power in the Memorandum

Another mode of effecting a reconstruction or amalgamation has frequently been adopted, *viz.*:—

(1) To sell the company's undertaking under a power[20] in its memorandum of association for paid-up shares in a new company to be allotted to the selling company or its nominees;

(2) Subsequently to resolve on a voluntary winding up, and pursuant to a power in the articles, to authorise the liquidator, after paying or providing for the debts and liabilities, to distribute the surplus proceeds of sale, namely the shares, amongst the members of the company according to their rights and interests.

This method was at one time extensively used in cases in which it was desired to reconstruct conditionally on the new company finding further capital by the issue of shares or debentures.

The principal advantage of adopting this method was that it was considered that the company was thereby enabled to avoid the danger arising from the provisions of s. 161 of 1862 or s. 192 of 1908 in favour of dissentient members, for those sections were sometimes used by dissentients for blackmailing purposes.

In the case, however, of *Bisgood* v. *Hendersons, etc., Co*,[21] a scheme of reconstruction was held by the Court of Appeal to be ultra vires, on grounds which were stated by the court as follows: 'If the company is proposed to be wound up, and the transaction is a sale *and distribution*, then . . . the statute provides that sale by conversion into money may be replaced by exchange for shares on the terms, *but only upon* the terms, of complying with the provisions of s. 161 (of 1862).'

The eleventh and previous editions of this work continued as follows: 'Serious doubts, however, exist whether the ground or principle of the decision in the *Bisgood Case*[21]—namely, that the section is to be treated as implying such a prohibition—is sound, although it may be that the actual decision, looking to the special features of the case, was correct'.

But though some of the dicta in the judgment of the Court of Appeal may go further than is necessary, the decision itself has never been overruled or judicially criticised, and has been followed and applied in *Etheridge* v. *Central Uruguay Railway, etc.*[22]

The method above indicated is, however, still employed where there is no intention to make the reconstruction provisional upon the provision

[18] *Ernest* v. *Nicholls* (1857) 6 H.L.C. 414.
[19] *Re Walker's Settlement* [1935] W.N. 54. See as to the distinction between reconstruction and amalgamation, and the procedure, *Company Precedents*, Part II, 15th ed., p. 1021 *et seq.*
[20] *Ante*, p. 49.
[21] [1908] 1 Ch. 743.
[22] [1913] 1 Ch. 425.

of further capital, or where the sale can be carried out as a separate transaction independent of the liquidation which is to follow.[23]

Stamp duty.

A genuine amalgamation or re-construction may be exempted from all or part of the stamp duties payable on the transfer and on the new capital of the transferee company, if the provisions of the Finance Act, 1927, s. 55, as amended by Finance Act, 1928, s. 31, and Finance Act, 1930, s. 41, are strictly complied with.[24]

Where shares in the new company are allotted to the shareholders in the transferor company, the original shareholders should be registered as shareholders in the new company. If letters of renunciation of allotment are used, the full stamp duty may become payable.[25]

See also s. 42 of Finance Act, 1930, as to conveyances by one company to another, *Company Precedents*, Part I, 15th ed., p. 1437.

Arrangements under s. 206

Companies, like individuals, find it necessary sometimes to make an arrangement with their creditors. Such an arrangement with creditors, in the case of a company, is commonly effected under **s. 206** of the Act. The machinery of the Act is available where there is, and also where there is not, a winding up in progress. The course of proceedings is to apply to the court by summons, in the first instance, to direct meetings of the different classes of creditors and of the members or classes of members, to be held to consider the proposed scheme of arrangement. The court usually makes an order for this purpose, appoints a chairman of the meetings, and directs them to be convened by circular or advertisement. The resolution of the meeting is required to be passed by a three-fourths majority in value of those who are present in person or by proxy and vote. The resolution having been passed by the requisite majority, a petition is then presented to the court to sanction the scheme; and, if approved, an order in due course is made. Schemes of the most varied character are adopted. One well-known form of scheme is that a new company shall be formed; that the debenture holders of the existing company shall take in exchange debentures or preference shares of the new company; that the unsecured creditors of the existing company shall take a composition of so much in the pound payable partly in cash and partly in shares, or partly in debentures; and that the shareholders shall receive shares in the new company with a liability attached. Any scheme which is fair and reasonable, and made in good faith, will be sanctioned if it could reasonably be supposed by sensible business people to be for the benefit of each class of the members or creditors concerned.[26] It

[23] See *Company Precedents*, Part II, 15th ed., p. 996 *et seq.*
[24] See *Company Precedents*, Part I, 15th ed., p. 1435 *et seq.*
[25] *Oswald Tillotson, Ltd.* v. *I.R.C.* [1933] 1 K.B. 134; and see *Brotex Cellulose Fibres, Ltd.* v. *I.R.C.*, *ibid.*, p. 158; *Murex, Ltd.* v. *I.R.C.*, *ibid.*, p. 173; *Lever Bros., Ltd.* v. *I.R.C.* [1938] 1 K.B. 314, and *Company Precedents*, Part I, 15th ed., pp. 1240, 1268.
[26] *Re Alabama, etc., Co.* [1891] 1 Ch. 213 (C.A.); *Re Dorman Long & Co.* [1934] Ch. at p. 656; and see this case as to the form of proxy papers.

is now settled that there is no objection to a scheme by which debenture holders are to accept fully-paid shares in satisfaction of their debts, and the court will under such a scheme compel dissentient debenture holders to surrender their securities.[27] Not uncommonly the scheme provides that debenture holders of the existing company shall grant an extension of time for payment, say, five or ten years, and that creditors shall accept some composition, or, perhaps, second debentures or shares, and that the winding up shall be stayed, and that the company shall resume business. This avoids the necessity for a new company.[28]

1947 *Amendment.*

Section 206 of the Act of 1948 applies to an arrangement between the company and the members thereof or any class thereof, and the section is available without a winding up. By **s. 207,** where a meeting of creditors or any class of creditors is summoned under **s. 206,** a statement must be sent with the notice convening the meeting explaining the effect of the compromise or arrangement and in particular the manner in which the interests of the directors will be directly or indirectly affected. If the notice is given by advertisement it must state where and how copies of the statement can be obtained. Where debenture-holders are affected, similar information must be given as respects the trustees of any debenture trust deed.[29] Every director or trustee for debenture holders must give notice to the directors of such matters relating to himself as may be necessary for the purpose of the disclosures mentioned above.[30]

It has been held that there may be an arrangement, though there is no dispute or compromise.[31]

The court cannot authorise a scheme which provides for the company doing something which is ultra vires.[32]

Proxies.

The order for convening the meetings usually directs that proxy papers shall be sent with the notices.[33] Proxy papers are usually in a form settled by the court; but this does not prevent the shareholders or creditors from using other forms.[34] The official receiver may be appointed to be a proxy for creditors.[35]

Classes of shares.

Where separate meetings of the holders of different classes of shares are required, the meetings should strictly be confined to persons who are

[27] *Re Empire Mining Co.* (1890) 44 Ch.D. 402; and see *Alabama Co., supra,* and *Re Dominion of Canada Freehold Estate, etc., Co.* (1886) 55 L.T. 347.
[28] See *Company Precedents,* Part I, 15th ed., p. 1237 *et seq.*
[29] This requirement was first made by s. 40 of the Act of 1947.
[30] **S. 207** re-enacting s. 41 of 1947.
[31] *Re Guardian Assurance Co.* [1917] 1 Ch. 431.
[32] *Re Oceanic Steam Navigation Co.* [1939] Ch. 41.
[33] As to the form of proxy paper to be used, see form approved by Swinfen Eady J. [1910] W.N. 154, and *Company Precedents,* Part I, Form 770, 15th ed., p. 1259.
[34] *Re Dorman Long & Co.* [1934] Ch. p. 660 *et seq.*
[35] *Re General Mortgage Society* [1942] 1 All E.R. 414.

members of the class in question.[36] The holders of shares of £1 each on which 10s. has been paid up, and a further 10s. paid in advance of calls, may be a different class from the holders of fully-paid shares.[37]

Combined with reconstruction.

Where an arrangement was combined with a reconstruction under s. 161 of the Act of 1862, it was held that it ought to provide for payment out of dissentient members.[38] And where there was in fact no arrangement with creditors, but a scheme for the sale of the whole of the company's undertaking to a new company, without any provisions for dealing with dissentient shareholders, the court declined to approve the scheme.[39] A reconstruction can, however, be carried out by this method where proper provision is made for dissentient members.[40] And a bona fide arrangement with creditors may in a proper case be sanctioned by the court without giving to dissentient members (by analogy to **s. 287** of the Act) the right to payment out of the value of their interests.[41] Where the scheme of arrangement involves a reduction of capital, the provisions of the Act with regard to reduction must be complied with.[42] A sale to a foreign company could be carried out in this way under the Act of 1908.[43]

Proceedings in an English court under **s. 206** of the Act of 1948, or the Companies Acts generally, cannot be pleaded in a colony as a defence to an action by a colonial creditor, those Acts not extending to the colonies or being intended to bind them.[44]

By **s. 208,** in case of a reconstruction by means of a scheme under **s. 206,** the court may provide for the transfer of the company's business and the dissolution of the company without winding up and other incidental matters.[45] The order may provide for a transfer of all the liabilities of the transferor company to the transferee company. It has, however, been held by the House of Lords (Lord Romer dissenting) that contracts of service are not transferred.[46]

Where a scheme of arrangement is proposed in regard to a company not being wound up, the court has no jurisdiction to restrain actions and proceedings against the company.[47] This is a defect in the Act. See, contra, the Railway Companies Act, 1867, s. 9, which provides whilst the scheme is pending no execution shall be available without the leave of the court.

The difficulty can be overcome by presenting a winding-up petition, which can be ordered to stand over pending the preparation of a scheme,

[36] *Carruth* v. *Imperial Chemical Industries* [1937] A.C. 707.
[37] *Re United Provident Assurance Co.* [1910] 2 Ch. 477.
[38] *Re Canning Jarrah Timber, etc., Co.* [1900] 1 Ch. 708.
[39] *Re General Motor Cab Co.* [1913] 1 Ch. 377.
[40] *Re Sandwell Park Colliery Co., Ltd.* [1914] 1 Ch. 589.
[41] *Sorsbie* v. *Tea Corporation* [1904] 1 Ch. 12.
[42] *Re White Pass and Yukon Ry.* [1918] W.N. 323.
[43] *Re Anglo-Continental Supply Co.* [1922] 2 Ch. 723.
[44] *New Zealand Loan and Mercantile Agency Co.* v. *Morrison* [1898] A.C. 349.
[45] For the form of order in such a case, see *Re Star Tea Co.* [1930] W.N. 4, and *Re The Langham Hotel Co., Ltd.* [1946] W.N. 19.
[46] *Nokes* v. *Doncaster Amalgamated Collieries* [1940] A.C. 1014.
[47] *Booth* v. *Walkden Spinning, etc., Co.* [1909] 2 K.B. 368.

and can be stayed if the scheme becomes effective. In the meantime separate proceedings by creditors will generally be stayed [48]

Section 306 is seldom effective. 'Arrangement' has a very limited meaning.[49]

Deeds of arrangement.

A creditor who did not put forward a claim at the time of the deed of arrangement may be allowed to prove under it.[50]

An assignment by a company to a trustee for the benefit of creditors is void (**s. 320 (3)**). It has been held that this extends to a debenture issued to a trustee, though it contains merely a floating charge.[51]

Reconstruction and Amalgamation by Sale of Shares

A convenient method of transferring the control of the company's business to another company is by a sale by the shareholders of the former company of their shares to the purchasing company Although from a business point of view this process is usually described as an amalgamation, it is not 'an amalgamation of the company with another company' within the meaning of s. 10 (3) (*c*) of the Trustee Act, 1925, which enables trustees holding shares to concur in schemes of amalgamation, etc.[52] It is not always essential that all the shareholders should transfer their shares; but the existence of a small minority who refuse to sell may hamper the scheme. Under the Act of 1908 there was no power to coerce such a minority; but by s. 155 of the Act of 1929, now **s. 209** of the Act of 1948, where the arrangement has been sanctioned by the holders of nine-tenths in value of the shares affected, the purchasing company may acquire the shares of the dissentients on the same terms, unless the court otherwise orders.

Changes under Act of 1947.

In calculating the nine-tenths of the shares affected, shares already held by the company or its nominee or subsidiary are to be excluded Where the transferee company or its nominee or subsidiary holds more than one-tenth in value of the shares affected, **s. 209** does not apply unless the company offers the same terms to all holders of the shares involved, and the holders who approve the scheme are not less than three-fourths in number of the holders of the shares affected. Where the transferee company as a result of the scheme holds not less than nine-tenths of the shares of the transferor company, notice must be given by the transferee company to the holders of the remaining shares, and the holders may within three months require the transferee company to acquire their shares. The transferee company is then bound to acquire the shares in question on the same terms as the other shares acquired or

[48] *Bowkett* v. *Fuller's United Electric Works* [1923] 1 K.B. 160.
[49] *Re Contal Radio, Ltd.* [1932] 2 Ch. 66.
[50] *Curtis* v. *B.U.R.T. Co., Ltd.* (1912) 28 T.L.R. 585.
[51] *London Joint, etc., Bank* v. *Herbert Dickinson* [1922] W.N. 13.
[52] *Re Walker's Settlement* [1935] Ch. 567.

as the court may order. These and other amendments of section 155 of 1929 were introduced by s. 11 of 1947.[53]

When the necessary majority has been obtained, the court will, in the absence of evidence of unfairness, treat the scheme as a fair one[54]; and the court will not refuse to sanction a scheme, in the absence of evidence of unfairness, merely on the ground that the applicant has not had all the information which he requires.[55]

Discovery has been refused to a shareholder seeking information for the purposes of **s. 209.**[56]

[53] Appendix 1, *post*.
[54] *Re Hoare, etc.* (1934) 150 L.T. 374; *Re Castner-Kellner Alkali Co.* [1930] 2 Ch. 349.
[55] *Re Everite Locknuts, Ltd.* [1945] Ch. 220.
[56] *Re Press Caps, Ltd.* [1948] W.N. 351.

CHAPTER 44

PENSIONS AND GRATUITIES

THE question whether it is within the powers of a company under the Act of 1948 to grant a pension or gratuity to an employee or ex-employee, or to his dependants, or to give a gratuity to its workmen and others not uncommonly arises for consideration. Sometimes the company's memorandum contains an express sanction for these objects, *e.g.*, it gives power to the company ' to establish and support, or aid in the establishment and support of associations, funds, trusts, and schemes calculated to benefit employees or ex-employees of the company or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe and guarantee money for charitable or benevolent objects, or for exhibitions, or for any public, general or useful object '. Such provision puts the company's power in regard to the matters specified beyond all question.

Implied powers.

But, apart from such an express sanction, a company may have, as incidental to its business, an implied power which will cover a part at least of the ground. This was well pointed out by Bowen L.J. in *Hutton* v. *West Cork Ry.*,[1] where a company had voted a gratuity to its directors:—

> ' You cannot say that the company has only got power to spend the money which it is bound to pay according to law, otherwise the wheels of business would stop, nor can you say that directors, who have got all the powers of the company given to them . . . are always to be limited to the strictest possible view of what the obligations of the company are. They are not to keep their pockets buttoned up and defy the world unless they are liable in a way which would be enforced at law or in equity. Most businesses require liberal dealings. The test there again is not whether it is bona fide, but whether as well as being bona fide it is done within the ordinary scope of the company's business, and whether it is reasonably incidental to the carrying on of the company's business for the company's benefit.'

It was on this principle that Sir George Jessel M.R., in *Hampson* v. *Price's Patent Candle Co.*,[2] held that ' a company might lawfully expend a week's wages as gratuities for its servants, because that sort of liberal dealings with servants eases the relation between masters and servants, and is in the end a benefit to the company '. So, also, in *Henderson* v. *Bank of Australasia*,[3] it was held to be within the powers of a banking company to give the family of a deceased manager a pension for a term of years. See also *Cyclists' Touring Club* v. *Hopkinson*,[4] which shows

[1] (1883) 23 Ch.D. 672.
[2] (1876) 24 W.R. 754.
[3] (1888) 40 Ch.D. 170.
[4] [1910] 1 Ch. 179.

that the principle is not confined to trading companies. So also sums paid to tenants, customers, etc., of the company for the benefit of the business, may be expenses of the company, though there was no legal obligation to pay them.[5] In any case, the power of paying gratuities stops on the commencement of a winding up, for it is a power incidental to the carrying on of the company's business as a *going concern*.[6]

Where the directors voted an annuity to the widow of a managing director, the widow was not allowed to prove for the annuity in a winding up.[7]

A subscription for outside purposes, *e.g.*, a subscription to the Imperial Institute,[8] stands on a very different footing. It may be shown to be for the benefit of the company, but in the absence of express authority it is not a form of expenditure easy for directors to justify.

Perpetuities.

Trusts of a fund to provide benefits, *e.g.*, holidays for the employees of a company at the discretion of trustees or directors, are not charitable, and are, unless confined within proper limits, void as infringing the rule against perpetuities.[9] But the rule against perpetuities does not now apply to a fund established in connection with an undertaking carried on in Great Britain, of which the main purposes are superannuation allowances for employees, pensions for their widows, allowances for their children or assurance of a capital sum on death, provided the fund is registered under the Superannuation and other Trust Funds (Validation) Act, 1927.

[5] *Usher's Wiltshire Brewery, Ltd.* v. *Bruce* [1915] A.C. 433.
[6] *Hutton* v. *West Cork Ry.* (1883) 23 Ch.D. 654; *Stroud* v. *Royal Aquarium, etc., Ltd.* [1903] W.N. 146; 89 L.T. 243.
[7] See *Re Lee, Behrens & Co.* [1932] 2 Ch. 46.
[8] *Tomkinson* v. *S.E. Ry.* (1887) 56 L.T. 812.
[9] *Re Drummond* [1914] 2 Ch. 90.

CHAPTER 45

POWERS OF ATTORNEY

THE directors of a company sometimes have occasion to affix the common seal of the company to a document (commonly called a power of attorney) authorising some person or persons on the company's behalf to execute or do some deed, instrument or thing, whether in the United Kingdom or abroad.

Section 34 of the Act of 1948 runs as follows:—

34.—(1) 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.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Besides this, **s. 35** enables a company whose objects require or comprise the transaction of business in foreign countries, to have an official seal for use abroad if its articles authorise it.[1] And the articles very commonly contain more or less elaborate provisions as to local management.[2] Moreover, it is well to bear in mind ss. 123–125 of the Law of Property Act, 1925, as amended by the Act of 1926. Under these the donee of a power of attorney can execute and do any assurance, instrument or thing in and with his own name and signature, and under his own seal where sealing is required, by the authority of the donor of the power, and protect persons acting thereunder; and ss. 126 and 127 of the same Act enable the power of attorney for valuable consideration to be made irrevocable, and enable the power of attorney, whether for value or not, to be made irrevocable for a fixed time. Provisions for depositing instruments creating powers of attorney in the Central Office are contained in s. 219 of the Judicature Act, 1925 (replacing s. 48 of the Conveyancing Act, 1881).

Strict construction.

Powers of attorney are strictly construed, as, for example, a power of attorney to act prior to the happening of some contingency may render it necessary to prove that such contingency has not happened[3]; and so the operation of a power of attorney may be cut down with reference to what appears to have been the purpose for which it was executed.[4]

[1] See Appendix 1, *post*.
[2] See *Company Precedents*, Part I, 15th ed., p. 709.
[3] *Danby* v. *Coutts & Co.* (1885) 29 Ch.D. 500.
[4] *Attwood* v. *Munnings* (1827) 7 B. & C. 278; *Jonmenjoy Coondoo* v. *Watson* (1884) 9 App.Cas. 561; *Jacobs* v. *Morris* [1902] 1 Ch. 816; *Hambro* v. *Burnand* [1904] 2 K.B. 14.

Put on inquiry.

Prima facie, those who deal with a person acting under, or purporting to act under, a power of attorney, are bound to inquire into the authenticity of the power.[5] Where the agent is acting under a written authority, and what he does comes within the terms of that authority, the principal cannot repudiate on the ground that the agent acted in his own interests and not in those of the principal, unless the other party was aware of the facts.[6] And where the agent has powers exercisable in special circumstances, it seems that a person dealing with him bona fide need not inquire whether those special circumstances have arisen.[7]

Illegitimate profits.

An attorney is an agent, and therefore subject to the well-settled rule that an agent cannot appropriate any illegitimate profit.[8]

Stamp.

Under the Stamp Act, 1891, a power of attorney generally requires a 10s. stamp.

[5] *De Bouchov* v. *Goldsmid* (1800) 5 Ves. 210; *Earl of Sheffield* v. *London Joint Stock Bank, Ltd.* (1888) 13 App.Cas. 333; *Bryant, Powis and Bryant* v. *La Banque de Peuple* [1893] A.C. 170.

[6] *Hambro* v. *Burnand* [1904] 2 K.B. 10.

[7] *Montaignac* v. *Shitta* (1890) 15 App.Cas. 357.

[8] *Parker* v. *McKenna* (1874) L.R. 10 Ch.App. 96; *Bray* v. *Ford* [1896] A.C. 44; and see as to sub-agents, *Powell* v. *Evan Jones & Co.* [1905] 1 K.B. 11.

CHAPTER 46

FOREIGN COMPANIES

Sections 406 and 407 of the Act of 1948[1] impose certain requirements on any company incorporated outside Great Britain, which establishes or has established and maintains a place of business in the United Kingdom. Such companies are referred to as 'overseas' companies (**s. 406**). They are required to deliver to the registrar of companies:—

(a) a certified copy of the charter, statutes or memorandum and articles creating the corporation and defining its constitution;

(b) a list of the directors of the company together with the particulars as to directors and secretary required by **s. 200** of 1948;

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

In case of any alterations in any of these, notice of the alteration must be delivered to the registrar.

Service on the persons made agents for service under (c) is to be sufficient.

Every such company must also deliver to the registrar an annual statement, in the form of a balance sheet containing the particulars required to be given in its annual summary by a company registered in the United Kingdom with a share capital.

The company must, in every prospectus it issues inviting subscriptions for its shares or debentures, state the country in which it was incorporated and it must conspicuously exhibit in every place in the United Kingdom where it carries on business the name of the company and the country where it was incorporated. It must also have the name of the company and of the country of its incorporation mentioned in legible characters in all billheads and letter paper, and in all notices, advertisements, and other official publications of the company (**s. 411**).[2]

If the liability of members is limited, notice of that fact must be stated in every prospectus and in all billheads, letter paper and advertisements, and must be affixed to every place where it carries on business.

Such a company must also make out a balance sheet every year containing the same particulars and accompanied by the same documents as if it were registered in England and must deliver a copy to the registrar (**s. 410**). It must also register charges on property in England (**s. 106**).

All provisions as to delivering documents are now made to apply to companies registered in the Channel Islands or the Isle of Man (**s. 416**).

Prospectuses of companies incorporated out of Great Britain are now

[1] Incorporating amendments by ss. 110 to 114 of the Act of 1947.
[2] Incorporating s. 114 of the Act of 1947.

made subject to the same rules as to delivering the prospectus for registration and as to the contents of the prospectus as apply to companies registered in England, with some modifications (see **ss. 417 and 418**).[3]

These are just and reasonable conditions, to which no honest foreign trading company can fairly take exception; while to investors, or persons having dealings with the foreign company in the United Kingdom, they afford valuable information and protection.

By **s. 408** of the Act, where an oversea company has delivered to the registrar the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subs. (1) of **s. 407**, it is to have the same power to hold lands in the United Kingdom as if it were a company incorporated under the Act. This power was possessed by companies incorporated in a British possession under the Act of 1929 and was extended by s. 111 of the Act of 1947 to all companies registered outside the United Kingdom which have established a place of business within the United Kingdom. A foreign company, which does not come within this section, cannot hold lands 'in mortmain'; but this does not prevent such a company from holding a lease, unless the lease is so long as to be practically equivalent to a grant of the fee.[4]

A sale to a foreign company on reconstruction can now be effected under **s. 287** of the Act.[5]

Winding up of Foreign Companies

A foreign company is an unregistered company under **s. 398**, and may be wound up by the court under **s. 399** if (i) 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; (ii) it is unable to pay its debts; (iii) the court is of opinion that it is just and equitable that the company should be wound up.[6]

By **s. 400**, where a foreign company which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up even if it has been dissolved. See *Re Russian and English Bank*,[7] where a Russian company which had been dissolved in Russia was ordered to be wound up, though the petitioners' debt was disputed, there being no other remedy open to the creditor; and *Dairen Kisen Kabushiki Kaisha* v. *Shiangkee*[8] (a decision on the Companies Ordinance of Hong Kong). A foreign company which has been dissolved cannot bring an action[9]; but after a winding-up order, the liquidator can sue in the name of the company, though it has been dissolved[10], and it is submitted, an order might be made under **s. 244** vesting all the property of the company

[3] For full details of these requirements in the case of oversea companies see **ss. 406–423**, Appendix 1, *post*.
[4] *Vigers* v. *Dean of St. Paul's* (1819) 18 L.J.Q.B. 97; *Truro Corporation* v. *Rowe* [1901] 1 K.B. at p. 875.
[5] See *ante*, p. 437.
[6] *Re Mercantile Bank of Australia* [1892] 2 Ch 204.
[7] [1932] 1 Ch. 663.
[8] [1941] A.C. 373.
[9] *Russian and English Bank* v. *Baring Bros. & Co., Ltd.* [1932] 1 Ch. 435.
[10] *Russian and English Bank* v. *Baring Bros.* [1936] A.C. 405.

in the liquidator and he could then, as provided by the section, bring an action in his official name.[11]

Before 1929 a company which has been carrying on business in England merely through an agent, but without any branch in this country, could not be wound up in England though it was being wound up abroad [12]; but see *Re Tovarishestvo Manufactur Lindvig-Rabenek*,[13] where the directors met in a hotel in London to transact business, and *Re Naamloose Vermootschap Handelsmaatschappij Wokar*,[14] where a company which had not registered particulars under s. 344 of 1929 (now **s. 407**) was held well served at its place of business in England though there was no one there.

[11] Cf. Bankruptcy Act, 1914, s. 76; and see judgment of Clauson J., *S.C.* [1935] 1 Ch. at p. 125; and of Slesser L.J. at pp. 133–135; and of Lord Russell of Killowen [1906] A.C. at p. 435

[12] *Re Lloyd Generale Italiano* (1885) 29 Ch.D. 219.

[13] [1944] Ch. 404.

[14] [1946] Ch. 98.

CHAPTER 47 [1]

INCOME TAX AND SURTAX

Income Tax

English company carrying on business abroad.

IF a company is registered in the United Kingdom, it is liable for tax on the whole of its trading profits, even though it carries on business wholly or partly abroad, if the business is controlled in the United Kingdom; but if nothing is done in the United Kingdom except the holding of meetings of the company, it becomes a question of fact whether the company is a person residing in the United Kingdom.[2]

Foreign company carrying on business here.

Where shares in a foreign company are held by an English company managed abroad, the tax is on the dividends received as from a foreign possession.[3]

A company registered abroad is only liable to tax on profits arising from business carried on here.[4] In considering the liability of a foreign company to income tax, the place where the contracts are made is important.[5] Thus, a foreign company selling its goods in this country through an agent here has been held liable[6]; while a foreign company buying goods here through an agent for the purpose of exportation and sale in America has been held not liable.[7]

Sale of assets.

If a company sells the whole or part of its assets and the transaction is a sale of the kind the company is formed to effect and not a mere change of investment, any profit therefrom will be assessable to income tax[8]; but where the transaction is merely a sale of an investment held by the company, the profit is not assessable.[9] Thus the profit on sale by a trading company of part of the land acquired by the company was held not to be assessable to income tax, as the company did not carry on the trade of selling land.[10]

[1] This chapter is merely intended as a summary of the more important decisions on these subjects so far as they affect companies.
[2] *San Paulo Ry.* v. *Carter* [1896] A.C. 31; *Mitchell* v. *Egyptian Hotels* [1915] A.C. 1022; *Swedish Central Ry.* v. *Thompson* [1925] A.C. 495; *Egyptian Delta, etc., Co.* v. *Todd* [1929] A.C. 1.
[3] *Bradbury* v. *English Sewing Cotton Co.* [1922] 2 K.B. 569.
[4] *Sulley* v. *Att.-Gen.* (1860) 2 Tax Cas. 149; *Grainger & Son* v. *Gough* [1896] A.C. 325.
[5] *Grainger & Son* v. *Gough*, *ubi sup.* at p. 335; *Lovell, etc.* v. *Commissioner of Taxes* [1908] A.C. 46.
[6] *Thomas Turner (Leicester), Ltd* v. *Rickman* (1898) 4 Tax Cas. 25; *Weiss, Bitheller & Brooks, Ltd.* v. *Farmer* [1923] 1 K.B. 226.
[7] *Sully* v. *Att.-Gen.* (1860) 2 Tax Cas. 149; 5 H. & N. 711.
[8] *Californian Copper Syndicate, Ltd., and Reduced* v. *Harris* (1904) 6 F. 894, 41 Sc.L.R. 691; *Commissioner of Taxes* v. *Melbourne Trust* [1914] A.C. 1001.
[9] *Tebrau (Johore) Rubber Syndicate, Ltd.* v. *Farmer* [1910] S.C. 906; 47 Sc.L.R. 816.
[10] *Stevens* v. *Hudson's Bay Co.* (1909) 101 L.T. 96; 25 T.L.R. 709.

Appreciation of capital values.

Appreciation of capital values is not the subject of taxation.[11] The values appearing in the company's books do not bind the Crown, and cannot be used by the Crown as binding on the company.[12] In the case of a company formed for the purpose of buying or selling investments or land, the true rule appears to be that, subject to proper adjustment, the taxable profit is the excess of profit realised over the price paid.

Income tax, paid in British Dominions.

Section 43 of the Finance Act, 1916, as amended by the Finance Act, 1920, s. 27 (5), provides relief against double income tax by providing that any person who has paid or is liable to pay by deduction or otherwise United Kingdom income tax for the current income tax year on any part of his income, and proves to the satisfaction of the Commissioners that he has also paid 'colonial' income tax in respect of the same part of his income, shall be entitled to certain repayments. The effect of this provision in the Act of 1916 in a case where the company has paid colonial income tax was considered in *Scottish Union Co.* v. *New Zealand Land, etc. Co.*,[13] where it was held, overruling *Rover* v. *South African Breweries*,[14] that the company should deduct the full rate of United Kingdom income tax in paying dividends, with the result that the repayments benefit the ordinary shareholder and not the preference shareholder entitled to a fixed rate of dividend; but in *Sheldrik* v. *South African Breweries*,[15] the Court of Appeal (overruling *Wakefield* v. *Whiteaway, Laidlaw & Co.*),[16] held that the Act of 1920 has altered the law in this respect, and accordingly the deduction for preference dividends must be diminished by the allowance for colonial tax.

Deductions for expenses.

An estate company whose business consists in holding and managing land must be assessed under Schedule A in respect of rents or value of land, and under Schedule D in respect of other profits.[17]

Allowance for expenses may be claimed under Schedule A (v), r. 8.

In case of a company whose business consists chiefly of investments, management expenses can be deducted under s. 33 of the Income Tax Act, 1918.

Surtax

Bonus and capitalisation of profits.

Where a company declares a bonus out of undivided profits and authorises in satisfaction of the bonus a distribution of unissued shares credited as fully paid, the shares so distributed are not liable to surtax, but are an addition to the shareholders' capital[18]; and, even where the

[11] *Craig & Co.* v. *Inland Revenue* (1914) 51 Sc.L.R. at p. 328.
[12] *Craig & Co.* v. *Commissioners I.R.*, *ubi sup.* at p. 321; *Assets Co.* v. *Forbes* (1897) 3 Tax Cas. 542.
[13] (1920) 57 Sc.L.R. p. 15, affirmed by the House of Lords [1921] A.C. 172.
[14] [1918] 2 Ch. 238.
[15] [1923] 1 K.B. 173.
[16] [1922] 1 Ch. 200.
[17] *Fry* v. *Salisbury House Estate Co.* [1930] A.C. 432, overruling *Re Rosyth Building and Estate Co.* [1921] S.C. 372.
[18] *Commissioners of Inland Revenue* v. *Blott* [1921] 2 A.C. 171.

payment was made in debentures of the company, it has been held that the payment is not liable to surtax.[19] Where, however, a bonus is paid out of profits chargeable to income tax, either in cash,[20] or in shares of another company,[21] the payment must be taken into account for the purposes of surtax. See also *Hill* v. *Permanent Trustee, etc., Ltd.*,[22] where a cash distribution was held to be income though the company declared that it was a capital distribution free from income tax.

The profits of a company distributed on a winding up are not liable to surtax.[23]

Dividend paid out of non-taxable profits.

If a dividend is paid out of profits of a company which in the hands of the company are charged to tax, income tax is deductible from the dividend at the standard rate, and surtax is payable by the shareholder, though the company may have been charged under Schedule A only at a much lower rate than the standard rate on the full amount of its profits.[24]

Where the dividend is paid out of the balance of profit which is not taxable in the hands of the company and is paid without deduction of income tax, a further notional sum is not to be added to the dividend for the purpose of surtax.[25]

Where a dividend is paid wholly out of a profit arising on the realisation of a capital asset, or otherwise out of profits not charged to tax at all in the hands of the company, neither income tax nor surtax appear to be payable by the shareholder who receives the dividend.[26] Dividends as such are not charged to tax, it is the profit which is taxed, if chargeable to tax.[27]

Tax-free dividends.

In calculating income for the purposes of surtax there must be added in respect of dividends paid ' free of income tax ', the amount of income tax paid by the company in respect of such dividends.[28]

Where a business is sold as from a preceding date, the vendor is chargeable to surtax on the profits between that date and the date of the contract. See *Adams* v. *Morgan & Co., Ltd.*,[29] where it was held that the purchasing company must indemnify the vendor. It is submitted, however, that this was not the fair result of the transaction, since the tax was charged on the vendor because he *personally* had made the profits in question, and though he sold these profits to the company, so much of the price as represented these profits remained *his* income.

[19] *I.R.C.* v. *Fischer's Executors* [1926] A.C. 395; and see *Whitmore* v. *I.R.C.* (1925) 10 Tax Cas. 645.
[20] *Re Alsbury* (1890) 45 Ch.D. 242; *Re Bates* [1928] Ch. 682.
[21] *Pool* v. *Guardian Investment Trust Co.* [1922] 1 K.B. 347.
[22] [1930] A.C. 720.
[23] *I.R. Commissioners* v. *Burrell* [1924] 2 K.B. 52; *I.R. Commissioners* v. *Blott* [1920] 2 K.B. at p. 675.
[24] *Newmann* v. *I.R.C.* [1934] A.C. 215.
[25] *Ibid.*
[26] *Grimson* v. *I.R.C.* [1930] 2 K.B. 246, approved and explained by the House of Lords in *Newmann* v. *I.R.C.*, *supra*.
[27] *Ibid.*
[28] *Samuel* v. *Commissioners I.R.* [1918] 2 K.B. 553, applying *Att.-Gen.* v. *Ashton Gas Co.* [1906] A.C. 10.
[29] [1923] 2 K.B. 234.

Where the rights in a winding up of [redacted] held by the Minister of Agriculture depended on the amount of dividend paid on shares issued to the public, it was held that the amount in question was the net amount received by the shareholders after deducting income tax.[30]

One-man companies.

In *Commissioners of I. R.* v. *Sansom*[31] it was held that where the holder of the majority of the shares of a company received no dividends, but borrowed money from time to time from the company, no super-tax was payable, the loans being held to be bona fide. This and other similar devices were intended to be met by s. 21 of the Finance Act, 1922, which, as amended by the Finance Acts, 1927, 1936, 1938 and 1939, provides as follows:—

Super-tax on undistributed income of certain companies.

21. With a view to preventing the avoidance of the payment of super-tax through the withholding from distribution of income of a company which would otherwise be distributed, it is hereby enacted as follows.

(1) Where it appears to the Special Commissioners that any company to which this section applies has not, within a reasonable time after the end of any year or other period ending on any date subsequent to the fifth day of April, nineteen hundred and twenty-two, for which accounts have been made up, distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources for the said year or other period, the Commissioners may, by notice in writing to the company, direct that for purposes of assessment to super-tax, the said income of the company shall, for the year or other period specified in the notice, be deemed to be the income of the members, and the amount thereof shall be apportioned among the members.

The section (as amended) then sets out elaborate provisions for apportioning the tax and other matters. The Act of 1922 only applied to a limited class of companies and its provisions were easily evaded. The section (as amended by the Acts of 1927, 1936, 1938 and 1939), however, now provides as follows:—

(6) This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested. . . .

A company shall be deemed to be under the control of not more than five persons—

(*a*) if any five or fewer persons together exercise or are able to exercise or are entitled to acquire control whether direct or indirect over the company's affairs and in particular but without prejudice to the generality of the foregoing words if any five or fewer persons together possess or are entitled to acquire the greater part of the share capital or voting power of the company; or

(*b*) if any five or fewer persons together possess or are entitled to acquire either the greater part of the issued share capital of the company or such part of that capital as would if the whole of the income of the company were in fact distributed to the members entitle them to receive the greater part of the amount so distributed; or

[30] *Re Home Grown Sugar* [1938] Ch. 219.
[31] [1921] 2 K.B. 492.

(c) if,—

(i) on the assumption that the company is a company to which the said section twenty-one applies; or

(ii) on the assumption that the company and any other company or companies are companies to which the said section twenty-one applies, more than half of the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it, for the purposes of the said section twenty-one) could be apportioned for those purposes among not more than five persons.

' Relatives ' and ' nominees ' are defined in s. 19 (2) of the Act of 1936.

The application of s. 21 of the Finance Act, 1922, has been much extended and its provisions made very complicated by later amendments, in particular by the provisions of ss. 13–17 of the Finance Act, 1939.

Before 1936, where 50 ordinary shares were held by one person and 700 preference shares were held by fourteen persons holding 50 shares each, all shares carrying equal voting rights, the company was held not to be ' under the control of not more than five persons '.[32]

The whole of the income of a company may be apportioned by the Commissioners to a person able to secure that income or assets, present or future, will be applied directly or indirectly for his benefit to a greater extent than is represented in the value of his relevant interests in the company.[33]

A subsidiary company is one the control of which is in the hands of another company to which the section does not apply.[34]

If the Commissioners do not consider that a reasonable amount of the income has been distributed, the whole of the income of the company becomes liable to tax.[35] Surtax assessed on the company under this section may be recovered under **s. 259** of the Companies Act, 1948, from a contributory who has been paid profits without deducting the surtax so assessed.[36] If the company does not pay within three months, the tax may be recovered from the members on whom the tax is assessed.[37] The shareholders should be debited with the amount of surtax paid by the company in proportion to their liability to tax.[38] These provisions apply even though the shareholders are companies or trustees or other persons who do not pay surtax.[39] A provision in the articles that no dividends are to be paid until the capital of mortgages has been paid off does not take the company out of the section.[40]

Where a company to which the Act applies is wound up, the income from the end of the last financial year to the date of the winding up is deemed to be income of that period available for distribution.[41]

[32] *Re Himley Estates, Ltd.* [1933] 1 K.B. 472.
[33] *Fendoch Investment Trust Co.* v. *I.R.C.* [1945] W.N. 118; and see *F.P.H. Financial Trust* v. *I.R.C.* [1946] A.C. 38
[34] But see now Finance Act, 1937, s. 14.
[35] See s. 21 (1).
[36] *Re Asdall, Ltd.* [1938] 1 Ch. 323.
[37] Finance Act, 1936, s. 19 (6).
[38] *Re Alexander Drew & Co.* [1935] 1 Ch. 93.
[39] *Roomwood Investments and Others* v. *I.R.C.* [1942] 1 All E.R. 290.
[40] *Colville Estates, Ltd.* v. *I.R.C.* [1930] 2 K.B. 393.
[41] Finance Act, 1927, s. 31 (4); *Re H. Collier & Sons, Ltd.* [1933] 1 K.B. 488. But see now Finance Act, 1937, s. 14 (2) (c).

Patents.

As to super-tax on a sale of patents, see *Jones* v. *Commissioners of I. R.*[42]

If a company was exempt from the Act of 1922, but is covered by the Act of 1927, the first year to which the provisions of the amended Act applies is the super-tax year 1928–29.[43]

National Defence Contribution

A new tax called National Defence Contribution was charged by the Finance Act, 1937, on the profits for five years from April 1, 1937, arising from trades or businesses falling within the Act at the rate, in the case of companies, of 5 per cent. For the definition of a subsidiary company for the purposes of this tax, see Finance Act, 1938, s. 42.

The Profits Tax

As from the beginning of 1947 National Defence Contribution is to be known as ' the profits tax '. The rate was increased to 12½ per cent. by s. 30 of the Finance Act, 1947, subject to exceptions, and other alterations were made. This rate was doubled by the Finance (No. 2) Act, 1947, s. 7.

Excess Profits Tax

By the Finance (No. 2) Act, 1939, s. 12, amended by the Finance Act, 1940, s. 26, excess profits tax was charged upon the excess of all profits over the standard profit as defined by the Act By the Finance Act, 1941, s. 28, the surplus over 80 per cent. was to be repaid after the war. The tax was abolished by the Finance Act, 1946, s. 36.

It was held that the similar tax known as E.P.D., which was abolished in 1924, should be deducted in ascertaining the amount of the profits available for dividend.[44] For the purpose of determining whether directors have a ' controlling interest ' under s. 13 (9) of the Act of 1939, shares held by them as trustees must be taken into account.[45]

Estate Duty

Restrictions in the articles on the right to sell shares at their full value can only be taken into account in fixing the value of shares passing on death on the basis that the shares are capable of being sold in the open market.[46]

When forming an estate company with a view to reducing the amount of estate duty which will be payable on the death of the estate owner, regard must be had to the provisions of ss. 34–38 of the Finance Act, 1930.

[42] [1920] 1 K.B. 711.
[43] Finance Act, 1927, s. 37. See also Finance Act, 1928, s. 18.
[44] See *Re Condran* [1917] 1 Ch. 635, and other cases, *ante*, p. 208.
[45] *I.R.C.* v. *J. Bibby & Sons, Ltd.* [1945] W.N. 117.
[46] *I.R.C.* v. *Crossman* [1937] A.C. 26.

APPENDIX 1

COMPANIES ACT, 1948

(11 & 12 GEO. 6, c. 38)

ARRANGEMENT OF SECTIONS

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Memorandum of Association

SECT.		PAGE
1.	Mode of forming incorporated company	468
2.	Requirements with respect to memorandum	469
3.	Stamp and signature of memorandum	469
4.	Restriction on alteration of memorandum	469
5.	Mode in which and extent to which objects of company may be altered	469

Articles of Association

6.	Articles prescribing regulations for companies	471
7.	Regulations required in case of unlimited company or company limited by guarantee	471
8.	Adoption and application of Table A	471
9.	Printing, stamp, and signature of articles	472
10.	Alteration of articles by special resolution	472

Form of Memorandum and Articles

11.	Statutory forms of memorandum and articles	472

Registration

12.	Registration of memorandum and articles	472
13.	Effect of registration	472
14.	Power of company to hold lands	473
15.	Conclusiveness of certificate of incorporation	473
16.	Registration of unlimited company as limited	473

Provisions with respect to Names of Companies

17.	Prohibition of registration of companies by undesirable names	473
18.	Change of name	474
19.	Power to dispense with "limited" in name of charitable and other companies	474

General Provisions with respect to Memorandum and Articles

20.	Effect of memorandum and articles	475
21.	Provision as to memorandum and articles of companies limited by guarantee	475
22.	Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent	476
23.	Power to alter conditions in memorandum which could have been contained in articles	476
24.	Copies of memorandum and articles to be given to members	476
25.	Issued copies of memorandum to embody alterations	476

Membership of Company

26.	Definition of member	477
27.	Membership of holding company	477

Private Companies

28.	Meaning of "private company"	477
29.	Consequences of default in complying with conditions constituting a company a private company	478
30.	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company	478

Reduction of Number of Members below Legal Minimum

SECT. PAGE
31. Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members 479

Contracts, etc.

32. Form of contracts 479
33. Bills of exchange and promissory notes 480
34. Execution of deeds abroad 480
35. Power for company to have official seal for use abroad 480

Authentication of Documents

36. Authentication of documents 480

PART II

SHARE CAPITAL AND DEBENTURES

Prospectus

37. Dating of prospectus 481
38. Matters to be stated and reports to be set out in prospectus 481
39. Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses 482
40. Expert's consent to issue of prospectus containing statement by him . . 482
41. Registration of prospectus 483
42. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus 484
43. Civil liability for mis-statements in prospectus 484
44. Criminal liability for mis-statements in prospectus 486
45. Document containing offer of shares or debentures for sale to be deemed prospectus 486
46. Interpretation of provisions relating to prospectuses 487

Allotment

47. Prohibition of allotment unless minimum subscription received . . 487
48. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar 488
49. Effect of irregular allotment 488
50. Applications for, and allotment of, shares and debentures 489
51. Allotment of shares and debentures to be dealt in on stock exchange . 490
52. Return as to allotments 490

Commissions and Discounts, etc.

53. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc. 491
54. Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's shares 492

Construction of References to offering Shares or Debentures to the Public

55. Construction of references to offering shares or debentures to the public . . 493

Issue of Shares at Premium and Discount and Redeemable Preference Shares

56. Application of premiums received on issue of shares 493
57. Power to issue shares at a discount 494
58. Power to issue redeemable preference shares 494

Miscellaneous Provisions as to Share Capital

59. Power of company to arrange for different amounts being paid on shares . . 495
60. Reserve liability of limited company 495
61. Power of company limited by shares to alter its share capital 495
62. Notice to registrar of consolidation of share capital, conversion of shares into stock, etc. 496
63. Notice of increase of share capital 496
64. Power of unlimited company to provide for reserve share capital on re-registration 496
65. Power of company to pay interest out of capital in certain cases . . . 497

Reduction of Share Capital

SECT. PAGE

66. Special resolution for reduction of share capital 497
67. Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors 498
68. Order confirming reduction and powers of court on making such order . . 498
69. Registration of order and minute of reduction 499
70. Liability of members in respect of reduced shares 499
71. Penalty for concealing name of creditor, etc. 500

Variation of Shareholders' Rights

72. Rights of holders of special classes of shares 500

Transfer of Shares and Debentures, Evidence of Title, etc.

73. Nature of shares 501
74. Numbering of shares 501
75. Transfer not to be registered except on production of instrument of transfer 501
76. Transfer by personal representative 501
77. Registration of transfer at request of transferor 501
78. Notice of refusal to register transfer 501
79. Certification of transfers 501
80. Duties of company with respect to issue of certificates 502
81. Certificate to be evidence of title 502
82. Evidence of grant of probate 503
83. Issue and effect of share warrants to bearer 503
84. Penalty for personation of shareholder 503
85. Offences in connection with share warrants in Scotland 503

Special Provisions as to Debentures

86. Provisions as to registers of debenture holders 504
87. Rights of inspection of register of debenture holders and to copies of register and trust deed 504
88. Liability of trustees for debenture holders 505
89. Perpetual debentures 505
90. Power to re-issue redeemed debentures in certain cases 506
91. Saving, in case of re-issued debentures, of rights of certain mortgagees . . 506
92. Specific performance of contracts to subscribe for debentures 507
93. Validity of debentures to bearer in Scotland 507
94. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge 507

PART III

REGISTRATION OF CHARGES

Registration of Charges with Registrar of Companies

95. Registration of charges created by companies registered in England . . . 508
96. Duty of company to register charges created by company 509
97. Duty of company to register charges existing on property acquired . . . 510
98. Register of charges to be kept by registrar of companies 510
99. Endorsement of certificate of registration on debentures 511
100. Entries of satisfaction and release of property from charge 511
101. Rectification of register of charges 511
102. Registration of enforcement of security 512

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges

103. Copies of instruments creating charges to be kept by company 512
104. Company's register of charges 512
105. Right to inspect copies of instruments creating mortgages and charges and company's register of charges 512

Application of Part III to Companies incorporated outside England

106. Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England 513

PART IV

MANAGEMENT AND ADMINISTRATION

Registered Office and Name

107. Registered office of company 513
108. Publication of name by company 513

Restrictions on Commencement of Business

SECT. PAGE
109. Restrictions on commencement of business 514

Register of Members

110. Register of members 515
111. Index of members 516
112. Provisions as to entries in register in relation to share warrants . . . 516
113. Inspection of register and index 517
114. Consequences of failure to comply with requirements as to register owing to agent's default 517
115. Power to close register 517
116. Power of court to rectify register 517
117. Trusts not to be entered on register in England 518
118. Register to be evidence 518

Dominion Register

119. Power for company to keep dominion register 518
120. Regulations as to dominion register 518
121. Stamp duties in case of shares registered in dominion registers . . . 519
122. Power to extend provisions as to dominion registers to other countries . . 519
123. Provisions as to branch registers of dominion companies kept in the United Kingdom 520

Annual Return

124. Annual return to be made by company having a share capital 520
125. Annual return to be made by company not having a share capital . . . 521
126. Time for completion of annual return 522
127. Documents to be annexed to annual return 522
128. Certificates to be sent by private company with annual return 523
129. Exemption, in certain cases, of private companies from requirements of s. 127 523

Meetings and Proceedings

130. Statutory meeting and statutory report 524
131. Annual general meeting 525
132. Convening of extraordinary general meeting on requisition 525
133. Length of notice for calling meetings 526
134. General provisions as to meetings and votes 527
135. Power of court to order meeting 527
136. Proxies 527
137. Right to demand a poll 528
138. Voting on a poll 529
139. Representation of corporations at meetings of companies and of creditors . 529
140. Circulation of members' resolutions, etc. 529
141. Extraordinary and special resolutions 530
142. Resolutions requiring special notice 531
143. Registration and copies of certain resolutions and agreements 531
144. Resolutions passed at adjourned meetings 532
145. Minutes of proceedings of meetings of company and of directors and managers 532
146. Inspection of minute books 532

Accounts and Audit

147. Keeping of books of account 533
148. Profit and loss account and balance sheet 534
149. General provisions as to contents and form of accounts 534
150. Obligation to lay group accounts before holding company 535
151. Form of group accounts 536
152. Contents of group accounts 537
153. Financial year of holding company and subsidiary 537
154. Meaning of "holding company" and "subsidiary" 537
155. Signing of balance sheet 538
156. Accounts and auditors' report to be annexed to balance sheet 539
157. Directors' report to be attached to balance sheet 539
158. Right to receive copies of balance sheets and auditors' report 539
159. Appointment and remuneration of auditors 540
160. Provisions as to resolutions relating to appointment and removal of auditors 541
161. Disqualifications for appointment as auditor 542
162. Auditors' report and right of access to books and to attend and be heard at general meetings 543
163. Construction of references to documents annexed to accounts 543

Inspection

SECT. PAGE
164. Investigation of company's affairs on application of members 543
165. Investigation of company's affairs in other cases 544
166. Power of inspectors to carry investigation into affairs of related companies 544
167. Production of documents, and evidence, on investigation 544
168. Inspectors' report 545
169. Proceedings on inspectors' report 545
170. Expenses of investigation of company's affairs 546
171. Inspectors' report to be evidence 547
172. Appointment and powers of inspectors to investigate ownership of company 547
173. Power to require information as to persons interested in shares or debentures 548
174. Power to impose restrictions on shares or debentures 549
175. Saving for solicitors and bankers 550

Directors and other Officers

176. Directors 550
177. Secretary 550
178. Prohibition of certain persons being sole director or secretary 550
179. Avoidance of acts done by person in dual capacity as director and secretary 550
180. Validity of acts of directors 551
181. Restrictions on appointment or advertisement of director 551
182. Share qualifications of directors 551
183. Appointment of directors to be voted on individually 552
184. Removal of directors 552
185. Retirement of directors under age limit 553
186. Duty of directors to disclose age to company 554
187. Provisions as to undischarged bankrupts acting as directors 555
188. Power to restrain fraudulent persons from managing companies 555
189. Prohibition of tax-free payments to directors 556
190. Prohibition of loans to directors 556
191. Approval of company requisite for payment by it to director for loss of office, etc. 557
192. Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, etc. 557
193. Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company 557
194. Provisions supplementary to three foregoing sections 558
195. Register of directors' shareholdings, etc. 559
196. Particulars in accounts of directors' salaries, pensions, etc. 560
197. Particulars in accounts of loans to officers, etc. 562
198. General duty to make disclosure for purposes of three foregoing sections . . 563
199. Disclosure by directors of interest in contracts 5
200. Register of directors and secretaries 5
201. Particulars with respect to directors in trade catalogues, circulars, etc. . .
202. Limited company may have directors with unlimited liability . . . .
203. Special resolution of limited company making liability of directors unlimited
204. Provisions as to assignment of office by directors . . . . .

Avoidance of Provisions in Articles or Contracts relieving Officers from Liab

205. Provisions as to liability of officers and auditors . . . . .

Arrangements and Reconstructions

206. Power to compromise with creditors and members . . . . .
207. Information as to compromises with creditors and members . . .
208 Provisions for facilitating reconstruction and amalgamation of comp
ver to acquire shares of shareholders dissenting from scheme or co
ed by majority . . . . . .

Minorities

winding up in cases of oppression . . .

Contributories

SECT. PAGE
212. Liability as contributories of present and past members 573
213. Definition of "contributory" 574
214. Nature of liability of contributory 574
215. Contributories in case of death of member 574
216. Contributories in case of bankruptcy of member 575
217. Provision as to married women 575

(ii) WINDING UP BY THE COURT

Jurisdiction

218. Jurisdiction to wind up companies registered in England 575
219. Transfer of proceedings from one court to another and statement of case by county court 576
220. Jurisdiction to wind up companies registered in Scotland 576
221. Power in Scotland to remit winding up to Lord Ordinary 577

Cases in which Company may be wound up by Court

222. Circumstances in which company may be wound up by court 577
223. Definition of inability to pay debts 577

Petition for Winding Up and Effects Thereof

224. Provisions as to applications for winding up 578
225. Powers of court on hearing petition 579
226. Power to stay or restrain proceedings against company 579
227. Avoidance of dispositions of property, etc., after commencement of winding up 579
228. Avoidance of attachments, etc., in case of English company, and in case of effects in England of Scottish company 579

Commencement of Winding Up

229. Commencement of winding up by the court 580

Consequences of Winding-up Order

230. Copy of order to be forwarded to registrar 580
231. Actions stayed on winding-up order 580
232. Effect of winding-up order 580

Official Receiver in English Winding Up

233. Official receiver in bankruptcy to be official receiver for winding-up purposes 580
234. Appointment of official receiver by court in certain cases 580
235. Statement of company's affairs to be submitted to official receiver . . . 581
236. Report by official receiver 582

Liquidators

Power of court to appoint liquidators 582
Appointment and powers of provisional liquidator 582
Appointment, style, etc., of liquidators in England 582
Provisions where person other than official receiver is appointed liquidator 583
Provisions as to liquidators in Scotland 583
General provisions as to liquidators 583
Custody of company's property 584
Vesting of property of company in liquidator . . . . . .
Powers of liquidator . . . . . .
Exercise and control of liquidator's powers in England . .
Books to be kept by liquidator in England . . .
Payments of liquidator in England into bank . . .
Audit of liquidator's accounts in England . .
Control of Board of Trade over liquidators in
Release of

General Powers of Court in case of Winding Up by Court

SECT. PAGE
256. Power to stay winding up 589
257. Settlement of list of contributories and application of assets 589
258. Delivery of property to liquidator 590
259. Payment of debts due by contributory to company and extent to which set-off allowed 590
260. Power of court to make calls 590
261. Payment into Bank of moneys due to company 590
262. Order on contributory conclusive evidence 591
263. Appointment in England of special manager 591
264. Power to exclude creditors not proving in time 591
265. Adjustment of rights of contributories 591
266. Inspection of books by creditors and contributories 591
267. Power to order costs of winding up to be paid out of assets 592
268. Power to summon persons suspected of having property of company, etc. . . 592
269. Attendance of officers of company at meetings of creditors, etc., in Scotland 592
270. Power in England to order public examination of promoters and officers . . 592
271. Power to arrest absconding contributory 593
272. Powers of court cumulative 593
273. Delegation to liquidator of certain powers of court in England 593
274. Dissolution of company 594

Enforcement of and Appeal from Orders

275. Order for calls on contributories in Scotland 594
276. Enforcement throughout United Kingdom of orders made in winding up . . 594
277. Appeals from orders in Scotland 595

(iii) VOLUNTARY WINDING UP

Resolutions for, and Commencement of, Voluntary Winding Up

278. Circumstances in which company may be wound up voluntarily . . . 595
279. Notice of resolution to wind up voluntarily 596
280. Commencement of voluntary winding up 596

Consequences of Voluntary Winding Up

281. Effect of voluntary winding up on business and status of company . . . 596
282. Avoidance of transfers, etc., after commencement of voluntary winding up 596

Declaration of Solvency

283. Statutory declaration of solvency in case of proposal to wind up voluntarily 596

Provisions Applicable to a Members' Voluntary Winding Up

284. Provisions applicable to a members' winding up 597
285. Power of company to appoint and fix remuneration of liquidators . . . 597
286. Power to fill vacancy in office of liquidator 597
287. Power of liquidator to accept shares, etc., as consideration for sale of property of company 597
288. Duty of liquidator to call creditors' meeting in case of insolvency . . . 598
289. Duty of liquidator to call general meeting at end of each year 598
290. Final meeting and dissolution 598
291. Alternative provisions as to annual and final meetings in case of insolvency 599

Provisions Applicable to a Creditors' Voluntary Winding Up

292. Provisions applicable to a creditors' winding up 599
293. Meeting of creditors 600
294. Appointment of liquidator 600
295. Appointment of committee of inspection 600
296. Fixing of liquidators' remuneration and cesser of directors' powers . . . 601
297. Power to fill vacancy in office of liquidator 601
298. Application of s. 287 to a creditors' voluntary winding up 601
299. Duty of liquidator to call meetings of company and of creditors at end of each year 601
300. Final meeting and dissolution 601

Provisions Applicable to every Voluntary Winding Up

301. Provisions applicable to every voluntary winding up 602
302. Distribution of property of company 602
303. Powers and duties of liquidator in voluntary winding up 602
304. Power of court to appoint and remove liquidator in voluntary winding up . 603
305. Notice by liquidator of his appointment 603

SECT. PAGE
306. Arrangement when binding on creditors 603
307. Power to apply to court to have questions determined or powers exercised . 603
308. Power of court in Scotland to stay proceedings against company 604
309. Costs of voluntary winding up 604
310. Saving for rights of creditors and contributories 604

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

311. Power to order winding up subject to supervision 604
312. Effect of petition for winding up subject to supervision 604
313. Application of ss. 227 and 228 to winding up subject to supervision . . 604
314. Power of court to appoint or remove liquidators 604
315. Effect of supervision order 605

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

316. Debts of all descriptions may be proved 605
317. Application of bankruptcy rules in winding up of insolvent English companies 605
318. Ranking of claims in Scotland 606
319. Preferential payments 606

Effect of Winding Up on antecedent and other Transactions

320. Fraudulent preference 608
321. Liabilities and rights of certain fraudulently preferred persons . . . 609
322. Effect of floating charge 609
323. Disclaimer of onerous property in case of company wound up in England . 610
324. Liability for rentcharge on company's land after disclaimer 611
325. Restriction of rights of creditor as to execution or attachment in case of company being wound up in England 611
326. Duties of sheriff as to goods taken in execution 612
327. Effect of diligence within sixty days of winding up in case of Scottish company and in case of effects in Scotland of English company 612

Offences antecedent to or in course of Winding Up

328. Offences by officers of companies in liquidation 613
329. Penalty for falsification of books 615
330. Frauds by officers of companies which have gone into liquidation . . . 615
331. Liability where proper accounts not kept 616
332. Responsibility for fraudulent trading of persons concerned 616
333. Power of court to assess damages against delinquent directors, etc. . . . 617
334. Prosecution of delinquent officers and members of company 617

Supplementary Provisions as to Winding Up

335. Disqualification for appointment as liquidator 618
336. Corrupt inducement affecting appointment as liquidator 618
337. Enforcement of duty of liquidator to make returns, etc. 619
338. Notification that a company is in liquidation 619
339. Exemption of certain documents from stamp duty on winding up of companies 619
340. Books of company to be evidence 620
341. Disposal of books and papers of company 620
342. Information as to pending liquidations 620
343. Unclaimed assets in England to be paid to Companies Liquidation Account 620
344. Unclaimed dividends, etc., in Scotland to be lodged in bank 621
345. Resolutions passed at adjourned meetings of creditors and contributories . . 621

Supplementary Powers of Court

346. Meetings to ascertain wishes of creditors or contributories 621
347. Judicial notice of signature of officers 622
348. Special commission for receiving evidence 622
349. Court may order examination of persons in Scotland 622
350. Costs of application for leave to proceed against company being wound up in Scotland 623
351. Affidavits, etc., in United Kingdom and dominions 623

Provisions as to Dissolution

352. Power of court to declare dissolution of company void 623
353. Registrar may strike defunct company off register 624
354. Property of dissolved company to be bona vacantia 625

SECT. PAGE
355. Power of Crown to disclaim title to property vesting under foregoing section . 625
356. Liability for rentcharge on company's land after dissolution 626

Special Provisions as to Stannaries

357. Attachment of debt due to contributory on winding up in stannaries court . 626
358. Preferential payments in stannaries cases 626
359. Provisions as to mine club funds 628

Central Accounts

360. Companies Liquidation Account 628
361. Investment of surplus funds on general account 628
362. Separate accounts of particular estates 628

Officers

363. Officers and remuneration 629
364. Returns by officers in English winding up 629

Rules and Fees

365. General rules and fees for winding up 629

PART VI

RECEIVERS AND MANAGERS

366. Disqualification of body corporate for appointment as receiver 630
367. Disqualification of undischarged bankrupt from acting as receiver or manager 630
368. Power in England to appoint official receiver as receiver for debenture holders or creditors 630
369. Receivers and managers appointed out of court 630
370. Notification that receiver or manager appointed 631
371. Power of court to fix remuneration on application of liquidator 631
372. Provisions as to information where receiver or manager appointed . . . 632
373. Special provisions as to statement submitted to receiver 633
374. Delivery to registrar of accounts of receivers and managers 634
375. Enforcement of duty of receivers and managers to make returns, etc. . . 634
376. Construction of references to receivers and managers 634

PART VII

APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER FORMER ACTS

377. Application of Act to companies formed and registered under former Companies Acts 635
378. Application of Act to companies registered but not formed under former Companies Acts 635
379. Application of Act to unlimited companies re-registered under former Companies Acts 635
380. Provisions as to companies registered under the Joint Stock Companies Acts 636
381. Exclusion of companies registered in Northern Ireland or Eire 636

PART VIII

COMPANIES NOT FORMED UNDER THIS ACT AUTHORISED TO REGISTER UNDER THIS ACT

382. Companies capable of being registered 636
383. Definition of joint stock company 637
384. Requirements for registration by joint stock companies 637
385. Requirements for registration by other than joint stock companies . . . 638
386. Authentication of statements of existing companies 638
387. Registrar may require evidence as to nature of company 638
388. Change of name for purposes of registration 638
389. Addition of "limited" to name 638
390. Certificate of registration of existing companies 638
391. Vesting of property on registration 638

SECT. PAGE
392. Saving for existing liabilities 639
393. Continuation of existing actions 639
394. Effect of registration under Part VIII 639
395. Power to substitute memorandum and articles for deed of settlement . . 640
396. Power of court to stay or restrain proceedings 641
397. Actions stayed on winding-up order 641

PART IX

WINDING UP OF UNREGISTERED COMPANIES

398. Meaning of unregistered company 641
399. Winding up of unregistered companies 641
400. Oversea companies may be wound up although dissolved 643
401. Contributories in winding up of unregistered company 643
402. Power of court to stay or restrain proceedings 643
403. Actions stayed on winding-up order 644
404. Provisions of Part IX cumulative 644
405. Saving for enactments providing for winding up under former Companies Acts 644

PART X

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN

Provisions as to Establishment of Place of Business in Great Britain

406. Application of ss. 407 to 414 644
407. Documents, etc., to be delivered to registrar by oversea companies carrying on business in Great Britain 644
408. Power of oversea company to hold lands 645
409. Return to be delivered to registrar by oversea company where documents, etc., altered 646
410. Accounts of oversea company 646
411. Obligation to state name of oversea company, whether limited, and country where incorporated 646
412. Service on oversea company 647
413. Office where documents to be filed 647
414. Penalties 647
415. Interpretation of ss. 407 to 414 647
416. Special provisions as to delivery of documents by companies incorporated in Channel Islands or Isle of Man 648

Prospectuses

417. Dating of prospectus and particulars to be contained therein. 648
418. Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses 650
419. Provisions as to expert's consent, and allotment 650
420. Registration of prospectus 650
421. Penalty for contravention of four foregoing sections 651
422. Civil liability for mis-statements in prospectus 651
423. Interpretation of provisions as to prospectuses 652

PART XI

GENERAL PROVISIONS AS TO REGISTRATION

424. Registration offices in England and Scotland 652
425. Fees 652
426. Inspection, production and evidence of documents kept by registrar . . . 653
427. Power of registrar in England to direct removal of documents to Public Record Office 654
428. Enforcement of duty of company to make returns to registrar 654

PART XII

MISCELLANEOUS PROVISIONS WITH RESPECT TO BANKING AND INSURANCE COMPANIES, AND CERTAIN SOCIETIES, PARTNERSHIPS AND UNREGISTERED COMPANIES

Provisions relating to Banking and Insurance Companies

429. Prohibition of banking partnerships with more than ten members . . . 654
430. On registration of banking company with limited liability, notice to be given to customers 654

SECT. PAGE
431. Liability of bank of issue unlimited in respect of notes 655
432. Privileges of banks making annual return 655
433. Banking and certain other companies to publish periodical statement . . 655

Prohibition of Partnerships with more than twenty Members

434. Prohibition of partnerships with more than twenty members 656

Application of certain Provisions of this Act to Unregistered Companies

435. Application of certain provisions of this Act to unregistered companies . . 656

PART XIII

GENERAL

Form of Registers, etc.

436. Form of registers, etc. 657

Service of Documents

437. Service of documents on a company 657

Offences

438. Penalty for false statements 657
439. Penalty for improper use of word "limited" 658
440. Provision with respect to default fines and meaning of "officer in default" . 658
441. Production and inspection of books where offence suspected 658
442. Provisions as to summary proceedings 659
443. Proceedings on indictment in Scotland against bodies corporate 659
444. Application of fines 660
445. Saving as to private prosecutors 660
446. Saving for privileged communications 661

Legal Proceedings

447. Costs in actions by certain limited companies 661
448. Power of court to grant relief in certain cases 661
449. Power to enforce orders 661
450. Jurisdiction of stannaries court 661

General Provisions as to Board of Trade

451. Annual report by Board of Trade 662
452. Authentication of documents issued by Board of Trade 662
453. Orders and certificates of Board to be evidence 662
454. Power to alter tables and forms 662

Supplemental

455. Interpretation 663
456. Amendments of other Acts 666
457. Construction of references in other Acts to subsidiary companies as defined by, and companies registered under, the Companies Act, 1929 666
458. Effect of provisions of former Companies Acts as to registration of charges on land and keeping books of account 666
459. Repeal and savings 666
460. Provisions as to winding-up proceedings commenced before November 1, 1929 669
461. Application to Northern Ireland 669
462. Short title and commencement 669

SCHEDULES:
First Schedule.—Tables A, B, C, D and E 670
Second Schedule.—Form of Licence to hold Lands 695
Third Schedule.—Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company and Reports to be set out therein 695
Fourth Schedule.—Matters to be specified in Prospectus and Reports to be set out therein 698

Wi... effec...

PAGE

Fifth Schedule.—Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to Allotment on a Prospectus issued and Reports to be set out therein 702
Sixth Schedule.—Contents and Form of Annual Return of a Company having a Share Capital 706
Seventh Schedule.—Conditions as to Interests in Shares and Debentures of Exempt Private Company 712
Eight Schedule.—Accounts 715
Ninth Schedule.—Matters to be expressly stated in Auditors' Report . . 722
Tenth Schedule.—Orders in Course of Winding Up pronounced in Vacation in Scotland 722
Eleventh Schedule.—Provisions of this Act which do not apply in the case of a Winding Up subject to Supervision of the Court 723
Twelfth Schedule.—Fees to be paid to the Registrar of Companies . . 724
Thirteenth Schedule.—Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident or Benefit Societies . . 725
Fourteenth Schedule.—Provisions of this Act applied to Unregistered Companies 726
Fifteenth Schedule.—Provisions referred to in section 438 of this Act . . 726
Sixteenth Schedule.—Amendments of other Acts 727
Seventeenth Schedule.—Enactments Repealed 729
Eighteenth Schedule.—Enactments Saved 731

An Act to consolidate the Companies Act, 1929, the Companies Act, 1947 (other than the provisions thereof relating to the registration of business names, bankruptcy and the prevention of fraud in connection with unit trusts), and certain other enactments amending the first-mentioned Act. [30th June 1948.]

Part I

Incorporation of Companies and Matters incidental thereto

Memorandum of Association

Mode of forming incorporated company.

1.—(1) Any seven or more persons, or, where the company to be formed will be a private company, 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 an incorporated company, with or without limited liability.

(2) Such a company may be either—

(*a*) 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

(*b*) 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 "company limited by guarantee"); or

(*c*) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

Requirements with respect to memorandum.

2.—(1) The memorandum of every company must state—

(*a*) the name of the company, with "limited" as the last word of the name in the case of a company limited by shares or by guarantee;

(*b*) whether the registered office of the company is to be situate in England or in Scotland;

(*c*) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also 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 after he ceases to be a member, 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.

(4) In the case of a company having a share capital—

(*a*) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*b*) no subscriber of the memorandum may take less than one share;

(*c*) each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum.

3. 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.

Restriction on alteration of memorandum.

4. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Mode in which and extent to which objects of company may be altered.

5.—(1) 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 operation; 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; or

(*f*) to sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under this section may be made—

(*a*) by the holders of not less in the aggregrate than fifteen per cent. in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen per cent. of the company's members; or

(*b*) by the holders of not less than fifteen per cent. of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section 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, 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 shall be expended in any such purchase.

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before the first day of December, nineteen hundred and forty-seven, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is, by virtue of a licence from the Board of Trade, exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Board of Trade as to members of the company.

(7) Where a company passes a resolution altering its objects—

(*a*) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the registrar of companies a printed copy of its memorandum as altered; and

(*b*) if such an application is made it shall—

(i) forthwith give notice of that fact to the registrar; and

(ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of documents to the registrar under paragraph (*b*) of this subsection for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the registrar of companies as required by the last foregoing

subsection, the company and every officer of the company who is in default shall be liable to a default fine of ten pounds.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

(10) In relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of the company passed before the first day of December, nineteen hundred and forty-seven, this section shall have effect as if, in lieu of the proviso to subsection (1) and subsections (2) to (9) thereof, there had been enacted therein the provisions of subsections (2) to (7) of section five of the Companies Act, 1929.

Articles of Association

Articles prescribing regulations for companies.

6. 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.

Regulations required in case of unlimited company or company limited by guarantee.

7.—(1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Adoption and application of Table A.

8.—(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) 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 contained in Table A, 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.

Printing, stamp, and signature of articles.

9. 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;

(*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.

Alteration of articles by special resolution.

10.—(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.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Form of Memorandum and Articles

Statutory forms of memorandum and articles.

11. The form of—

(*a*) the memorandum of association of a company limited by shares;

(*b*) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(*c*) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(*d*) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule to this Act, or as near thereto as circumstances admit.

Registration

Registration of memorandum and articles.

12. The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

Effect of registration.

13.—(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, 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.

Power of company to hold lands.

14.—(1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain :

Provided that 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.

(2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

Conclusiveness of certificate of incorporation.

15.—(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 Supreme Court, and in Scotland 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 said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

16.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a 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 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 the registration, and those rights or liabilities may be enforced in manner provided by Part VIII 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 from those under which the company is registered as a limited company.

Provisions with respect to Names of Companies

Prohibition of registration of companies by undesirable names.

17. No company shall be registered by a name which in the opinion of the Board of Trade is undesirable.

Change of name.

18.—(1) A company may by special resolution and with the approval of the Board of Trade signified in writing change its name.

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Board of Trade, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Board of Trade and, if they so direct within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Board may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) Where a company changes its name under this section, 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.

(4) A change of name by a company under this section 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.

Power to dispense with "limited" in name of charitable and other companies.

19.—(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 may 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 and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Board of Trade—

(*a*) that the objects of a company registered under this Act as a limited company are restricted to those specified in the foregoing subsection and to objects incidental or conducive thereto; and

(*b*) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Board may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) 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 body to which the licence is granted, and (where the grant is under subsection (1) of this section) shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the

word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the registrar of companies.

(5) 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 upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Board shall give to the body notice in writing of their intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Board of Trade may (unless they see fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Board think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall, within a period of six weeks from the date of revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words, and—

(*a*) the notice to be given under the proviso to subsection (5) of this section to that body shall include a statement of the effect of the foregoing provisions of this subsection; and

(*b*) subsections (3) and (4) of the last foregoing section shall apply to a change of name under this subsection as they apply to a change of name under that section.

If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

General Provisions with respect to Memorandum and Articles

Effect of memorandum and articles.

20.—(1) Subject to the provisions of this Act, 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 to observe all the provisions of the memorandum and of the articles.

(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 be of the nature of a specialty debt.

Provision as to memorandum and articles of 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 a company limited by guarantee and registered on or after the date aforesaid, 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.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

22. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Power to alter conditions in memorandum which could have been contained in articles.

23.—(1) Subject to the provisions of the last foregoing section and of section two hundred and ten of this Act, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution :

Provided that if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2), (3), (4), (7) and (8) of section five of this Act (except paragraph (*b*) of the said subsection (2)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

Copies of memorandum and articles to be given to members.

24.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding one pound.

Issued copies of memorandum to embody alterations.

25.—(1) Where an alteration is made 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.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Definition of member.

26.—(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.

Membership of holding company.

27.—(1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to the last foregoing subsection, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2) of this section, subsections (1) and (3) thereof shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Private Companies

Meaning of "private company".

28.—(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 to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) 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.

Consequences of default in complying with conditions constituting a company a private company.

29. Where the articles of a company include the provisions which, under the last foregoing section, are required to be included in the articles of a company in order to constitute it a private company but 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 contained in section thirty-one, subsection (1) of section one hundred and twenty-nine, paragraph (*d*) of section two hundred and twenty-two and paragraph (i) of proviso (*a*) to subsection (1) of section two hundred and twenty-four of this Act, and thereupon the provisions contained in the first, third and fourth of those enactments shall apply to the company as if it were not a private company and the provisions contained in the second of those enactments shall cease to apply to the 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.

Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.

30.—(1) If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under section twenty-eight of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Third Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule :

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the said period of fourteen days a prospectus relating to the company which complies, or is deemed by virtue of a certificate of exemption under section thirty-nine of this Act to comply, with the Fourth Schedule to this Act, is issued and is delivered to the registrar of companies as required by section forty-one of this Act.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Third Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with subsection (1) or (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

(4) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue

statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(5) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Reduction of Number of Members below Legal Minimum

Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members.

31. 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 severally sued therefor.

Contracts, etc.

Form of contracts.

32.—(1) Contracts on behalf of a company may be made as follows:—

(*a*) a 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;

(*b*) a 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;

(*c*) a 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.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) A deed to which a company is a party shall be held to be validly executed according to the law of Scotland on behalf of the company if it is executed in accordance with 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 or by a director and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

Bills of exchange and promissory notes.

33. 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.

34.—(1) 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.

(2) A deed signed by such an 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.

35.—(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 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 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.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person 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.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

Authentication of Documents

Authentication of documents.

36. 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.

Part II

Share Capital and Debentures

Prospectus

Dating of prospectus.

37. A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Matters to be stated and reports to be set out in prospectus.

38.—(1) Subject to the provisions of the next following section, 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 the matters specified in Part I of the Fourth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company 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.

(3) Subject to the provisions of the next following section, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(*a*) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

(4) In the event of non-compliance with or contravention of 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 or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

(*a*) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant

for shares or debentures will or will not have the right to renounce in favour of other persons; or

(*b*) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) 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.

Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.

39.—(1) Where—

(*a*) it is proposed to offer any shares in or debentures of a company to the public by a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the company); and

(*b*) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then—

(*a*) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and

(*b*) the last foregoing section shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

Expert's consent to issue of prospectus containing statement by him.

40.—(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

(*a*) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(*b*) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding five hundred pounds.

(3) In this section the expression "expert" includes engineer, valuer,

accountant and any other person whose profession gives authority to a statement made by him.

Registration of prospectus.

41.—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

(*a*) any consent to the issue of the prospectus required by the last foregoing section from any person as an expert; and

(*b*) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section thirty-nine of this Act to comply with the requirements of that Schedule a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to the stock exchange, a copy or, as the case may be, a memorandum of that contract; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in sub-paragraph (i) of paragraph (*b*) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

(2) Every prospectus shall, on the face of it, –

(*a*) state that a copy has been delivered for registration as required by this section; and

(*b*) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, 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 delivered with the required documents endorsed thereon or attached thereto.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

42.—(1) A company limited by shares or a company limited by guarantee and having a share capital 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.

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

Civil liability for mis-statements in prospectus.

43.—(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons 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 included therein, that is to say :—

(*a*) every person who is a director of the company at the time of the issue of the prospectus;

(*b*) every person who has authorised himself to be named 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;

(*c*) every person being a promoter of the company; and

(*d*) every person who has authorised the issue of the prospectus :

Provided that where, under section forty of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves—

(*a*) 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

(*b*) 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

(*c*) 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; or

(*d*) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, 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

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the

issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section forty of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards 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, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section forty, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section forty of this Act, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

(*a*) that, having given his consent under the said section forty to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(*b*) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(*c*) that he was competent to make the statement and 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.

(4) Where—

(*a*) 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; or

(*b*) the consent of a person is required under section forty of this Act to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

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 or whose consent was required as aforesaid, as the case may be, 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 of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

(*a*) 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; and

(*b*) the expression "expert" has the same meaning as in section forty of this Act.

Criminal liability for mis-statements in prospectus.

44.—(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the prospectus shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding one hundred pounds, or both;

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospecus by reason only of his having given the consent required by section forty of this Act to the inclusion therein of a statement purporting to be made by him as an expert.

Document containing offer of shares or debentures for sale to be deemed prospectus.

45.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures, were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-eight of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and section forty-one of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

Interpretation of provisions relating to prospectuses.

46. For the purposes of the foregoing provisions of this Part of this Act—

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Allotment

Prohibition of allotment unless minimum subscription received.

47.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Fourth Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus 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 cent. per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment 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.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

48.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration 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 Part I of the Fifth Schedule to this Act and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under the foregoing subsection shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fifth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

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

(4) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

(5) Where a statement in lieu of prospectus delivered to the registrar of companies under subsection (1) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds, or both; or

(*b*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or both;

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(*a*) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(*b*) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Effect of irregular allotment.

49.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections 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, or, in any case where the company is not required to hold a statutory

meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, 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 said sections 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.

Applications for, and allotment of, shares and debentures.

50.—(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as " the time of the opening of the subscription lists ".

(2) In the foregoing subsection, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement :

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section forty-three of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this and the next succeeding section the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday in any part of Great Britain shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

(7) This section shall not apply in relation to a prospectus to which paragraph (*a*) or (*b*) of subsection (2) of section thirty-nine of this Act applies.

Allotment of shares and debentures to be dealt in on stock exchange.

51.—(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the eighth day :

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

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under the last foregoing subsection; and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

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

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect—

(*a*) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and

(*b*) in relation to a prospectus offering shares for sale with the following modifications, that is to say—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

Return as to allotments.

52.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment

of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(*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 deliver to the registrar of companies for registration 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.

(3) If default is made in complying with this section, every officer of the company who is in 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 delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order exending the time for the delivery of the document for such period as the court may think proper.

Commissions and Discounts, etc.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

53.—(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—

(*a*) the payment of the commision is authorised by the articles; and

(*b*) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) 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 delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a

prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(*d*) the number of shares which persons have agreed for a commision to subscribe absolutely is disclosed in manner aforesaid.

(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 in 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.

(4) 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.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

(6) Nothing in this section shall affect the operation of subsection (2) of section three of the Gas Undertakings Act, 1934 (which limits the rate at which commission may be paid by gas undertakers).

Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's, shares.

54.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company :

Provided that nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(*c*) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

Construction of References to offering Shares or Debentures to the Public

Construction of references to offering shares or debentures to the public.

55.—(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) The foregoing subsection shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

(*a*) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(*b*) the provisions of this Act relating to private companies shall be construed accordingly.

Issue of Shares at Premium and Discount and Redeemable Preference Shares

Application of premiums received on issue of shares.

56.—(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off—

(*a*) the preliminary expenses of the company; or

(*b*) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of the Eighth Schedule to this Act shall be disregarded in determining the sum to be included in the share premium account.

Power to issue shares at a discount.

57.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

(*a*) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the court;

(*b*) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(*c*) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(*d*) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Power to issue redeemable preference shares.

58.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed :

Provided that—

(*a*) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(*d*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called " the capital redemption reserve fund ", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Miscellaneous Provisions as to Share Capital

Power of company to arrange for different amounts being paid on shares.

59. A company, if so authorised by its articles, may do any one or more of the following things—

(*a*) 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;

(*b*) accept from any member 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;

(*c*) 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.

Reserve liability of limited company.

60. 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.

Power of company limited by shares to alter its share capital.

61.—(1) A company limited by shares or a company limited by guarantee and having a share capital, 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 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*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision 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 must be exercised by the company in general meeting.

(3) 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.

62.—(1) If a company having a share capital has—

(*a*) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(*b*) converted any shares into stock; or

(*c*) re-converted stock into shares; or

(*d*) subdivided its shares or any of them; or

(*e*) redeemed any redeemable preference shares; or

(*f*) cancelled any shares, otherwise than in connection with a reduction of share capital under section sixty-six of this Act;

it shall within one month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Notice of increase of share capital.

63.—(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, it shall, within fifteen days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration.

64. 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.

Power of company to pay interest out of capital in certain cases.

65.—(1) 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 sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

(*a*) no such payment shall be made unless it is authorised by the articles or by special resolution;

(*b*) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade;

(*c*) 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;

(*d*) the payment shall be made only for such period as may be determined by the Board of Trade, and that 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;

(*e*) the rate of interest shall in no case exceed four per cent. per annum or such other rate as may for the time being be prescribed by order of the Treasury;

(*f*) 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;

(*g*) nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Reduction of Share Capital

Special resolution for reduction of share capital.

66.—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, 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 referred to as " a resolution for reducing share capital ".

Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.

67.—(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) 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, the following provisions shall have effect, subject nevertheless to the next following subsection :—

(*a*) 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;

(*b*) 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;

(*c*) where a creditor entered on the list whose debt or claim is not discharged or has not 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 :—

(i) if the company admits the full amount of the 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 and 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.

(3) Where a proposed reduction of share capital involves 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, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of court on making such order.

68.—(1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section 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.

(2) Where the court makes any such order, it may—

(*a*) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period,

commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words " and reduced "; and

(*b*) make an order requiring 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 giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words " and reduced ", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction.

69.—(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 of the order and minute, 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.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-five of this Act.

Liability of members in respect of reduced shares.

70.—(1) In the case of a reduction of share capital, 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 of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be :

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—

(*a*) 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 the said date; and

(*b*) 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.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for concealing name of creditor, etc.

71. If any officer of the company—

(*a*) wilfully conceals the name of any creditor entitled to object to the reduction; or

(*b*) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

Variation of Shareholders' Rights

Rights of holders of special classes of shares.

72.—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Transfer of Shares and Debentures, Evidence of Title, etc.

Nature of shares.

73. 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.

Numbering of shares.

74. Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up.

Transfer not to be registered except on production of instrument of transfer.

75. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative.

76. 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 of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor.

77. 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.

Notice of refusal to register transfer.

78.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Certification of transfers.

79.—(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer,

but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(*a*) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(*b*) the certification of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;

(*c*) a certification shall be deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether handwritten or not); and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company with respect to issue of certificates.

80.—(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 date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, 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.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title.

81. A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

Evidence of grant of probate.

82. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Issue and effect of share warrants to bearer.

83.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant 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 the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Penalty for personation of shareholder.

84. If any person 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 shall on conviction thereof 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.

Offences in connection with share warrants in Scotland.

85.—(1) If in Scotland any person—

(*a*) 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

(*b*) 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;

he shall on conviction thereof 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 in Scotland any person without lawful authority or excuse, proof whereof shall lie on him,—

(*a*) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(*b*) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of

PART III

REGISTRATION OF CHARGES

Registration of Charges with Registrar of Companies

Registration of charges created by companies registered in England.

95.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the 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 charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges :—

(*a*) a charge for the purpose of securing any issue of debentures;

(*b*) a charge on uncalled share capital of the company;

(*c*) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(*d*) a charge on land, wherever situate, or any interest therein, but not including a charge for any rent or other periodical sum issuing out of land;

(*e*) a charge on book debts of the company;

(*f*) a floating charge on the undertaking or property of the company;

(*g*) a charge on calls made but not paid;

(*h*) a charge on a ship or any share in a ship;

(*i*) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced 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 charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to creat the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which

the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) 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 charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) 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, for the purposes of this section, 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 :

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.

(9) Where any commission, allowance or discount has been paid or made either directly or indirectly by a 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 of rate per cent. of the commission, discount or allowance so paid or made, but 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 subsection, be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

(*a*) the expression " charge " includes mortgage;

(*b*) the expression " the fixed date " means in relation to the charges specified in paragraphs (*a*) to (*f*), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (*g*) to (*i*), both inclusive, of the said subsection, the first day of November, nineteen hundred and twenty-nine.

Duty of company to register charges created by company.

96.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring

registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where 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.

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Duty of company to register charges existing on property acquired.

97.—(1) Where a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquistion of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument 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 completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Register of charges to be kept by registrar of companies.

98.—(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter in the register with respect to such charges the following particulars :—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section ninety-five of this Act;

(*b*) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive

evidence that the requirements of this Part of this Act as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding one shilling for each inspection as may be specified by regulations made by the Board of Trade.

(4) The powers to make regulations conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Endorsement of certificate of registration on debentures.

99.—(1) The company shall cause a copy of every certificate of registration given under the last foregoing 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 charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

Entries of satisfaction and release of property from charge.

100. The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge,—

(*a*) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(*b*) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

Rectification of register of charges.

101. The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction 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 court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

Registration of enforcement of security.

102.—(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 said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of such fee as may be specified by regulations made by the Board of Trade, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) 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.

(4) The power conferred by this section on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges

Copies of instruments creating charges to be kept by company.

103. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act 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 debenture of the series shall be sufficient.

Company's register of charges.

104.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any 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.

Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

105.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges 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, every officer of the company who is in default 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.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

Application of Part III to Companies incorporated outside England

Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.

106. The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

Part IV

Management and Administration

Registered Office and Name

Registered office of company.

107.—(1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, 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 within fourteen days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Publication of name by company.

108.—(1) Every 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 business letters of the company and in all notices 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 company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, the company shall be liable to a fine not exceeding fifty pounds.

(4) If an officer of a company or any person on its behalf—

(*a*) 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

(*b*) issues or authorises the issue of any business letter of the company or any notice 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 or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(*c*) issues or authorises the issue of 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 the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

Restrictions on Commencement of Business

Restrictions on commencement of business.

109.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the 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 subscripion; and

(*c*) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange; and

(*d*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(*a*) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; 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 payable in cash; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the

directors, in the prescribed form, that paragraph (*b*) of this subsection has been complied with.

(3) The registrar of companies shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) 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.

(5) 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.

(6) 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.

(7) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of January, nineteen hundred and one; or

(*c*) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Register of Members

Register of members.

110.—(1) Every company shall keep a register of its members and enter therein the following particulars :—

(*a*) the names and addresses 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 so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which each person was entered in the register as a member;

(*c*) the date at which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (*a*) of this subsection.

(2) The register of members shall be kept at the registered office of the company :

Provided that,—

(*a*) if the work of making it up is done at another office of the company, it may be kept at that other office; and

(*b*) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done;

so, however, that it shall not be kept, in the case of a company registered in England, at a place outside England, and, in the case of a company registered in Scotland, at a place outside Scotland.

(3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place :

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) Where a company make default in complying with subsection (1) of this section or makes default for fourteen days in complying with the last foregoing subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Index of members.

111.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Provisions as to entries in register in relation to share warrants.

112.—(1) 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 specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and

(*c*) the date of the issue of the warrant.

(2) 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.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section 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.

(5) Subject to the provisions of this Act, 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.

Inspection of register and index.

113.—(1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company 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 without charge and 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, 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.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Consequences of failure to comply with requirements as to register owing to agent's default.

114. Where, by virtue of proviso (*b*) to subsection (2) of section one hundred and ten of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, subsection (3) of section one hundred and eleven of this Act, or the last foregoing section or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of the last foregoing section shall extend to the making of orders against that other person and his officers and servants.

Power to close register.

115. 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.

116.—(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) Where an application is made under this section, 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 an 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.

Trusts not to be entered on register in England.

117. 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.

Register to be evidence.

118. The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

Dominion Register

Power for company to keep dominion register.

119.—(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a "dominion register").

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) References to a colonial register occurring in any articles registered before the first day of November, nineteen hundred and twenty-nine, shall be construed as references to a dominion register.

Regulations as to dominion register.

120.—(1) A dominion register shall be deemed to be part of the company's register of members (in this 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 where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting

the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall—

(*a*) transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made; and

(*b*) cause to be kept at the place where the company's principal register is kept a duplicate of its dominion register duly entered up from time to time.

Every such 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 dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions 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 dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine; and where, by virtue of proviso (*b*) to subsection (2) of section one hundred and ten of this Act, the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with paragraph (*b*) of subsection (3) of this section, he shall be liable to the same penalty as if he were an officer of the company who was in default.

Stamp duties in case of shares registered in dominion registers.

121. An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, 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 stamp duty chargeable in Great Britain.

Power to extend provisions as to dominion registers to other countries.

122.—(1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

(2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend, with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

Provisions as to branch registers of dominion companies kept in the United Kingdom.

123.—(1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that subsection (2) of section one hundred and ten (except the proviso thereto) and sections one hundred and thirteen and one hundred and sixteen of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purposes of this section, the expression "His Majesty's dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

(3) For the purposes of the Mandated and Trust Territories Act, 1947 (which makes provision as to the application and modification of enactments in relation to such mandates as aforesaid and the trusteeship system of the United Nations), subsections (1) and (2) of this section shall be deemed to be contained in an Act of an earlier session than that Act.

Annual Return

Annual return to be made by company having a share capital.

124.—(1) Every company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Sixth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near thereto as circumstances admit:

Provided that—

(*a*) a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year;

(*b*) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list referred to in paragraph 5 of Part I of the said Sixth Schedule must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph;

(*c*) the return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member; and

(*d*) the annual return of a company made next after the expiry of paragraph (1) of regulation three of the Defence (Companies) Regulations, 1940 (under which the annual return of a company having a share capital need not contain any list of members, except in the case of a company's first

annual return or of a private company), need not, if that paragraph applied to the annual return last made by the company, give the particulars required by the said paragraph 5 as to past members of the company or as to shares transferred.

(2) In the case of a company keeping a dominion register—

(*a*) references in proviso (*c*) to the foregoing subsection to the particulars required by the said paragraph 5 shall be taken as not including any such particulars contained in the dominion register, in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and

(*b*) where an annual return is made between the date when any entries are made in the dominion register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section and of Part I of the Sixth Schedule to this Act the expressions "director" and "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Annual return to be made by company not having a share capital.

125.—(1) Every company not having a share capital shall once at least in every calendar year make a return stating—

(*a*) the address of the registered office of the company;

(*b*) in a case in which the register of members is, under the provisions of this Act, kept elsewhere than at that office, the address of the place where it is kept;

(*c*) in a case in which any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept;

(*d*) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

Provided that a company need not make a return under this subsection either in the year of its incorporation or, if it is not required by section one hundred and thirty-one of this Act to hold an annual general meeting during the following year, in that year.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of 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) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Time for completion of annual return.

126.—(1) The annual return must be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting, of the company in the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Documents to be annexed to annual return.

127.—(1) Subject to the provisions of this Act, there shall be annexed to the annual return—

(*a*) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and

(*b*) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet;

and where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation.

(2) If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine.

For the purposes of this subsection, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) This section shall not apply to an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909.

Certificates to be sent by private company with annual return.

128. A private company shall send with the annual return required by section one hundred and twenty-four of this Act a certificate signed both by a director and by the secretary of the company 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 annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (*b*) of subsection (1) of section twenty-eight of this Act are not to be included in reckoning the number of fifty.

Exemption, in certain cases, of private companies, from requirements of s. 127.

129.—(1) A private company shall be excepted from the requirements imposed by section one hundred and twenty-seven of this Act if, but only if,—

(*a*) the conditions mentioned in the next following subsection are satisfied at the date of the return and have been satisfied at all times since the commencement of this Act; and

(*b*) there is sent with the return a certificate, signed by the persons signing the certificates required to be so sent by the last foregoing section, that to the best of their knowledge and belief the said conditions are and have been satisfied as aforesaid:

Provided that if at any time it is shown that the said conditions are then satisfied in the case of any private company, the Board of Trade may on the application of the company's directors direct that, in relation to any subsequent annual returns of the company, it shall not be necessary for the said conditions to have been satisfied before that time, and the certificates sent with those returns shall in that event relate only to the period since that time.

(2) The said conditions are—

(*a*) that the conditions contained in the Seventh Schedule to this Act are satisfied as to the persons interested in the company's shares and debentures; and

(*b*) that the number of persons holding debentures of the company is not more than fifty (joint holders being treated as a single person); and

(*c*) that no body corporate is a director of the company and neither the company nor any of the directors is party or privy to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture holders or trustees for debenture holders.

(3) A prosecution shall not be instituted in England in respect of any failure of a private company to comply with section one hundred and twenty-seven of this Act except by or with the consent of the Board of Trade.

(4) Any reference in this Act to an exempt private company shall be construed as referring to a company with respect to which the conditions mentioned in subsection (2) of this section are satisfied and have been satisfied at all times since the commencement of this Act or since the giving by the Board of Trade of a direction under the proviso to subsection (1) of this section.

(5) References in this section to the said conditions having been satisfied since the commencement of this Act shall, in relation to a company first registered after the commencement of this Act, be

construed as referring to the conditions having been satisfied since the company's registration.

Meetings and Proceedings

Statutory meeting and statutory report.

130.—(1) Every company limited by shares and every company limited by guarantee and having a share capital 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 fourteen days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company 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 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 required by this section, to be delivered to the registrar of companies for registration 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) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

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

Annual general meeting.

131.—(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with the foregoing subsection, the Board of Trade may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Board think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of the last foregoing subsection shall, subject to any directions of the Board of Trade, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the registrar of companies and recorded by him.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Board of Trade under subsection (2) thereof, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds, and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

Convening of extraordinary general meeting on requisition.

132.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the

company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly 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 within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A 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.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

Length of notice for calling meetings.

133.—(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

(*a*) in the case of the annual general meeting, twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by the foregoing subsection) a meeting of the company (other than an adjourned meeting) may be called—

(*a*) in the case of the annual general meeting, by twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of

the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

General provisions as to meetings and votes.

134. The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

(*a*) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(*b*) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(*c*) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(*d*) any member elected by the members present at a meeting may be chairman thereof;

(*e*) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

Power of court to order meeting.

135.—(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with an order under the foregoing subsection shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Proxies.

136.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide,—

(*a*) this subsection shall not apply in the case of a company not having a share capital; and

(*b*) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(*c*) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding one hundred pounds:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

Right to demand a poll.

137.—(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

(*a*) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(*b*) of making ineffective a demand for a poll on any such question which is made either—

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one tenth of the total voting rights of all the members having the right to vote at the meetings; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the foregoing subsection a demand by a person as proxy for a member shall be the same as a demand by the member.

Voting on a poll.

138. On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Representation of corporations at meetings of companies and of creditors.

139.—(1) A corporation, whether a company within the meaning of this Act or not, may—

(*a*) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(*b*) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

Circulation of members' resolutions, etc.

140.—(1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—

(*a*) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(*b*) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under the foregoing subsection shall be—

(*a*) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(*b*) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than one hundred pounds.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto :

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

Extraordinary and special resolutions.

141.—(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 as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, 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 passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given :

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in

nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, 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) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) 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 this Act or the articles.

Resolutions requiring special notice.

142. Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

Registration and copies of certain resolutions and agreements.

143.—(1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him:

Provided that an exempt private company need not forward a printed copy of any such resolution or agreement if instead it forwards to the registrar of companies a copy in some other form approved by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(*a*) special resolutions;

(*b*) extraordinary resolution;

(*c*) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(*d*) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(*e*) resolutions requiring a company to be wound up voluntarily, passed under paragraph (*a*) of subsection (1) of section two hundred and seventy-eight of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the two last foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

144. Where a resolution is passed at an adjourned meeting of—

(*a*) a company;

(*b*) the holders of any class of shares in a company;

(*c*) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of proceedings of meetings of company and of directors and managers.

145.—(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its 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) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

Inspection of minute books.

146.—(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November, nineteen hundred and twenty-nine, shall be kept at the registered office

of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit

Keeping of books of account.

147.—(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) For the purposes of the foregoing subsection, proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Great Britain there shall be sent to, and kept at a place in, Great Britain and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that—

(*a*) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent

and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet.

148.—(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account, as the case may be, is made up.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

General provisions as to contents and form of accounts.

149.—(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in Part III of the said Eighth Schedule, the requirements of the last foregoing subsection and the said Eighth Schedule shall be without prejudice either to the general requirements of subsection (1) of this section or to any other requirements of this Act.

(4) The Board of Trade may, on the application or with the consent

of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1) of this section) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) of this section shall not apply to a company's profit and loss account if—

(*a*) the company has subsidiaries; and

(*b*) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires,—

(*a*) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and

(*b*) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

Obligation to lay group accounts before holding company.

150.—(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as " group accounts ") dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to the next following subsection, be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in the foregoing subsection—

(*a*) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Great Britain; and

(*b*) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the Board of Trade shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that,—

(*a*) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

Form of group accounts.

151.—(1) Subject to the next following subsection, the group accounts laid before a holding company shall be consolidated accounts comprising—

(*a*) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(*b*) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(*a*) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(*b*) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by the foregoing subsection, and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

Contents of group accounts.

152.—(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Board of Trade on the application or with the consent of the holding company's directors otherwise direct, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1) of this section, the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Eighth Schedule to this Act, so far as applicable thereto, and if not so prepared shall give the same or equivalent information :

Provided that the Board of Trade may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

Financial year of holding company and subsidiary.

153.—(1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Board of Trade desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Board may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

Meaning of "holding company" and "subsidiary".

154.—(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another if, but only if,—

(*a*) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(*b*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of the foregoing subsection, the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company

shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or

(*b*) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or

(*c*) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another—

(*a*) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to the two following paragraphs, any shares held or power exercisable—

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section the expression "company" includes any body corporate, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Signing of balance sheet.

155.—(1) Every balance sheet of a company 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.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, 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.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

Accounts and auditors' report to be annexed to balance sheet.

156.—(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

Directors' report to be attached to balance sheet.

157.—(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Eighth Schedule to this Act.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of subsection (1) of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds :

Provided that,—

(*a*) in any proceedings against a person in respect of an offence under the said subsection (1), it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and

(*b*) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Right to receive copies of balance sheets and auditors' report.

158.—(1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled :

Provided that—

(*a*) in the case of a company not having a share capital this

subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company who is not so entitled;

(*b*) this subsection shall not require a copy of those documents to be sent—

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and

(*c*) if the copies of the documents aforesaid are sent less than twenty-one days before the day of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, whether he is or is not so entitled, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(3) If default is made in complying with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, when any person makes a demand for any document with which he is by virtue of subsection (2) of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) The foregoing provisions of this section shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

Appointment and remuneration of auditors.

159.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless—

(*a*) he is not qualified for reappointment; or

(*b*) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(*c*) he has given the company notice in writing of his unwillingness to be reappointed :

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Board of Trade may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Board's power under the last foregoing subsection becoming exercisable, give them notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting :

Provided that—

(*a*) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(*b*) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(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—

(*a*) in the case of an auditor appointed by the directors or by the Board of Trade, may be fixed by the directors or by the Board, as the case may be;

(*b*) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression " remuneration ".

Provisions as to resolutions relating to appointment and removal of auditors.

160.—(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the

company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) The last foregoing subsection shall apply to a resolution to remove the first auditors by virtue of subsection (5) of the last foregoing section as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

Disqualifications for appointment as auditor.

161.—(1) A person shall not be qualified for appointment as auditor of a company unless either—

(*a*) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Board of Trade; or

(*b*) he is for the time being authorised by the Board of Trade to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of the foregoing paragraph or as having before the sixth day of August, nineteen hundred and forty-seven, practised in Great Britain as an accountant:

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

(*a*) an officer or servant of the company;

(*b*) a person who is a partner of or in the employment of an officer or servant of the company;

(*c*) a body corporate:

Provided that paragraph (*b*) of this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the last foregoing subsection, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding anything in the foregoing provisions of this section, a Scottish firm shall be qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditor thereof.

(5) Any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

Auditors' report and right of access to books and to attend and be heard at general meetings.

162.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Ninth Schedule to this Act.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(3) 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 officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Construction of references to documents annexed to accounts.

163. References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

Inspection

Investigation of company's affairs on application of members.

164.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

(*a*) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one tenth of the shares issued;

(*b*) 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 requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the investigation.

Investigation of company's affairs in other cases.

165. Without prejudice to their powers under the last foregoing section, the Board of Trade—

(*a*) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct, if—

(i) the company by special resolution; or

(ii) the court by order;

declares that its affairs ought to be investigated by an inspector appointed by the Board; and

(*b*) may do so if it appears to the Board that there are circumstances suggesting—

(i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

Power of inspectors to carry investigation into affairs of related companies.

166. If an inspector appointed under either of the two last foregoing sections to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents, and evidence, on investigation.

167.—(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of the last foregoing section to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

(*a*) the inspector may take part therein either personally or by solicitor or counsel;

(*b*) the court may put such questions to the person examined as the court thinks fit;

(*c*) the person examined shall answer all such questions as the court may put or allow to be put to him, but 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;

and 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:

Provided that, notwithstanding anything in paragraph (*c*) of this subsection, the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspectors' report.

168.—(1) The inspectors may, and, if so directed by the Board of Trade, shall, make interim reports to the Board, and on the conclusion of the investigation shall make a final report to the Board.

Any such report shall be written or printed, as the Board direct.

(2) The Board of Trade shall—

(*a*) forward a copy of any report made by the inspectors to the registered office of the company;

(*b*) if the Board think fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section one hundred and sixty-six of this Act or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Board to be affected;

(*c*) where the inspectors are appointed under section one hundred and sixty-four of this Act, furnish, at the request of the applicants for the investigation, a copy to them; and

(*d*) where the inspectors are appointed under section one hundred and sixty-five of this Act in pursuance of an order of the court, furnish a copy to the court;

and may also cause the report to be printed and published.

Proceedings on inspectors' report.

169.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section one hundred and sixty-six of this Act, been

guilty of any offence for which he is criminally liable, the Board shall proceed as follows:—

(*a*) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;

(*b*) in the case of an offence in Scotland, the Board shall refer the matter to the Lord Advocate.

(2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

Subsection (5) of section one hundred and sixty-seven of this Act shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Board of Trade, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (*b*) of section one hundred and sixty-five of this Act, the Board may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section two hundred and ten of this Act or both.

(4) If from any such report as aforesaid it appears to the Board of Trade that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, they may themselves bring proceedings for that purpose in the name of the body corporate.

(5) The Board of Trade shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of the last foregoing subsection.

Expenses of investigation of company's affairs.

170.—(1) The expenses of and incidental to an investigation by an inspector appointed by the Board of Trade under the foregoing provisions of this Act shall be defrayed in the first instance by the Board of Trade, but the following persons shall, to the extent mentioned, be liable to repay the Board :—

(*a*) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (4) of the last foregoing section, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;

(*b*) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and

(*c*) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate,—

(i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Board's own motion, shall be liable, except so far as the Board otherwise direct; and

(ii) the applicants for the investigation, where the inspector was appointed under section one hundred and sixty-four of this Act, shall be liable to such extent (if any) as the Board may direct;

and any amount for which a body corporate is liable by virtue of paragraph (*b*) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Board of Trade's own motion may, if he thinks fit, and shall, if the Board so direct, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under paragraph (*c*) of the foregoing subsection.

(3) For the purposes of this section, any costs or expenses incurred by the Board of Trade in or in connection with proceedings brought by virtue of subsection (4) of the last foregoing section (including expenses incurred by virtue of subsection (5) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Board of Trade imposed by paragraphs (*a*) and (*b*) of subsection (1) of this section shall, subject to satisfaction of the Board's right to repayment, be a liability also to indemnify all persons against liability under paragraph (*c*) thereof, and any such liability imposed by the said paragraph (*a*) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said paragraph (*b*); and any person liable under the said paragraph (*a*) or (*b*) or either sub-paragraph of the said paragraph (*c*) shall be entitled to contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses to be defrayed by the Board of Trade under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament, but subsection (8) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding up of companies in England) shall have effect as if the said expenses were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

Inspectors' report to be evidence.

171. A copy of any report of any inspectors appointed under the foregoing provisions of 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 powers of inspectors to investigate ownership of company.

172.—(1) Where it appears to the Board of Trade that there is good reason so to do, they may appoint one or more competent inspectors to investigate and report on the membership of any company

and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Board of Trade by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section one hundred and sixty-four of this Act, the Board of Trade shall appoint an inspector to conduct the investigation unless they are satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Board of Trade are satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section sections one hundred and sixty-six to one hundred and sixty-eight of this Act, shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

(*a*) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(*b*) the Board of Trade shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Board of Trade out of moneys provided by Parliament.

Power to require information as to persons interested in shares or debentures.

173.—(1) Where it appears to the Board of Trade that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, they may require any person whom they have reasonable cause to believe—

(*a*) to be or to have been interested in those shares or debentures; or

(*b*) to act or to have acted in relation to those shares or debentures as the solicitor or agent of someone interested therein;

to give them any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

Power to impose restrictions on shares or debentures.

174.—(1) Where in connection with an investigation under either of the two last foregoing sections it appears to the Board of Trade that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Board may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

(*a*) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(*b*) no voting rights shall be exercisable in respect of those shares;

(*c*) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

(*d*) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Board of Trade make an order directing that shares shall be subject to the said restrictions, or refuse to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any order (whether of the Board of Trade or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (*c*) and (*d*) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

(*a*) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(*b*) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(*c*) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds.

(7) A prosecution shall not be instituted in England under this section except by or with the consent of the Board of Trade.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

Saving for solicitors and bankers.

175. Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Board of Trade or to an inspector appointed by them—

(*a*) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(*b*) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

Directors and other Officers

Directors.

176. Every company registered on or after the first day of November, nineteen hundred and twenty-nine (other than a private company) shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director.

Secretary.

177.—(1) Every company shall have a secretary and a sole director shall not also be secretary.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

Prohibition of certain persons being sole director or secretary.

178. No company shall—

(*a*) have as secretary to the company a corporation the sole director of which is a sole director of the company; or

(*b*) have as sole director of the company a corporation the sole director of which is secretary to the company.

Avoidance of acts done by person in dual capacity as director and secretary.

179. A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

Validity of acts of directors.

180. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Restrictions on appointment or advertisement of director.

181.—(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 a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(*b*) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) 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.

(5) This section shall not apply to—

(*a*) a company not having a share capital; or

(*b*) a private company; or

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Share qualifications of directors.

182.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles 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 articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) 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 articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) 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 or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Appointment of directors to be voted on individually.

183.—(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time :

Provided that—

(*a*) this subsection shall not be taken as excluding the operation of section one hundred and eighty of this Act; and

(*b*) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

184.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him :

Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

Retirement of directors under age limit.

185.—(1) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he has attained the age of seventy.

(2) Subject as aforesaid, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy:

Provided that acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of this subsection.

(3) Where a person retires by virtue of the last foregoing subsection, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply; and if at the meeting at which he retires the vacancy is not filled it may be filled as a casual vacancy.

(4) Subsection (2) of this section shall not apply to a director who is in office at the commencement of this Act so as to terminate his then appointment before the conclusion of the third annual general meeting commencing after the commencement of this Act, but shall apply so as

to terminate it at the conclusion of that meeting if he has attained the age of seventy before the commencement of the meeting.

(5) Nothing in the foregoing provisions of this section shall prevent the appointment of a director at any age, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting, but special notice shall be required of any resolution appointing or approving the appointment of a director for it to have effect for the purposes of this subsection and the notice thereof given to the company and by the company to its members must state or must have stated the age of the person to whom it relates.

(6) A person reappointed director on retiring by virtue of subsection (2) of this section, or appointed in place of a director so retiring, shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement; but, except as provided by this subsection, the retirement of a director out of turn by virtue of the said subsection (2) shall be disregarded in determining when any other directors are to retire.

(7) In the case of a company first registered after the beginning of the year nineteen hundred and forty-seven, this section shall have effect subject to the provisions of the company's articles; and in the case of a company first registered before the beginning of that year—

(*a*) this section shall have effect subject to any alterations of the company's articles made after the beginning thereof; and

(*b*) if at the beginning thereof the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age this section shall not apply to directors to whom that provision applies.

(8) A company shall be subject to this section if it is not a private company or if, being a private company, it is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company; and for the purposes of any other section of this Act which refers to a company subject to this section, a company shall be deemed be to subject to this section notwithstanding that all or any of the provisions thereof are excluded or modified by the company's articles.

Duty of directors to disclose age to company.

186.—(1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to the last foregoing section at a time when he has attained any retiring age applicable to him as director either under this Act or under the company's articles shall give notice of his age to the company:

Provided that this subsection shall not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(2) Any person who—

(*a*) fails to give notice of his age as required by this section; or

(*b*) acts as director under any appointment which is invalid or has terminated by reason of his age;

shall be liable to a fine not exceeding five pounds for every day during which the failure continues or during which he continues to act as aforesaid.

(3) For the purposes of the last foregoing subsection, a person who has

acted as director under an appointment which is invalid or has terminated shall be deemed to have continued so to act throughout the period from the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he is shown to have acted thereunder.

Provisions as to undischarged bankrupts acting as directors.

187.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the third day of August, nineteen hundred and twenty-eight, acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) In England the leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression "official receiver" means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words "sequestration of his estates was awarded" were substituted for the words "he was adjudged bankrupt".

Power to restrain fraudulent persons from managing companies.

188.—(1) Where—

(*a*) a person is convicted on indictment of any offence in connection with the promotion, formation or management of a company; or

(*b*) in the course of winding up a company it appears that a person—

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section three hundred and thirty-two of this Act; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company;

the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period not exceeding five years as may be specified in the order.

(2) In the foregoing subsection the expression "the court", in relation to the making of an order against any person by virtue of paragraph (*a*) thereof, includes the court before which he is convicted, as well as any

court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of sub-paragraph (ii) of paragraph (*b*) of subsection (1) of this section notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-paragraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

Prohibition of tax-free payments to directors.

189.—(1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax or of income tax other than surtax, or otherwise calculated by reference to or varying with the amount of his income tax or his income tax other than surtax, or to or with the rate or standard rate of income tax, except under a contract which was in force on the eighteenth day of July, nineteen hundred and forty-five, and provides expressly, and not by reference to the articles, for payment of remuneration as aforesaid.

(2) Any provision contained in a company's articles, or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

Prohibition of loans to directors.

190.—(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either—

(*a*) to anything done by a company which is for the time being an exempt private company; or

(*b*) to anything done by a subsidiary, where the director is its holding company; or

(*c*) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(*d*) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (*c*) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either—

(*a*) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(*b*) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

Approval of company requisite for payment by it to director for loss of office, etc.

191. It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, etc.

192.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company.

193.—(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(*a*) an offer made to the general body of shareholders;

(*b*) an offer made by or on behalf of some other body corporate with a

view to the company becoming its subsidiary or a subsidiary of its holding company;

(*c*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or

(*d*) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

(*a*) any such director fails to take reasonable steps as aforesaid; or

(*b*) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

he shall be liable to a fine not exceeding twenty-five pounds.

(3) If—

(*a*) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned; or

(*b*) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (*b*) of the last foregoing subsection are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Board of Trade on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (*b*) of subsection (3) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

Provisions supplementary to three foregoing sections.

194.—(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of the last but one foregoing section or subsections (1) and (3) of the last foregoing section, been received by any person in trust, it is shown that—

(*a*) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or

within one year before or two years after that agreement or the offer leading thereto; and

(*b*) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in either of the two last foregoing sections—

(*a*) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(*b*) any valuable consideration is given to any such director;

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in the three last foregoing sections to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in the two last foregoing sections shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

Register of directors' shareholdings, etc.

195.—(1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the

purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows :—

(*a*) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(*b*) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Board of Trade.

In computing the fourteen days and the three days mentioned in this subsection, any day which is a Saturday or Sunday or a bank holiday shall be disregarded.

(6) Without prejudice to the rights conferred by the last foregoing subsection, the Board of Trade may at any time require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(8) If default is made in complying with the last foregoing subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds; and if default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds and further to a default fine of two pounds.

(9) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(10) For the purposes of this section—

(*a*) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(*b*) a director of a company shall be deemed to hold, or to have any interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

Particulars in accounts of directors' salaries, pensions, etc.

196.—(1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned—

(*a*) the aggregate amount of the directors' emoluments;

(*b*) the aggregate amount of directors' or past directors' pensions; and

(*c*) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (*a*) of subsection (1) of this section—

(*a*) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(*b*) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression "emoluments", in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to United Kingdom income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

(3) The amount to be shown under paragraph (*b*) of the said subsection (1)—

(*a*) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in the last foregoing subsection, whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and

(*b*) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment, and the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution" in relation to a pension scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under paragraph (*c*) of the said subsection (1)—

(*a*) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(*b*) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss

of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of the said subsection (1)—

(*a*) shall include all relevant sums paid by or receivable from—

(i) the company; and

(ii) the company's subsidiaries; and

(iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section one hundred and ninety-three of this Act, to past or present members of the company or any of its subsidiaries or any class of those members; and

(*b*) shall distinguish, in the case of the amount to be shown under paragraph (*c*) of the said subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

(*a*) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (*a*) of the last foregoing subsection, but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(*b*) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto, and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

(*a*) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary; and

(*b*) shall for the purposes of subsections (2) and (8) be taken as referring to a subsidiary at the time the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

Particulars in accounts of loans to officers, etc.

197.—(1) The accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(*a*) the amount of any loans made during the company's financial year to—

(i) any officer of the company; or

(ii) any person who, after the making of the loan, became during that year an officer of the company;

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

(*b*) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) The foregoing subsection shall not require the inclusion in accounts of particulars of—

(*a*) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(*b*) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed two thousand pounds and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

General duty to make disclosure for purposes of three foregoing sections.

198.—(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections one hundred and ninety-five and one hundred and ninety-six of this Act and of the last foregoing section except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of the said section one hundred and ninety-five shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall apply—

(*a*) for the purposes of the last foregoing section, in relation to officers other than directors; and

(*b*) for the purposes of the said section one hundred and ninety-six and the last foregoing section, in relation to persons who are or have at any time during the preceding five years been officers;

as it applies in relation to directors.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty pounds.

Disclosure by directors of interests in contracts.

199.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Register of directors and secretaries.

200.—(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say,—

(*a*) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and, in the case of a company subject to section one hundred and eighty-five of this Act, the date of his birth; and

(*b*) in the case of a corporation, its corporate name and registered or principal office:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of

which the company is the wholly-owned subsidiary, and for the purposes of this proviso—

(i) the expression "company" shall include any body corporate incorporated in Great Britain; and

(ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say,—

(*a*) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(*b*) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

(4) The company shall, within the periods respectively mentioned in the next following subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in the last foregoing subsection are the following, namely,—

(*a*) the period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company; and

(*b*) the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be fourteen days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused or if default is made in complying with subsection (1), (2), (3) or (4) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) For the purposes of this section—

(*a*) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;

(*b*) the expression "Christian name" includes a forename;

(*c*) in the case of a peer or person usually known by a title different from his surname, the expression "surname" means that title;

(*d*) references to a former Christian name or surname do not include—

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

Particulars with respect to directors in trade catalogues, circulars, etc.

201.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

(*a*) his present Christian name, or the initials thereof, and present surname;

(*b*) any former Christian names and surnames;

(*c*) his nationality, if not British:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

(*a*) every company registered under this Act or under the Companies Act, 1929, or the Acts repealed thereby unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and

(*b*) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and

(*c*) every company licensed under the Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business.

(3) If a company makes default in complying with this section every officer of the company who is in default shall be liable on summary conviction for each offence to a fine not exceeding five pounds, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company:

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

(*a*) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression "officer" shall be construed accordingly;

(*b*) the expression "initials" includes a recognised abbreviation of a Christian name; and

(*c*) the expression "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof;

and paragraphs (*b*), (*c*) and (*d*) of subsection (9) of the last foregoing section shall apply as they apply for the purposes of that section.

Limited company may have directors with unlimited liability.

202.—(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 and any managers of the company 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 before the person accepts the office or acts therein, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(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.

203.—(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 passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Provisions as to assignment of office by directors.

204. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability

Provisions as to liability of officers and auditors.

205. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

(*a*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(*b*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section four hundred and forty-eight of this Act in which relief is granted to him by the court.

Arrangements and Reconstructions

Power to compromise with creditors and members.

206.—(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 and voting 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) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) An order under subsection (1) of this section pronounced in Scotland by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933, shall not be subject to review, reduction, suspension or stay of execution.

(6) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Information as to compromises with creditors and members.

207.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under the last foregoing section there shall—

(*a*) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred pounds, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding fifty pounds.

Provisions for facilitating reconstruction and amalgamation of companies.

208.—(1) Where an application is made to the court under section two hundred and six of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or

arrangement or by any subsequent order, make provision for all or any of the following matters:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (6) of section two hundred and six of this Act, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

209.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms

on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company :

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(*a*) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(*b*) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

(*a*) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(*b*) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under paragraph (*b*) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section

shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

(*a*) with the substitution, in subsection (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)", of the words "the shares affected" and with the omission of the proviso to that subsection;

(*b*) with the omission of subsection (2); and

(c) with the omission, in subsection (3), of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that subsection.

Minorities

Alternative remedy to winding up in cases of oppression.

210.—(1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion—

(*a*) that the company's affairs are being conducted as aforesaid; and

(*b*) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered

by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section three hundred and sixty-five of this Act shall apply as it applies in relation to a winding-up petition, and proceedings under this section shall, for the purposes of Part V of the Economy (Miscellaneous Provisions) Act, 1926, be deemed to be proceedings under this Act in relation to the winding up of companies.

PART V

WINDING UP

(i) PRELIMINARY

Modes of Winding Up

Modes of winding up.

211.—(1) The winding up of a company may be either—

(*a*) by the court; or

(*b*) voluntary; or

(*c*) 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.

212.—(1) In the event of a company being wound up, every present and past member shall 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, subject to the provisions of subsection (2) of this section and the following qualifications:—

(*a*) 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;

(*b*) 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;

(*c*) 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;

(*d*) 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;

(*e*) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(*f*) 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;

(*g*) 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, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute 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—

(*a*) 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;

(*b*) 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;

(*c*) 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".

213. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and 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.

214. The liability of a contributory shall create a debt (in England 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.

215.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, 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 legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

216. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories,—

(*a*) 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 proof 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

(*b*) 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.

217.—(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.

(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.

(ii) Winding Up by the Court

Jurisdiction

Jurisdiction to wind up companies registered in England.

218.—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the palatine court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the county court of the district in which the registered office of the company is situate shall, subject to the provisions of this section, have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be 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, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order made by statutory instrument

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 any other county court, and may by statutory instrument revoke or vary any such order.

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.

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 Court (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.

Transfer of proceedings from one court to another and statement of case by county court.

219.—(1) The winding 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 registered in Scotland.

220.—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company:

Provided that—

(*a*) it shall be lawful for the Court of Session, if it appears to the Court having regard to the amount of the assets of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company or to require any such petition presented to a sheriff court to be remitted to the Court of Session; and

(*b*) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court; and

(*c*) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) 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.

Power in Scotland to remit winding up to Lord Ordinary.

221. The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary, and where provision is so made, the Lord Ordinary shall, for the purposes of a winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

Cases in which Company may be wound up by Court

Circumstances in which company may be wound up by court.

222. A company may be wound up by the court if—

(*a*) the company has by special resolution resolved that the company be wound up by the court;

(*b*) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;

(*c*) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(*d*) 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;

(*e*) the company is unable to pay its debts;

(*f*) the court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

223. A company shall 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 it at the registered office of the company, 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

(*b*) if, in England or Northern 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

(*c*) if, in Scotland, the inducie 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

(*d*) 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.

Petition for Winding Up and Effects thereof

Provisions as to applications for winding up.

224.—(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 winding-up petition unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, 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 winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, 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 winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and

(*d*) in a case falling within subsection (8) of section one hundred and sixty-nine of this Act, a winding-up petition may be presented by the Board of Trade.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up 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 mentioned in paragraph (ii) of proviso (*a*) to subsection (1) of this section,

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.

Powers of court on hearing petition.

225.—(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, 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 by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion,—

(*a*) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(*b*) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—

(*a*) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(*b*) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Power to stay or restrain proceedings against company.

226. At any time after the presentation of a winding-up petition, 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 Northern 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.

Avoidance of dispositions of property, etc., after commencement of winding up.

227. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, etc., in case of English company and in case of effects in England of Scottish company.

228.—(1) Where any company registered in England is being wound up by 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.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

Commencement of Winding Up

Commencement of winding up by the court.

229.—(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order

Copy of order to be forwarded to registrar.

230. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

231. When a winding-up order has been made or a provisional liquidator has been appointed, 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.

Effect of winding-up order.

232. 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.

Official Receiver in English Winding Up

Official receiver in bankruptcy to be official receiver for winding-up purposes.

233.—(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" means 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.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled "the official receiver".

Appointment of official receiver by court in certain cases.

234. If, in the case of the winding up of any company by the court in England, it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would by virtue of the last

foregoing section be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to official receiver.

* **235.**—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, 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.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the relevant date;

(*c*) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(*d*) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date 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 or provisional liquidator, as the case may be, 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.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his

appointment, and, in a case where no such appointment is made, the date of the winding-up order.

Report by official receiver.

236.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, 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 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.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section two hundred and seventy of this Act.

Liquidators

Power of court to appoint liquidators.

237. 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.

Appointment and powers of provisional liquidator.

238.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) Where the proceedings are in England, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style, etc., of liquidators in England.

239. The following provisions with respect to liquidators shall have the effect on a winding-up order being made in England :—

(*a*) 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;

(*b*) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the

court for appointing a liquidator in the place of the official receiver;

(*c*) 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 the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(*d*) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(*e*) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(*f*) a liquidator shall be described, 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", of the particular company in respect of which he is appointed and not by his individual name.

Provisions where person other than official receiver is appointed liquidator.

240. Where, in the winding up of a company by the court in England, a person other than the official receiver is appointed liquidator, that person—

(*a*) 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;

(*b*) 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.

Provisions as to liquidators in Scotland.

241. The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland:—

(*a*) the court may determine whether any and what security is to be given by a liquidator on his appointment;

(*b*) a liquidator shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed and not by his individual name;

(*c*) where an order has been made 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.

General provisions as to liquidators.

242.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) 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.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(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) Subject to the provisions of section three hundred and thirty-five of this Act, 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.

243.—(1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, 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, 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.

Vesting of property of company in liquidator.

244. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates 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 which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of liquidator.

245.—(1) The liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection,—

(*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*) to appoint a solicitor to assist him in the performance of his duties;

(*d*) to pay any classes of creditors in full;

(*e*) to 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;

(*f*) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, 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, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

(*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 appoint an agent to do any business which the liquidator is unable to do himself;

(*h*) 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 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, the court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of this section without the sanction or intervention of the court.

(5) In a winding up by the court in Scotland, the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

Exercise and control of liquidator's powers in England.

246.—(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.

Books to be kept by liquidator in England.

247. 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.

Payments of liquidator in England into bank.

248.—(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 England.

249.—(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 delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The liquidator 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:

Provided that the Board may in any case dispense with compliance with this subsection.

Control of Board of Trade over liquidators in England.

250.—(1) The Board of Trade shall take cognisance 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.

Release of liquidators in England.

251.—(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.

Committees of Inspection

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

252.—(1) When a winding-up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further 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 members of the committee if appointed.

(2) When a winding-up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court 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:

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) 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 the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

253.—(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:

Provided that, where in Scotland a winding-up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(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) A 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) A 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, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Board of Trade in England where no committee of inspection.

254. Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

Additional powers of committee of inspection in Scotland.

255. In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

General Powers of Court in case of Winding up by Court

Power to stay winding up.

256.—(1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or 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.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets.

257.—(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:

Provided that, where it appears to the court that it will not be

necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(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 for the debts of others.

Delivery of property to liquidator.

258. The court may, at any time after making a winding-up order, require any contributory for the time being 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 prima facie entitled.

Payment of debts due by contributory to company and extent to which set-off allowed.

259.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being 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—

(*a*) 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

(*b*) 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) 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.

260.—(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 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, and make an order for payment of any calls so made.

(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.

Payment into Bank of moneys due to company.

261.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due 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.

262.—(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 in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Appointment in England of special manager.

263.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the state 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, and the court may on such application appoint a special manager of the said estate or business 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 to exclude creditors not proving in time.

264. 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.

265. The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

266.—(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories 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.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

Power to order costs of winding up to be paid out of assets.

267. 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.

Power to summon persons suspected of having property of company, etc.

268.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of 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 promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, 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.

Attendance of officers of company at meetings of creditors, etc., in Scotland.

269. In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Power in England to order public examination of promoters and officers.

270.—(1) Where 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 officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer 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 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 any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant 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 may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

271. 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 movable 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.

272. 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.

Delegation to liquidator of certain powers of court in England.

273. Provision may be made by general rules 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 following matters—

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(*c*) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(*d*) the making of calls;

(*e*) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

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.

Dissolution of company.

274.—(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded 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.

Enforcement of and Appeal from Orders

Order for calls on contributories in Scotland.

275.—(1) 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 said amount 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.

(2) Any such 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 throughout United Kingdom of orders made in winding up.

276.—(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 Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern 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 Northern Ireland 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 orders in Scotland.

277.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland 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) In regard to orders or judgments pronounced by the judge acting as vacation judge in pursuance of section four of the Administration of Justice (Scotland) Act, 1933,—

(*a*) none of the orders specified in Part I of the Tenth Schedule to this Act shall be subject to review, reduction, suspension or stay of execution; and

(*b*) every other order or judgment (except as hereinafter mentioned) may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment:

Provided that an order being one of the orders specified in Part II of the Tenth Schedule to this Act shall, from the date of such order and notwithstanding that it has been submitted to review as aforesaid, be carried out and receive effect until the Inner House have disposed of the matter.

(3) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within fourteen days from the date of the order or judgment, but should such order or judgment not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge 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 voluntary or by, or subject to the supervision of, the court.

(iii) Voluntary Winding Up

Resolutions for, and Commencement of, Voluntary Winding Up

Circumstances in which company may be wound up voluntarily.

278.—(1) A company may be wound up voluntarily—

(*a*) 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;

(*b*) if the company resolves by special resolution that the company be wound up voluntarily;

(*c*) 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.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1) of this section.

Notice of resolution to wind up voluntarily.

279.—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

280. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of Voluntary Winding Up

Effect of voluntary winding up on business and status of company.

281. In case of a voluntary winding up, 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.

Avoidance of transfers, etc., after commencement of voluntary winding up.

282. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency

Statutory declaration of solvency in case of proposal to wind up voluntarily.

283.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(*a*) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(*b*) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated

in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section two hundred and thirty of the Companies Act, 1929, is in this Act referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

(5) Subsections (1) to (3) of this section shall not apply to a winding up commenced before the commencement of this Act.

Provisions applicable to a Members' Voluntary Winding Up

Provisions applicable to a members' winding up.

284. The provisions contained in the seven sections of this Act next following shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

285.—(1) 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.

(2) 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.

Power to fill vacancy in office of liquidator.

286.—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, 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 provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

287.—(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, whether a company within the meaning of this Act or not (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 expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing 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 voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Duty of liquidator to call creditors' meeting in case of insolvency.

288.—(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section two hundred and eighty-three of this Act he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds.

Duty of liquidator to call general meeting at end of each year.

289.—(1) Subject to the provisions of section two hundred and ninety-one of this Act, 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 at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, 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.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

290.—(1) Subject to the provisions of the next following section, 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 send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, 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 deliver to the registrar an office copy of the order for registration, 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.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty pounds.

Alternative provisions as to annual and final meetings in case of insolvency.

291. Where section two hundred and eighty-eight of this Act has effect, sections two hundred and ninety-nine and three hundred thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section two hundred and ninety-nine at the end of the first year from the commencement of the winding up, unless the meeting held under the said section two hundred and eighty-eight is held more than three months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up

Provisions applicable to a creditors' winding up.

292. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

293.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(*a*) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(*a*) by the company in complying with subsections (1) and (2) of this section;

(*b*) by the directors of the company in complying with subsection (3) of this section;

(*c*) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator.

294. The creditors and the company at their respective meetings mentioned in the last foregoing section may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

295.—(1) The creditors at the meeting to be held in pursuance of section two hundred and ninety-three of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection

consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections two hundred and fifty-three (except subsection (1)) and two hundred and fifty-five of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesser of directors' powers.

296.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

297. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Application of s. 287 to a creditors' voluntary winding up.

298. The provisions of section two hundred and eighty-seven of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

299.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

300.—(1) 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 and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such 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 date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof 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 deliver to the registrar an office copy of the order for registration, 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.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding fifty pounds.

Provisions applicable to every Voluntary Winding Up

Provisions applicable to every voluntary winding up.

301. The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

302. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up.

303.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if

there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section two hundred and forty-five of this Act to a liquidator in a winding up by the court;

(*b*) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;

(*c*) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the court of making calls;

(*e*) 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 purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act 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.

Power of court to appoint and remove liquidator in voluntary winding up.

304.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

305.—(1) The liquidator shall, within fourteen days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made 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.

Arrangement when binding on creditors.

306.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the 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 to apply to court to have questions determined or powers exercised.

307.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, 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 it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Power of court in Scotland to stay proceedings against company.

308.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, 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.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the staying of proceedings against a company registered in England and in course of being wound up.

Costs of voluntary winding up.

309. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

310. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) Winding Up Subject to Supervision of Court

Power to order winding up subject to supervision.

311. When a company has passed a resolution for voluntary winding up, 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.

Effect of petition for winding up subject to supervision.

312. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Application of ss. 227 and 228 to winding up subject to supervision.

313. A winding up subject to the supervision of the court shall, for the purposes of sections two hundred and twenty-seven and two hundred and twenty-eight of this Act be deemed to be a winding up by the court.

Power of court to appoint or remove liquidators.

314.—(1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects

stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(8) 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.

Effect of supervision order.

315.—(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:

Provided that the powers specified in paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section two hundred and forty-five of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act specified in the Eleventh Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section two hundred and fifty-three (except subsection (1) thereof) and section two hundred and fifty-five of this Act except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(v) Provisions applicable to every Mode of Winding Up

Proof and Ranking of Claims

Debts of all descriptions may be proved.

316. 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 companies.

317. In the winding up of an insolvent company registered in England 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 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.

318. In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,—

(*a*) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;

(*b*) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

Preferential payments.

319.—(1) In a winding up there shall be paid in priority to all other debts—

(*a*) the following rates and taxes,—

(i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;

(ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes 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;

(iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;

(*b*) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;

(*c*) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date;

(*d*) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;

(*e*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946;

(*f*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is

mentioned in section seven of the Workmen's Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensaiton or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say, the day appointed for the purposes of the National Insurance (Industrial Injuries) Act, 1946);

(*g*) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.

(2) Notwithstanding anything in paragraphs (*b*) and (*c*) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds:

Provided that where a claimant under the said paragraph (*b*) is a labourer in husbandry who 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 relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*f*) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made

(*a*) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(*b*) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) 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, 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.

(6) 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, and in the case of the debts to which priority is given by paragraph (*e*)

of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(7) 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.

(8) For the purposes of this section—

(*a*) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(*b*) the expression " accrued holiday remuneration " includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

(*c*) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period; and

(*d*) the expression " the relevant date " means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.

(9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.

Effect of Winding Up on antecedent and other Transactions

Fraudulent preference.

320.—(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly :

Provided that, in relation to things made or done before the

commencement of this Act, this subsection shall have effect with the substitution, for references to six months, of references to three months.

(2) 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.

(3) In the application to Scotland of this section, the expression "fraudulent preference" includes any alienation or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, the expression "bankruptcy petition" means petition for sequestration and for the words "three months" there shall be substituted the words "sixty days".

Liabilities and rights of certain fraudulently preferred persons.

321.—(1) Where, in the case of a company wound up in England, anything made or done after the commencement of this Act is void under the last foregoing section as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

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

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of floating charge.

322.—(1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve 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 or such other rate as may for the time being be prescribed by order of the Treasury:

Provided that, in relation to a charge created more than six months before the commencement of this Act, this section shall have effect with the substitution, for the words "twelve months", of the words "six months".

(2) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Disclaimer of onerous property in case of company wound up in England.

323.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature,

the court shall not make a vesting order in favour of any person claiming under the company, whether as underlessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

Liability for rentcharge on company's land after disclaimer.

324.—(1) Where on a disclaimer under the last preceding section land in England vests subject to a rentcharge in the Crown or any other person that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this Act.

Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

325.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

(*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

(*b*) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has

been levied shall in all cases acquire a good title to them against the liquidator; and

(*c*) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Duties of sheriff as to goods taken in execution.

326.—(1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(5) This section shall not apply in the case of a winding up in Scotland.

Effect of diligence within 60 days of winding up in case of Scottish company, and in case of effects in Scotland of English company.

327.—(1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—

(*a*) the winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, 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 that date 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 that date who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence;

(*b*) the winding up shall, as at the date aforesaid, be equivalent to 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 date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided;

(*c*) the provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, 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;

(*d*) no poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator:

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date 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.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding Up

Offences by officers of companies in liquidation.

328.—(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or

(*e*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or

(*f*) makes any material omission in any statement relating to the affairs of the company; or

(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(*h*) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(*i*) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(*j*) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(*k*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*m*) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*n*) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any

of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (*m*), (*n*) and (*o*) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (*o*) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—

(*a*) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;

(*b*) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

329. If any 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 misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Frauds by officers of companies which have gone into liquidation.

330. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up,

(*a*) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on

indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

Liability where proper accounts not kept.

331.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility for fraudulent trading of persons concerned.

332.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression " assignee " includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage)

given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section one of the Bankruptcy Act, 1914.

Power of court to assess damages against delinquent directors, etc.

333.—(1) If 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) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(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 one of the Bankruptcy Act, 1914.

Prosecution of delinquent officers and members of company.

334.—(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 officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding up

Disqualification for appointment as liquidator.

335. A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and—

(*a*) any appointment made in contravention of this provision shall be void; and

(*b*) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds.

Corrupt inducement affecting appointment as liquidator.

336. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding one hundred pounds.

Enforcement of duty of liquidator to make returns, etc.

337.—(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.

338.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

Exemption of certain documents from stamp duty on winding up of companies.

339.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company,—

(*a*) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(*b*) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland—

(*a*) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and

(*b*) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and

(*c*) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(3) In subsection (1) of this section the expression "assurance" includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

Books of company to be evidence.

340. Where a 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 prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company.

341.—(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 members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

Information as to pending liquidations.

342.—(1) If where a company is being wound up 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) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

Unclaimed assets in England to be paid to Companies Liquidation Account.

343.—(1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section 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 or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money 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.

(2) 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 exercisable under section one hundred and fifty-three of the Bankruptcy Act, 1914, for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.

(3) 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 thereof, 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.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

Unclaimed dividends, etc., in Scotland to be lodged in bank.

344. When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

Resolutions passed at adjourned meetings of creditors and contributories.

345. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

346.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and 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 this Act or the articles.

Judicial notice of signature of officers.

347. 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 or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, 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.

348.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, 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 England or Scotland, 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 county courts, judge exercising the said bankruptcy jurisdiction, county court judge, 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.

349.—(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.

(2) The order or commission to take the examination aforesaid 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.

(3) 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.

(4) 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.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such 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.

(6) 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.

Costs of application for leave to proceed against company being wound up in Scotland.

350.—(1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

Affidavits, etc., in United Kingdom and dominions.

351.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, 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.

(3) Subsection (2) of section six of the Foreign Service Act, 1948 (which empowers His Majesty by Order in Council to make such amendments of any enactment as appear to him to be consequential on the establishment or reorganisation of His foreign service, including, in particular, such amendments of any reference to an office, rank or grade as appear to Him to be consequential on the abolition or alteration of the description thereof or on the creation of any new office, rank or grade corresponding thereto) shall have effect as if the reference to any enactment included a reference to this section.

Provisions as to Dissolution

Power of court to declare dissolution of company void.

352.—(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, or such further time as the court may allow, to deliver to the registrar of companies for registration 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.

Registrar may strike defunct company off register.

353.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may 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 to the effect that the company 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, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last foregoing 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—

(*a*) 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; and

(*b*) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid 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 upon an office copy of the order being delivered to the registrar for registration 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 notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be bona vacantia.

354. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

Power of Crown to disclaim title to property vesting under foregoing section.

355.—(1) Where any property vests in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice signed by the Treasury Solicitor.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under the last preceding section, and subsections (2) and (6) of section three hundred and twenty-three of this Act and section three hundred and twenty-four thereof shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section three hundred and twenty-three immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Treasury Solicitor, or, if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Treasury Solicitor on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who

have given the Treasury Solicitor notice that they claim to be interested in the property.

(7) This section shall apply to property vested in the Crown as aforesaid at the commencement of this Act, and where the vesting came to the notice of the Treasury Solicitor more than six months before the commencement of this Act notice of disclaimer under this section may (except where an application is made to him under subsection (4) of this section) be executed at any time within six months thereafter.

(8) This section shall apply to property vested in the Duchy of Lancaster or the Duke of Cornwall under the last preceding section as if for references to the Crown and to the Treasury Solicitor there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to the Duchy of Lancaster or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

(9) This section shall apply to property in Scotland as if for references to the Treasury Solicitor there were substituted references to the King's and Lord Treasurer's Remembrancer, and as if section three hundred and twenty-three of this Act applied in the case of a winding up in Scotland, with the substitution, however, for references to property of a leasehold nature, to an under-lessee, and to a mortgagee by demise or a chargee by way of legal mortgage, of references respectively to property held under a lease, to a sub-lessee, and to the creditor in a security constituted by the assignation of a lease recorded under the Registration of a lease recorded under the Registration of Leases (Scotland) Act, 1857.

Liability for rentcharge on company's land after dissolution.

356.—(1) Section three hundred and twenty-four of this Act shall apply to land in England which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under section three hundred and twenty-three of this Act.

(2) In this section the expression "company" includes any body corporate.

Special Provisions as to Stannaries

Attachment of debt due to contributory on winding up in stannaries court.

357. When several companies are in course of liquidation by or under the supervision 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, counterclaim 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.

358.—(1) 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:—

(*a*) 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 not extend to the principal agent, manager, purser or secretary;

(*b*) all wages in relation to the mine of a miner, artisan, 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 four months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts;

(*c*) the following debts, that is to say:—

(i) wages of any miner, artisan or labourer and accrued holiday remuneration becoming payable to or in right of any miner, artisan or labourer as mentioned in paragraph (*d*) of subsection (1) of section three hundred and nineteen of this Act, being wages or remuneration unpaid at the commencement of the winding up;

(ii) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (*e*) of the said subsection (1) as are given priority by that paragraph; and

(iii) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (*f*) of the said subsection (1);

shall 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 or accrued holiday remuneration due to them;

(*d*) 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 debts to be paid in priority under the last foregoing paragraph, together with interest thereon 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 debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs;

(*e*) the provision giving a right of priority to a person who has advanced money for the making of payments on account of wages, salary or accrued holiday remuneration shall have effect subject to the modifications contained in this section.

(2) References in the foregoing subsection to wages shall be construed as including references to such remuneration in respect of a period of holiday or absence from work as is deemed for the purposes of section three hundred and nineteen of this Act to be wages, and for the purposes of that subsection the expression "accrued holiday remuneration" has the same meaning as it has for the purposes of that section.

(3) The foregoing provisions of this section shall not apply in the case of such a winding up as is mentioned in subsection (9) of the said section three hundred and nineteen, and in such a case the provisions which, by virtue of that subsection, are deemed to remain in force shall have effect in their application to companies within the stannaries subject to the modifications subject to which they would have had effect if this Act had not passed.

Provisions as to mine club funds.

359.—(1) On the winding up of a company within the stannaries, contributions of the miners, artisans 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 winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts

Companies Liquidation Account.

360.—(1) An account, to be 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 connection 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.

361.—(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 into the Bankruptcy and Companies Winding-up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

Separate accounts of particular estates.

362.—(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 or such other rate as may for the time being be prescribed by order of the Treasury.

(5) The power conferred by this section on the Treasury shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Officers

Officers and remuneration.

363.—(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.

Returns by officers in English winding up.

364. 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.

Rules and Fees

General rules and fees for winding up.

365.—(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, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section 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:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

(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.

(5) The powers conferred by this section on the Lord Chancellor, the Court of Session and the Treasury shall be exercisable by statutory instrument, and—

(*a*) a statutory instrument containing general rules shall be laid before Parliament after being made;

(*b*) the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing general rules made by the Court of Session in like manner as if the rules had been made by a Minister of the Crown.

PART VI

RECEIVERS AND MANAGERS

Disqualification of body corporate for appointment as receiver.

366. A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding one hundred pounds.

Disqualification of undischarged bankrupt from acting as receiver or manager.

367.—(1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.

(2) The foregoing subsection shall not apply to a receiver or manager where—

(*a*) the appointment under which he acts and the bankruptcy were both before the commencement of this Act; or

(*b*) he acts under an appointment made by order of a court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

368. 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.

Receivers and managers appointed out of court.

369.—(1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such

application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act but subsection (2) thereof shall not apply to contracts entered into before the commencement of this Act.

Notification that receiver or manager appointed.

370.—(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

Power of court to fix remuneration on application of liquidator.

371.—(1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under the foregoing subsection shall, where no previous order has been made with respect thereto under that subsection,—

(*a*) extend to fixing the remuneration for any period before the making of the order or the application therefor; and

(*b*) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(*c*) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph (*c*) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

(4) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

Provisions as to information where receiver or manager appointed.

372.—(1) Where, in the case of a company registered in England, a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in the next following section referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this and the next following section—

(*a*) the receiver shall forthwith send notice to the company of his appointment; and

(*b*) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with the next following section a statement in the prescribed form as to the affairs of the company; and

(*c*) the receiver shall within two months after receipt of the said statement send—

(i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon; and

(ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

(*a*) with the omission of the references to the court in subsection (1); and

(*b*) with the substitution for the refences to the court in subsection (2) of references to the Board of Trade;

and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act,

except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (*b*) and (*c*) thereof to the receiver shall (subject to the next following subsection) include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2) of this section.

(5) This and the next following section, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver 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.

Special provisions as to statement submitted to receiver.

373.—(1) The statement as to the affairs of a company required by the last foregoing section to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's 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.

(2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*c*) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;

(*d*) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Board of Trade and for references to an affidavit of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(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) References in this section to the receiver's successor shall include a continuing receiver or manager.

Delivery to registrar of accounts of receivers and managers.

374.—(1) Except where subsection (2) of section three hundred and seventy-two of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Enforcement of duty of receivers and managers to make returns, etc.

375.—(1) If any receiver or manager of the property of a company—

(*a*) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(*b*) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (*a*) of the foregoing subsection, an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and in the case of any such default as is mentioned in paragraph (*b*) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

Construction of references to receivers and managers.

376. It is hereby declared that, except where the context otherwise requires,—

(*a*) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part

only of that property and to a receiver only of the income arising from that property or from part thereof; and

(*b*) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

PART VII

APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER FORMER ACTS

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

377. In the application of this Act to existing companies, it shall apply in the same manner—

(*a*) 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;

(*b*) 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

(*c*) 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, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

Application of Act to companies registered but not formed under former Companies Acts.

378. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, in the same manner as it is in Part VIII of 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, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, as the case may be.

Application of Act to unlimited companies re-registered under former Companies Acts.

379. This Act shall apply to every unlimited company registered as a limited company in pursuance of the Companies Act, 1879, section fifty-seven of the Companies (Consolidation) Act, 1908, or section sixteen of the Companies Act, 1929, 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 said Act of 1879, the said section fifty-seven or the said section sixteen, as the case may be.

Provisions as to companies registered under the Joint Stock Companies Acts.

380.—(1) 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.

(2) The power of altering articles under section ten of this Act 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 to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Exclusion of companies registered in Northern Ireland or Eire.

381. Nothing in this Part of this Act shall apply to companies registered in Northern Ireland or Eire.

Part VIII

Companies not formed under this Act authorised to register under this Act

Companies capable of being registered.

382.—(1) With the exceptions and subject to the provisions contained in this section,—

(*a*) 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

(*b*) 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 according to 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's being wound up :

Provided that—

(i) a company registered in any part of the United Kingdom under the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, shall not register in pursuance of this section;

(ii) 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;

(iii) 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;

(iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;

(v) 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) at a general meeting summoned for the purpose;

(vi) 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;

(vii) 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 after he ceases to be a member, 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.

(2) 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.

Definition of joint stock company.

383. 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.

Requirements for registration by joint stock companies.

384. 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 :—

(*a*) 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;

(*b*) 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

(*c*) if the company is intended to be registered as a limited company, a statement specifying the following particulars :—

(i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word " limited " as the last word thereof; and

(iv) in 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.

385. 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—

(*a*) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(*b*) 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

(*c*) 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.

386. The lists 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.

387. 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.

Change of name for purposes of registration.

388. Where the name of a company seeking registration under this Part of this Act is one by which it may not be so registered by reason of the name being in the opinion of the Board of Trade undesirable, it may, with the approval of the Board of Trade signified in writing change its name with effect from its registration as aforesaid:

Provided that the like assent of the members of the company shall be required to the change as is by section three hundred and eighty-two of this Act required to the registration under this Act.

Addition of "limited" to name.

389. 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:

Provided that this section shall not be taken as excluding the operation of section nineteen of this Act.

Certificate of registration of existing companies.

390. 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 the following provisions of 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 so incorporated, 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.

391. 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.

392. 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.

393. 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:

Provided that 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 Part VIII.

394.—(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament 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.

(3) 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:—

(*a*) Table A 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 or 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;

(*g*) in the event of the company being wound up, 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, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

(4) 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 or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any 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.

(6) None of the provisions of this Act (apart from those of subsection (3) of section two hundred and ten thereof) shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression "instrument" includes deed of settlement, contract of copartnery, cost-book regulations and letters patent.

Power to substitute memorandum and articles for deed of settlement.

395.—(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 section five of this Act with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations 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 delivery to the registrar of a printed copy of the substituted memorandum and articles or the date when the alteration

is no longer liable to be cancelled by order of the court, whichever last occurs, 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.

396. 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.

397. 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 IX

Winding up of Unregistered Companies

Meaning of unregistered company.

398. For the purposes of this Part of this Act, the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions :—

(*a*) 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;

(*b*) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or this Act;

(*c*) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(*d*) a limited partnership registered in England or Northern Irelandd

er

Winding up of unregistered companies. of

399.—(1) Subject to the provisions of this Part of this Act, here unregistered company may be wound up under this Act, and ections provisions of this Act with respect to winding up shall apply

unregistered company, with the exceptions and additions mentioned in the following provisions of this section.

(2) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland.

(3) 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 England or Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries, and the principal place of business situate in that part of Great Britain 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.

(4) No unregistered company shall be wound up under this Act voluntarily or subject to supervision.

(5) The circumstances in which an unregistered company may be wound up are as follows :—

(*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.

(6) 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 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 Northern 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 inducie 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.

(7) 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 or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up.

(8) 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.

(9) 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 statutory instrument by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

Oversea companies may be wound up although dissolved.

400. Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Contributories in winding up of unregistered company.

401.—(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 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, to the heirs and legatees of heritage of the heritable estate in Scotland 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.

402. 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.

403. 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.

Provisions of Part IX cumulative.

404. 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:

Provided that 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.

Saving for enactments providing for winding up under former Companies Acts.

405. 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 the Companies Act, 1929, or any enactment repealed by that Act.

PART X

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN

Provisions as to Establishment of Place of Business in Great Britain

Application of ss. 407 to 414.

406. The next eight following sections shall apply to all oversea companies, that is to say, companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

Documents, etc., to be delivered to registrar by oversea companies carrying on business in Great Britain.

407.—(1) Oversea companies which, after the commencement of this Act, establish a place of business within Great Britain shall, within one month of the establishment of the place of business, deliver to the registrar of companies for registration:—

(*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 and secretary of the company containing the particulars mentioned in the next following subsection;

(*c*) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company

service of process and any notices required to be served on the company.

(2) The list referred to in paragraph (*b*) of the foregoing subsection shall contain the following particulars, that is to say,—

(*a*) with respect to each director,—

(i) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and,

(ii) in the case of a corporation, its corporate name and registered or principal office;

(*b*) with respect to the secretary or, where there are joint secretaries, with respect to each of them,—

(i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(ii) in the case of a corporation or a Scottish firm, its corporate or firm name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (*b*) of this subsection.

Paragraphs (*b*), (*c*) and (*d*) of subsection (9) of section two hundred of this Act shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

(3) Oversea companies, other than those mentioned in subsection (1) of this section, shall, if at the commencement of this Act they have not delivered to the registrar—

(*a*) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;

(*b*) in the case of a company not so mentioned, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

continue subject to the obligation to deliver those documents and particulars in accordance with the said Act of 1929 or the said Acts of 1908 and 1917, as the case may be.

Power of oversea company to hold lands.

408. Where an oversea company has delivered to the registrar of companies—

(*a*) in the case of a company to which subsection (1) of the last foregoing section applies, the documents and particulars therein mentioned;

(*b*) in the case of a company mentioned in subsection (1) or (2) of section three hundred and forty-four of the Companies Act, 1929, the documents and particulars specified in subsection (1) of that section;

(*c*) in the case of any other company, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies

(Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

it shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

Return to be delivered to registrar by oversea company where documents, etc., altered.

409. If any alteration is made in—

(*a*) the charter, statutes, or memorandum and articles of an oversea company or any such instrument as aforesaid; or

(*b*) the directors or secretary of an oversea company or the particulars contained in the list of the directors and secretary; or

(*c*) the names or addresses of the persons authorised to accept service on behalf of an oversea company;

the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

Accounts of oversea company.

410.—(1) Every oversea company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar of companies:

Provided that a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitled it to rank as a private company, need not comply with the foregoing provisions of this subsection if there is delivered to the registrar a certificate signed by a director and by the secretary of the company that, had section one hundred and twenty-nine of, and the Seventh Schedule to, this Act extended to Northern Ireland it would at the date of the certificate have been an exempt private company.

(2) If any such document as is mentioned in the foregoing subsection is not written in the English language, there shall be annexed to it a certified translation thereof.

Obligation to state name of oversea company, whether limited, and country where incorporated.

411. Every oversea company shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

(*c*) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and

(*d*) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

Service on oversea company.

412. Any process or notice required to be served on an oversea company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part of this Act and left at or sent by post to the address which has been so delivered :

Provided that—

(*a*) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices; or

(*b*) if any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

Office where documents to be filed.

413.—(1) Any document, which any oversea company is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly.

(2) If any oversea company ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease.

Penalties.

414. If any oversea company fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, 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.

Interpretation of ss. 407 to 414.

415. For the purposes of the foregoing provisions of this Part of this Act—

the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

the expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

the expression "place of business" includes a share transfer or share registration office;

the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;

the expression "secretary" includes any person occupying the position of secretary by whatever name called.

Special provisions as to delivery of documents by companies incorporated in Channel Islands or Isle of Man.

416. Where a company incorporated in the Channel Islands or Isle of Man—

(*a*) after the commencement of this Act, establishes a place of business in England or Scotland; or

(*b*) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland.

Prospectuses

Dating of prospectus and particulars to be contained therein.

417.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain unless the prospectus is dated and—

(*a*) contains particulars with respect to the following matters:—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain;

(*b*) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule to this Act and sets out the reports specified in Part II of that Schedule, subject to the provisions contained in Part III of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii), and (iii) of paragraph (*a*) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection,

paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (*a*) or (*b*) of the foregoing subsection, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Great Britain does not contravene the provisions of section four hundred and nineteen of this Act :

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (*a*) and (*b*) of subsection (1) of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

(*a*) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(*b*) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) 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.

Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.

418.—(1) Where—

(*a*) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain; and

(*b*) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

(*a*) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and

(*b*) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

Provisions as to expert's consent, and allotment.

419.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain,—

(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections fifty and fifty-one of this Act so far as applicable.

(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus.

420.—(1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription

shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless before the issue, circulation or distribution of the prospectus in Great Britain, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy—

(*a*) any consent to the issue of the prospectus required by the last foregoing section;

(*b*) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section four hundred and eighteen of this Act to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and

(*c*) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in paragraph (*b*) of the foregoing subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

Penalty for contravention of four foregoing sections.

421. Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of the four last foregoing sections shall be liable to a fine not exceeding five hundred pounds.

Civil liability for mis-statements in prospectus.

422. Section forty-three of this Act shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, with the substitution, for references to section forty of this Act, of references to section four hundred and nineteen thereof.

Interpretation of provisions as to prospectuses.

423.—(1) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section forty-five of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Act.

(3) In this Part of this Act the expressions " prospectus ", " shares " and " debentures " have the same meanings as when used in relation to a company incorporated under this Act.

Part XI

General Provisions as to Registration

Registration offices in England and Scotland.

424.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England and Scotland 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) 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 direct, be done to or by the existing registrar of companies in England or Scotland, as the case may be, or in his absence to or by such person as the Board may for the time being authorise :

Provided that, 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.

425.—(1) In respect of the several matters mentioned in the first column of the table set out in Part I of the Twelfth Schedule to this Act, there shall, subject to the limitations imposed by Part II of that Schedule, be paid to the registrar the several fees specified in the second column of that table :

Provided that no fees shall be charged in respect of the registration in pursuance of Part VIII 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.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Inspection, production and evidence of documents kept by registrar.

426.—(1) Any person may—

(*a*) inspect the documents kept by the registrar of companies, on payment of such fee as may be appointed by the Board of Trade, not exceeding one shilling for each inspection;

(*b*) 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:

Provided that,—

(i) in relation to documents delivered to the registrar with a prospectus in pursuance of sub-paragraph (i) of paragraph (*b*) of subsection (1) of section forty-one of this Act, the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of publication of the prospectus or with the permission of the Board of Trade, and in relation to documents so delivered in pursuance of paragraph (*b*) of subsection (1) of section four hundred and twenty of this Act the said rights shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the Board of Trade; and

(ii) the right conferred by paragraph (*a*) of this subsection shall not extend to any copy sent to the registrar under section three hundred and seventy-two of this Act of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either is, or is the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph (*b*) of this subsection shall be similarly limited.

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies in England or Scotland, certified to be a true copy under the hand of the 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.

(4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) of this section to be a member or creditor of a company shall be liable to a fine not exceeding fifty pounds.

(5) In the application of this section to Scotland, as in its application to England, a folio shall be deemed to consist of seventy-two words.

Power of registrar in England to direct removal of documents to Public Record Office.

427.—(1) Where a company has been dissolved, whether under this Act or otherwise, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be removed to the Public Record Office, and documents in respect of which any such direction is given shall be disposed of in accordance with the provisions of the Public Record Office Acts, 1838 to 1898, and the rules made thereunder.

(2) In this section the expression "company" includes a company provisionally or completely registered under the Act 7 and 8 Victoria chapter one hundred and ten.

(3) This section shall not extend to Scotland.

Enforcement of duty of company to make returns to registrar.

428.—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar of companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

Part XII

Miscellaneous Provisions with respect to Banking and Insurance Companies, and Certain Societies, Partnerships and Unregistered Companies.

Provisions relating to Banking and Insurance Companies

Prohibition of banking partnerships with more than ten members.

429. 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.

On registration of banking company with limited liability, notice to be given to customers.

430.—(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.

Liability of bank of issue unlimited in respect of notes.

431.—(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 :

Provided that, 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.

Privileges of banks making annual return.

432.—(1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section one hundred and twenty-four of this Act and has added thereto a statement of the names of the several places where it carries on business, the company—

(*a*) shall not be required to furnish to the Commissioners of Inland Revenue any returns under the provisions of the Country Bankers Act, 1826, the Bankers (Scotland) Act, 1826, section twenty-one of the Bank Charter Act, 1844, or section thirteen of the Bank Notes (Scotland) Act, 1845; and

(*b*) shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books Evidence Act, 1879.

(2) The fact of the said annual return and statement having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

Banking and certain other companies to publish periodical statement.

433.—(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 set out in the Thirteenth Schedule to this Act, or as near thereto as circumstances 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 complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of this Act a company which carries on the

business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply, if the company complies with those provisions.

Prohibition of Partnerships with more than twenty Members

Prohibition of partnerships with more than twenty members.

434.—(1) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered 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.

(2) This section shall not apply in relation to any body of persons for the time being approved for the purposes of Part I of the War Risks Insurance Act, 1939, by the Minister of Transport, being a body the objects of which are or include the carrying on of business by way of the re-insurance of risks which may be re-insured under any agreement for the purpose mentioned in paragraph (*b*) of subsection (1) of section one of that Act.

Application of certain Provisions of this Act to Unregistered Companies

Application of certain provisions of this Act to unregistered companies.

435.—(1) The provisions of this Act specified in the second column of the Fourteenth Schedule to this Act (which respectively relate to the matters referred to in the first column of that Schedule) shall apply to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than those mentioned in the next following subsection, as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptations and modifications (if any) as may be specified by regulations made by the Board of Trade.

(2) The said provisions shall not apply by virtue of this section to any of the following, that is to say:—

(*a*) any body incorporated by or registered under any public general Act of Parliament; and

(*b*) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or by the individual members thereof; and

(*c*) any body for the time being exempted by direction of the Board of Trade.

(3) The said provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, and not registered under any other public general Act of Parliament, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (*b*) and (*c*) of the last foregoing subsection.

(4) This section shall not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating

any body in relation to which the said provisions are applied by virtue of this section, or restrict the power of His Majesty to grant a charter in lieu of or supplementary to any such charter as aforesaid; but, in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

(5) The powers to make regulations conferred by this section and the Fourteenth Schedule to this Act on the Board of Trade shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Part XIII

General

Form of registers, etc.

Form of registers, etc.

436.—(1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds and further shall be liable to a default fine.

Service of Documents

Service of documents on a company.

437.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(2) Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

(3) Where process is served on a company under subsection (2) of this section the person issuing out the process shall send a copy thereof by post to the registered office of the company.

Offences

Penalty for false statements.

438. 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 Fifteenth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland 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—

(*a*) the fine imposed on summary conviction shall not exceed one hundred pounds;

(*b*) nothing in this section shall affect the provisions of the Perjury Act, 1911, or the False Oaths (Scotland) Act, 1933.

Penalty for improper use of word "limited".

439. If any person or persons trade or carry on business under any name or title of which "limited", or any contraction or imitation of that word, 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.

Provision with respect to default fines and meaning of "officer in default".

440.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Production and inspection of books where offence suspected.

441.—(1) If on an application made—

(*a*) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or

(*b*) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) The foregoing subsection shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (ii) thereof shall be made by virtue of this subsection.

(3) The decision of a judge of the High Court or of any of the Lords Commisioners of Justiciary on an application under this section shall not be appealable.

(4) In this section the expression "chief officer of police" has (subject to the provisions of the Police Act, 1946 and the Police

(Scotland) Act, 1946) the same meaning as in the Police Pensions Act, 1921.

Provisions as to summary proceedings.

442.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts, and proceedings under those Acts in respect of any such offence may, notwithstanding anything to the contrary therein, be taken by the Director of Public Prosecutions or by the Board of Trade at any time within twelve months from the date on which evidence sufficient in the opinion of the Director or the Board, as the case may be, to justify the proceedings comes to his or their knowledge :

Provided that proceedings shall not be so taken more than three years after the commission of the offence.

(2) For the purposes of the foregoing subsection, a certificate of the Director of Public Prosecutions or the Board of Trade as to the date on which such evidence as aforesaid came to his or their knowledge shall be conclusive evidence thereof.

(3) In the application of this section to Scotland, any reference to the Director of Public Prosecutions and the first reference to the Board of Trade shall be omitted, and for any reference to evidence sufficient to justify proceedings there shall be substituted a reference to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of proceedings.

(4) Subsection (1) of this section, so far as it relates to the time within which proceedings may be taken, and subsections (2) and (3) thereof shall apply to proceedings in respect of offences under the Companies Act, 1929, or the Companies Act, 1947, that may be prosecuted under the Summary Jurisdiction Acts as it applies to proceedings in respect of the offences mentioned in the said subsection (1) :

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Acts apart from this section for taking them had already expired before the commencement of this Act.

Proceedings on indictment in Scotland against bodies corporate.

443.—(1) In any proceedings on indictment against a body corporate for an offence against this Act the indictment may be served by—

(*a*) delivery of a copy with notice to appear attached thereto at the registered office or, if there is no registered office, at the principal place of business of the body corporate; and

(*b*) delivery in Scotland of a copy of the indictment with notice to appear attached thereto to the secretary or any director or to any person in charge of any principal place of business of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Postmaster General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

(2) In any such proceedings as aforesaid the body corporate may appear, and any plea or notice on behalf of the body may be tendered or given—

(*a*) in the High Court of Justiciary, by counsel or by a representative of the body corporate; and

(*b*) in the sheriff court, by counsel or by a solicitor or by a representative of the body corporate.

(3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, it shall be deemed to have tendered a plea of not guilty.

(4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section, the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.

(6) Notwithstanding anything contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, it shall not be necessary for a plea tendered by counsel or by a solicitor in accordance with the provisions of subsection (2) of this section to be signed.

(7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

(8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of, the body corporate to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.

(9) The foregoing provisions of this section shall apply to offences against the Companies Act, 1929, or the Companies Act, 1947, as they apply to offences against this Act.

(10) This section shall extend to Scotland only.

Application of fines.

444. The court imposing any fine under this Act may direct that the whole or any part thereof shall 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.

Saving as to private prosecutors.

445. Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications.

446. Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

Legal Proceedings

Costs in actions by certain limited companies.

447. 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.

448.—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

Power to enforce orders.

449. Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

Jurisdiction of stannaries court.

450.—(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.

(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 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 other than Eire, 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.

General Provisions as to Board of Trade

Annual report by Board of Trade.

451. 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.

452. 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.

Orders and certificates of Board to be evidence.

453.—(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.

Power to alter tables and forms.

454.—(1) The Board of Trade shall have power by regulations made by statutory instrument to alter or add to the requirements of this Act as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts, and in particular of those of the Eighth Schedule to this Act; and any reference in this Act to the said Eighth Schedule shall be construed as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection.

(2) The Board of Trade may by regulations made by statutory instrument—

(*a*) alter Table A, the Twelfth Schedule to this Act so that it does not increase the amount of fees payable to the registrar under that

Schedule, and the form in the Thirteenth Schedule to this Act; and

(*b*) alter or add to Tables B, C, D, and E in the First Schedule to this Act and the forms in the Second Schedule and Part II of the Sixth Schedule to this Act;

but no alteration made by the Board of Trade in Table A shall affect any company registered before the alteration, or repeal as respects that company any portion of that Table.

(3) No regulations shall be made under subsection (1) of this section so as to render more onerous the requirements therein referred to, unless a draft of the instrument containing the regulations has been laid before Parliament and has been approved by resolution of each House of Parliament.

(4) A statutory instrument containing regulations made under this section, not being regulations to which the last foregoing subsection applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Supplemental

Interpretation.

455.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

"accounts" includes a company's group accounts, whether prepared in the form of accounts or not;

"agent" does not include a person's counsel acting as such;

"annual return" means the return required to be made, in the case of a company having a share capital, under section one hundred and twenty-four, and, in the case of a company not having a share capital, under section one hundred and twenty-five, of this Act;

"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 the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last-mentioned Act, or in Table A in the First Schedule to the Companies Act, 1929, or in Table A in the First Schedule to this Act;

"bank holiday" means a day which is a bank holiday under the Bank Holidays Act, 1871;

"book and paper" and "book or paper" include accounts, deeds, writings, and documents;

"company" means a company formed and registered under this Act or an existing company;

"company limited by guarantee" and "company limited by shares" have the meanings assigned to them respectively by subsection (2) of section one of this Act;

"company within the stannaries" means a company engaged in or formed for working mines within the stannaries;

"contributory" has the meaning assigned to it by section two hundred and thirteen of this Act;

"the court", used in relation to a company, means the court having jurisdiction to wind up the company;

" 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;

" creditors' voluntary winding up " has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

" debenture " includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

" director " includes any person occupying the position of director by whatever name called;

" document " includes summons, notice, order, and other legal process, and registers;

" dominion register " has the meaning assigned to it by subsection (1) of section one hundred and nineteen of this Act;

" exempt private company " means an exempt private company as defined by subsection (4) of section one hundred and twenty-nine of this Act;

" existing company " means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1929, but does not include a company registered under the said Acts, the said Act of 1862 or the said Act of 1908 in Northern Ireland or Eire;

" financial year " means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

" the Gazette " means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette;

" general rules " means general rules made under section three hundred and sixty-five of this Act, and includes forms;

" group accounts " has the meaning assigned to it by subsection (1) of section one hundred and fifty of this Act;

" holding company " means a holding company as defined by section one hundred and fifty-four of this Act;

" issued generally " means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of 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 7 and 8 Victoria, chapter one hundred and ten;

" members' voluntary winding up " has the meaning assigned to it by subsection (4) of section two hundred and eighty-three of this Act;

" the minimum subscription " has the meaning assigned to it by subsection (2) of section forty-seven of this Act;

" memorandum " means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

" officer ", in relation to a body corporate, includes a director, manager or secretary;

" 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 statutory instrument made by the Board of Trade;

" private company " has the meaning assigned to it by subsection (1) of section twenty-eight of this Act;

" 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;

" real " and " personal ", as respects Scotland, mean respectively heritable and moveable;

" recognised stock exchange " means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act, 1939;

" 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 or Scotland, or in the stannaries, as the case requires;

" resolution for reducing share capital " has the meaning assigned to it by subsection (2) of section sixty-six of this Act;

" a resolution for voluntary winding up " has the meaning assigned to it by subsection (2) of section two hundred and seventy-eight of this Act;

" share " means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

" share warrant " has the meaning assigned to it by subsection (2) of section eighty-three of this Act;

" statutory meeting " means the meeting required to be held by subsection (1) of section one hundred and thirty of this Act;

" statutory report " has the meaning assigned to it by subsection (2) of section one hundred and thirty of this Act;

" subsidiary " means a subsidiary as defined by section one hundred and fifty-four of this Act;

" Table A " means Table A in the First Schedule to this Act;

" the time of the opening of the subscription lists " has the meaning assigned to it by subsection (1) of section fifty of this Act;

" unlimited company " has the meaning assigned to it by subsection (2) of section one of this Act.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Great Britain, and references therein to a body corporate shall be construed as not including a Scottish firm.

(4) Any such provision of this Act overriding or interpreting a company's articles as is a re-enacted provision of the Companies Act, 1947, shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

Amendments of other Acts.

456. The Assurance Companies Acts, 1909 to 1946, sections two and thirteen of the Prevention of Fraud (Investments) Act, 1939, and sections fifty-eight, one hundred and fifteen and one hundred and seventeen of the Companies Act, 1947, shall have effect subject to the amendments specified in the Sixteenth Schedule to this Act.

Construction of references in other Acts to subsidiary companies as defined by, and companies registered under, the Companies Act, 1929.

457. Notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889 (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted),—

(*a*) references, in whatever terms, in any Act other than this Act to a subsidiary company as defined by the Companies Act, 1929, shall be construed in like manner as if this Act had not passed;

(*b*) references in any Act other than this Act to a company formed and registered, or registered, under the Companies Act, 1929, shall, unless the context otherwise requires, be construed as references to a company formed and registered, or registered, under that Act or this Act.

Effect of provisions of former Companies Acts as to registration of charges on land and keeping books of account.

458.—(1) Paragraph (*d*) of subsection (1) of section ten of the Companies Act, 1907, paragraph (*d*) of subsection (1) of section ninety-three of the Companies (Consolidation) Act, 1908, and paragraph (*d*) of subsection (2) of section seventy-nine of the Companies Act, 1929 (by virtue whereof charges created on land by a company required registration under those Acts respectively), shall be deemed never to have applied to a charge for any rent or other periodical sum issuing out of the land.

(2) Subsection (1) of section two hundred and seventy-four of the Companies Act, 1929 (which penalised the persons responsible where proper books of account were not kept by a company throughout the two years immediately preceding the commencement of the winding up) shall be deemed always to have had effect—

(*a*) as if after the words "the period of two years immediately preceding the commencement of the winding up" there had been inserted the words "or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter"; and

(*b*) as if, in the phrase "unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable", for the word "or" there had been substituted the word "and".

Repeal and savings.

459.—(1) The enactments mentioned in the first and second columns of Part I of the Seventeenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part of that Schedule, the provisions of the Companies Act, 1947, mentioned in the first column of Part II of that Schedule are, so far as they are not repealed by the foregoing provisions of this subsection, hereby repealed to the extent specified in the second column of that Part of that Schedule,

and paragraph (2) of Regulation three of the Defence (Companies) Regulations, 1940, is hereby revoked.

(2) Nothing in this Act shall affect any Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken, issued or done under this Act:

Provided that this subsection shall not apply to any such Order in Council, order or rule as is mentioned in any of the three next following subsections or to any regulation having effect by virtue of subsection (2) of section one hundred and twenty of the Companies Act, 1947.

(3) Any Order in Council under paragraph (*e*) of the proviso to subsection (1) of section fifty-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order of the Treasury under paragraph (*c*) of the proviso to subsection (1) of section sixty-five of this Act.

(4) Any order prescribing fees for the purposes of Part III of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were regulations under sections ninety-eight and one hundred and two of this Act.

(5) Any rule made with respect to procedure in the Court of Session or in a sheriff court (including appeals from the sheriff court), or with respect to costs and fees, under section three hundred and seventy-four of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were contained in an Act of Sederunt under section sixteen of the Administration of Justice (Scotland) Act, 1933, or under section forty of the Sheriff Courts (Scotland) Act, 1907, as the case may be.

(6) Nothing in this Act shall affect the operation of section one hundred and thirty-seven of the Companies Act, 1929, as respects inspectors appointed before, or to continue an inspection begun by inspectors appointed before, the commencement of this Act, and section one hundred and seventy-one of this Act shall apply to a report of inspectors appointed under the said section one hundred and thirty-seven as it applies to a report of inspectors appointed under section one hundred and sixty-four of this Act.

(7) An order made on an application under section two hundred and seventeen or subsection (4) of section two hundred and seventy-five of the Companies Act, 1929, which is in force at the commencement of this Act shall have effect as if it were an order under section one hundred and eighty-eight of this Act.

(8) Nothing in this Act shall affect any prosecution by a liquidator instituted or ordered by the court to be instituted under section two hundred and seventy seven of the Companies Act, 1929, and the Board of Trade shall have the same power of directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as they would have had if this Act had not passed.

(9) Nothing in this Act shall affect—

(*a*) the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865;

(*b*) the provisions of section five of the Trade Union Act, 1871

(which avoids the registration of a trade union under the enactments relating to companies);

(*c*) the provisions of subsection (4) of section fifty-four of the Finance Act, 1940 (which provides for payment in priority to other debts of duty payable by a company in respect of assets passing on a death by virtue of section forty-six of that Act), of any other enactment (not being one expressly repealed by this Act) relating to preferential payments or of regulations so relating having effect under any enactment;

(*d*) the provisions of subsection (2) of section eight of the Exchange Control Act, 1947 (which invalidates the subscription of the memorandum of association of a company by or on behalf of a person resident outside the scheduled territories as defined for the purposes of that Act, unless the subscription is with the permission of the Treasury);

(*e*) the provisions of any Regulation of the Defence (Recovery of Fines) Regulations, 1942, or the provisions of any other Defence Regulation so far as not expressly revoked by this Act;

(*f*) the enactments set out in the Eighteenth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862;

or be construed as repealing any provision of the Assurance Companies Acts, 1909 to 1946:

Provided that, notwithstanding subsection (1) of section thirty-eight of the Interpretation Act, 1889, references in any such enactment or regulations as are mentioned in paragraph (*c*) of this subsection to provisions of section seventy-eight, two hundred and sixty-four or two hundred and ninety-eight of the Companies Act, 1929, shall be construed as referring both to those provisions and to the corresponding provisions of this Act.

(10) Subject to the provisions of the last foregoing subsection, any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

(11) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

(12) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(13) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(14) Nothing in this Act shall affect —

(*a*) the incorporation of any company registered under any enactment hereby repealed;

(*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;

(*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;

(*d*) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally

contained in that Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act;

(*e*) Table A in the First Schedule to the Companies Act, 1929, or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(15) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(16) Save to the extent to which it is otherwise provided by subsection (9) of this section, the mention of particular matters in this section shall be without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with respect to the effect of repeals.

(17) In this section the expression "former enactment relating to companies" means the Companies Act, 1929, and any enactment repealed by that Act or by the Companies (Consolidation) Act, 1908.

Provisions as to winding-up proceedings commenced before 1st November, 1929.

460.—(1) The provisions of this Act with respect to winding up (other than sections three hundred and thirty-six, three hundred and fifty-six and three hundred and twenty-four as applied for the purposes of the last-mentioned section and subsection (2) of this section) shall not apply to any company of which the winding up commenced before the first day of November, nineteen hundred and twenty-nine, but every such company shall be wound up in the same manner and with the same incidents as if the Companies Act, 1929, and this Act (apart from the enactments aforesaid) had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

(2) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

Application to Northern Ireland.

461.—(1) Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.

(2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

Short title and commencement.

462.—(1) This Act may be cited as the Companies Act, 1948.

(2) This Act shall come into operation on the first day of July, nineteen hundred and forty-eight, being the day on which, by virtue of orders of the Board of Trade under section one hundred and twenty-three of the Companies Act, 1947, all the provisions of that Act will first be in operation, and immediately after all those provisions are in operation.

SCHEDULES

Sections 11, 455. FIRST SCHEDULE

Tables A, B, C, D and E

TABLE A

PART I

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES, NOT BEING A PRIVATE COMPANY

Interpretation

1. In these regulations:—
"the Act" means the Companies Act, 1948.
"the seal" means the common seal of the company.
"secretary" means any person appointed to perform the duties of the secretary of the company.
"the United Kingdom" means Great Britain and Northern Ireland.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, 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 capital or otherwise as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section 58 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may 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, whether or not the company is being wound up, 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 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 and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

6. The company may exercise the powers of paying commissions conferred by section 53 of the Act, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10 per cent. of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent. of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable,

contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of 2s. 6d. for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates 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 such holders.

9. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of 2s. 6d. or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 54 (1) of the Act.

Lien

11. The company shall have a first and paramount 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 first and paramount 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 regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. 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 a 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 thereto by reason of his death or bankruptcy.

13. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, 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.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. 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 on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 5 per cent. per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulation be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. 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 payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 5 per cent. per annum, as may be agreed upon between the directors and the member paying such sum in advance.

Transfer of Shares

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and, except as provided by sub-paragraph (4) of paragraph 2 of the Seventh Schedule to the Act, 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.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

25. The directors may also decline to recognise any instrument of transfer unless:—

(*a*) a fee of 2s. 6d. or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;

(*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; and

(*c*) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

28. The company shall be entitled to charge a fee not exceeding 2s. 6d. on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, notice in lieu of distringas, or other instrument.

Transmission of Shares

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, 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 that member before his death or bankruptcy, as the case may be.

31 If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. 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 :

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture of Shares

33. 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 the 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.

34. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service 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.

35. 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.

36. 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.

37. 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 payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. A statutory declaration in writing that the declarant is a director or the secretary 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. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon 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 proceeedings in reference to the forfeiture, sale or disposal of the share.

39. 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 nominal value 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

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. 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; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall, according to the amount of 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 and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder"

Alteration of Capital

44. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

45. The company may by ordinary resolution—

(*a*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*b*) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 61 (1) (*d*) of the Act;

(*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.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall clapse between the date of one annual general meeting of the company and that of the next Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. 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 132 of the Act. 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.

Notice of General Meetings

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to

be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and 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:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent. in nominal value of the shares giving that right.

51. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. 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 present in person shall be a quorum.

54. 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 or to such other day and at such other time and place as the directors may determine, 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.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. 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 thirty 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.

58. 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—

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be 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 containing the minutes 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 such resolution.

The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, 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

60. 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.

61. 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, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of Members

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. 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.

64. 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, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

65. 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.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. 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 or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

Limited

I/We , of , in the county of , being a member/members of the above-named company, hereby appoint of , or failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

71. Where it is desired to afford members an opportunity of voting for or against

a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

Limited

I/We, , of in the county of , being a member/members of the above-named company, hereby appoint of , or failing him of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 .

This form is to be used $\frac{\text{*in favour of}}{\text{against}}$ the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings

74. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

Borrowing Powers

79. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned

to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and Duties of Directors

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the 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.

81. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 35 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. The company may exercise the powers conferred upon the company by sections 119 to 123 (both inclusive) of the Act with regard to the keeping of a dominion register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84.- (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 199 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

(*a*) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(*b*) to any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(*c*) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(*d*) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities;

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

85. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

86. 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.

87. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependents and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors

88. The office of director shall be vacated if the director–

(*a*) ceases to be a director by virtue of section 182 or 185 of the Act; or

(*b*) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(*c*) becomes prohibited from being a director by reason of any order made under section 188 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general 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 one-third, shall retire from office.

90. 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.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The company may from time to time by ordinary resolution 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.

95. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

96. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding regulation, and without prejudice to the powers of the directors under regulation 95 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy 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

98. 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. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

100. 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 or director 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.

101. 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.

102. 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 it by the directors.

103. A committee may elect a chairman of its 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.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. 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 director or person 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.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he cease from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

110. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them

111. No person shall be appointed or hold office as secretary who is—

(*a*) the sole director of the company; or

(*b*) a corporation the sole director of which is the sole director of the company; or

(*c*) the sole director of a corporation which is the sole director of the company.

112. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

113. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividends and Reserve

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. 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.

116. No dividend shall be paid otherwise than out of profits.

117. 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 any 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. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. Any general meeting declaring a dividend or bonus may direct payment of

such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

122. No dividend shall bear interest against the company.

Accounts

123. The directors shall cause proper books of account to be kept with respect to:—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

124. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

125. 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.

126. The directors shall from time to time, in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

127. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31. Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

Capitalisation of Profits

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

129. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Audit

130. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice 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 to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

133. 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, within 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.

134. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member 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;

(*b*) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Winding up

135. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the

like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 448 of the Act in which relief is granted to him by the court.

Part II

Regulations for the Management of a Private Company limited by Shares

1. The regulations contained in Part I of Table A (with the exception of regulations 24 and 53) shall apply.

2. The company is a private company and accordingly—

(*a*) the right to transfer shares is restricted in manner hereinafter prescribed;

(*b*) the number of members of the company (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) is limited to fifty. Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

(*c*) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(*d*) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. 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 two members present in person or by proxy shall be a quorum.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

6. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the directors so require) by a statutory declaration, which they may consider necessary for the purpose of determining whether or not the company is an exempt private company within the meaning of subsection (4) of section 129 of the Act.

Note: Regulations 3 and 4 of this Part are alternative to regulations 24 and 53 respectively of Part I.

Table B

Form of 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.

TABLE C

FORM OF 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 Kent School 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 carrying on a school for boys in the county of Kent 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	schoolmaster
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

Interpretation

1. In these articles:—
"the Act" means the Companies Act, 1948.
"the seal" means the common seal of the company.
"secretary" means any person appointed to perform the duties of the secretary of the company.
"the United Kingdom" means Great Britain and Northern Ireland.
Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.
Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

Members

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. 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 132 of the Act. 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.

Notice of General Meetings

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and 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 articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, of the auditors.

10. 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 present in person shall be a quorum.

11. 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, or to such other day and at such other time and place as the directors may determine, 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.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. 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 thirty 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.

15. 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—

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be 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 containing the minutes 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 such resolution.

The demand for a poll may be withdrawn.

16. Except as provided in article 18, 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.

17. 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.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded or any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at

general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Votes of Members

20. Every member shall have one vote.

21. 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, receiver, curator bonis or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

25. 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 or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

Limited.

I/We of in the county of , being a member/members of the above named company, hereby appoint of or failing him of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

"

Limited

I/We , of in the county of , being a member/members of the above named company, hereby appoint of , or failing him of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 .

This form is to be used $\frac{\text{*in favour of}}{\text{against}}$ the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired."

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that

no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

Borrowing Powers

33. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

Powers and Duties of Directors

34. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Act or these articles and to such regulations, being not inconsistent with the aforesaid 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.

35. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

36. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

37. 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.

Disqualification of Directors

88. The office of director shall be vacated if the director—

(*a*) without the consent of the company in general meeting holds any other office of profit under the company; or

(*b*) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(*c*) becomes prohibited from being a director by reason of any order made under section 188 of the Act; or

(*d*) becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company; or

(*f*) ceases to be a director by virtue of section 185 of the Act;

(*g*) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 199 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general 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 one-third, shall retire from office.

40. 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

41. A retiring director shall be eligible for re-election.

42. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

43. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

44. The company may from time to time by ordinary resolution 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.

45. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

46. The company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

47. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 45 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy 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

48. 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 the 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. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

49. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

50. 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 articles of the company as the necessary quorum of directors, the continuing directors or director 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.

51. 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.

52. 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 it by the directors.

53. A committee may elect a chairman of its 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.

54. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

55. 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 director or person 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.

56. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Secretary

57. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

58. A provision of the Act or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

59. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts

60. The directors shall cause proper books of account to be kept with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company; and

(*c*) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

61. The books of account shall be kept at the registered office of the company, or, subject to section 147 (3) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

62. 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

63. The directors shall from time to time in accordance with sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

64. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

Audit

65. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

Notices

66. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice 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 to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

67. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

(*a*) every member 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;

(*b*) every person being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers

"1. John Jones of	in the county of	schoolmaster
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. 20, Bond Street, London.

TABLE D

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 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.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is fifty, but the directors may from time to time register an increase of members.

2. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1948, shall be deemed to be incorporated with these articles and shall apply to the company.

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.

TABLE E

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, and the doing of all such things as are incidental to or conducive to the attainment of the above objects."

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 Descriptions of Subscribers			Number of shares taken by each Subscriber
"1. John Jones of	in the county of	merchant	3
2. John Smith of	in the county of	„	2
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 number of members with which the company proposes to be registered is 20, but the directors may from time to time register an increase of members.

2. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.

3. The company may by special resolution—
   (*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
   (*b*) consolidate its shares into shares of a larger amount than its existing shares;
   (*c*) sub-divide its shares into shares of a smaller amount than its existing shares;
   (*d*) 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;
   (*e*) reduce its share capital in any way.

4. The regulations of Table A, Part I, set out in the First Schedule to the Companies Act, 1948 (other than regulations 40 to 46 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

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. Abel Brown of	in the county of	„

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 20, Bond Street, London.

Sections 14, 454. SECOND SCHEDULE

FORM OF LICENCE TO HOLD LANDS

The Board of Trade hereby licence 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 30. THIRD SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ACT, 1948

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company*]

Pursuant to section 30 of the Companies Act, 1948

Delivered for registration by	
The nominal share capital of the company. ...	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The earliest date on which the company has power to redeem these shares.	
Names, descriptions and addresses of directors or proposed directors.	
Amount of shares issued	Shares
Amount of commissions paid in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business:—	
Amount of preliminary expenses	£
By whom those expenses have been paid or are payable.	
Amount paid to any promoter	Name of promoter:— Amount £ .
Consideration for the payment	Consideration:—
Any other benefit given to any promoter.	Name of promoter:— Nature and value of benefit:—
Consideration for giving of benefit	Consideration:—
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
Consideration for the issue of those shares or debentures.	3. debenture £ 4. Consideration:—

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of £ and debentures of £
Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration :—
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses :—
Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material	
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	
Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.	Total purchase price £ Cash ... ... £ Shares ... ... £ Debentures ... £ Goodwill ... £
Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.	
Names and addresses of the auditors of the company.	
Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired	

by the company or, where the interest of such a director consists in being a partner in the 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 or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

Date.

PART II

REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2.—(1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the foregoing sub-paragraph shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Part III

Provisions applying to Parts I and II of this Schedule

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

FOURTH SCHEDULE

Sections 30, 38, 39, 41, 47, 417, 418, 420.

Matters to be specified in Prospectus and Reports to be set out therein

Part I

Matters to be specified

1. 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.

2. 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.

3. The names, descriptions and addresses of the directors or proposed directors.

4. Where shares are offered to the public for subscription, particulars as to—

(*a*) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The time of the opening of the subscription lists.

6. 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, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say—

(*a*) the period during which it is exercisable,

(*b*) the price to be paid for shares or debentures subscribed for under it;

(*c*) the consideration (if any) given or to be given for it or for the right to it;

(*d*) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. 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.

9.—(1) As respects any property to which this paragraph applies—

(*a*) the names and addresses of the vendors;

(*b*) 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;

(*c*) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

(2) The property to which this paragraph applies is 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 the issue of the prospectus, other than property—

(*a*) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(*b*) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) 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.

12. The amount or estimated amount of preliminary expenses and the persons by

whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

15. The names and addresses of the auditors, if any, of the company.

16. 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 connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part II

Reports to be set out

19.—(1) A report by the auditors of the company with respect to—

(*a*) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires; and

(*b*) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal separately with the company's profits or losses as provided by the last foregoing sub-paragraph, and in addition, deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the company's

assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21.—(1) If—

(*a*) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(*b*) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon—

(i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

(*a*) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

(*b*) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-paragraph (3) of paragraph 19 of this Schedule in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

23. Every person shall for the purposes of this Schedule, 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 the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect 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.

25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the

company or business have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

28. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

29. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

Section 48. FIFTH SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

THE COMPANIES ACT, 1948

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company*]

Pursuant to section 48 of the Companies Act, 1948

Delivered for registration by	
The nominal share capital of the company ...	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The earliest date on which the company has power to redeem these shares.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
The consideration for the intended issue of those shares and debentures.	3 debenture £ . 4. Consideration:—

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of £ and debentures of £
Period during which option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option.	3.
Consideration for option or right to option.	4. Consideration:—
Persons to whom option or right to option was given, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses:—
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
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 ... £
Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	
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	Amount paid. „ payable.
Rate of the commission	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	£ .
By whom those expenses have been paid or are payable.	
Amount paid or intended to be paid to any promoter.	Name of promoter. Amount £ .
Consideration for the payment	Consideration:—
Any other benefit given or intended to be given to any promoter.	Name of promoter:— Nature and value of benefit:—
Consideration for giving of benefit	Consideration:—
Dates of, parties to and general nature of 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 delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

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.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2.—(1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what

allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in the last foregoing sub-paragraph shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-paragraph (1) of this paragraph shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by the last foregoing sub-paragraph, and in addition deal either—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Part III

Provisions applying to Parts I and II of this Schedule

3. In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company which is not an exempt private company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

Sections 124, 454. SIXTH SCHEDULE

CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

PART I

CONTENTS

1. The address of the registered office of the company.

2.—(1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act, kept, in England in the case of a company registered in England or in Scotland in the case of a company registered in Scotland, elsewhere than at the registered office of the company, the address of the place where it is kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars:—

(*a*) the amount of the share capital of the company and the number of shares into which it is divided;

(*b*) the number of shares taken from the commencement of the company up to the date of the return;

(*c*) the amount called 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;

(*g*) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;

(*h*) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;

(*i*) the total number of shares forfeited;

(*j*) the total amount of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

4. Particulars of the total amount of the indebtedness of 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.

5. A list—

(*a*) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(*b*) stating 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, since 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;

(*c*) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

PART II

FORM

ANNUAL RETURN of Limited, made up to the day of , 19 (being the fourteenth day after the date of the annual general meeting for the year 19).

1. Address

(*Address of the registered office of the company*)

2. Situation of Registers of Members and Debenture-holders

(*a*) (*Address of place at which the register of members is kept, if other than the registered office of the company.*)

(*b*) (*Address of any place in Great Britain other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.*)

3. Summary of Share Capital and Debentures

(*a*) *Nominal Share Capital*

Nominal share capital £..... divided into:

(*Insert number and class*) shares of ..... each
.... shares of ... each
.... shares of ... each
.... shares of ... each

(*b*) *Issued Share Capital and Debentures*

	Number	*Class*	
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by existing members).	.....		shares
	...	.	shares
	...		shares
			shares
Number of shares of each class issued subject to payment wholly in cash.	...	.	shares
	.	.	shares
	.... .	.....	shares
	....	.	shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	.....	.....	shares
	.....	.....	shares
	.... .	... .	shares
	.....	.	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	.....	. ....	shares issued as paid up to the extent of £..... per share
	.....	.....	shares issued as paid up to the extent of £..... per share.
	.....	.....	shares issued as paid up to the extent of £..... per share.
	.....	.....	shares issued as paid up to the extent of £..... per share.

Number of shares (if any) of each class issued at a discount.	.....	.....	shares
	.....	.....	shares
	.. .	.....	shares
	. . .	.....	shares

Amount of discount on the issue of shares which has not been written off at the date of this return. £..... ... .

		Number	*Class*	
Amount called up on number of shares of each class.	£... .per share on	.....	.....	shares
	£.....per share on	.. ..	.....	shares
	£.....per share on	.. ..	.....	shares
	£.....per share on	. ....	.....	shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited. £..... .. ...

		Number	*Class*	
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.	£... on	. .	.. ...	shares
		.	.....	shares
		. ....	.....	shares
		...	.....	shares
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.	£..... on	. ....	.....	shares
		. . .	... .	shares
		.....	.....	shares
		.....	.. ..	shares

Total amount of calls unpaid ... £. .....

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures. £..... ....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return. £.....

	Number	*Class*	
Total number of shares of each class forfeited.	.....	.....	shares
	.....	.....	shares
	.....	.....	shares
	.....	.... .	shares

Total amount paid (if any) on shares forfeited. £.....

Total amount of shares for which share warrants to bearer are outstanding. £.....

Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return. Issued: £..... ..

Surrendered: £.....

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind. .....

4. Particulars of Indebtedness

Total amount of indebtedness of 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 the Companies Act, 1948, or which would have been required so to be registered if created after 1st July, 1908

5. List of Past and Present Members

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 19 , and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company

Folio in register ledger containing particulars	Names and addresses	Number of shares held by existing members at date of return *†	Particulars of shares transferred since the date of the last return or, in the case of the first return of the incorporation of the company by (a) persons who are still members and (b) persons who have ceased to be members‡		Remarks
			Account of Shares		
			Number †	Date of registration of transfer	
				(a) (b)	

* The aggregate number of shares held by each member must be stated and the aggregates must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up

† When the shares are of different classes these columns should be sub divided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡ 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.

Notes

1. If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member

2. If the names in the list are not arranged in alphabetical order an index sufficient to enable the name of any person to be readily found must be annexed

6. Particulars of Directors and Secretaries

Particulars of the persons who are directors of the company at the date of this return.

Name. (In the case of an individual, present Christian name or names and surname. In the case of a corporation, the corporate name.)	Any former Christian name or names and surname.	Nationality	Usual residential address. (In the case of a corporation, the registered or principal office.)	Business occupation and particulars of other directorships.	Date of birth.

Particulars of the person who is secretary of the company at the date of this return.

Name. (In the case of an individual, present Christian name or names and surname. In the case of a corporation or a Scottish firm, the corporate or firm name.)	Any former Christian name or names and surname.	Usual residential address. (In the case of a corporation or Scottish firm, the registered or principal office.)

Signed....., Director.

Signed....., Secretary.

Notes

"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Christian name" includes a forename, and "surname", in the case of a peer or person usually known by a title different from his surname, means that title.

"Former Christian name" and "former surname" do not include—

(*a*) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(*b*) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(*c*) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Great Britain of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Dates of birth need only be given in the case of a company which is subject to section 185 of the Companies Act, 1948, namely, a company which is not a private company or which, being a private company, is the subsidiary of a body corporate incorporated in the United Kingdom which is neither a private company nor a company registered under the law relating to companies for the time being in force in Northern Ireland and having provisions in its constitution which would, if it had been registered in Great Britain, entitle it to rank as a private company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

* Delivered for filing by .....

* This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of every Private Company (whether an Exempt Private Company or not)

We certify that the company has not since the date of† [the incorporation of the company/the last annual return] issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed . . . . . , Director.

Signed . . . . . , Secretary.

Further Certificate to be given as aforesaid if the Number of Members of the Company exceeds Fifty

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under paragraph (*b*) of subsection (1) of section twenty-eight of the Companies Act, 1948, are not to be included in reckoning the number of fifty.

Signed . . . . . , Director.

Signed . . . . . , Secretary.

Certified copies of Accounts

Except where the company is either an exempt private company as defined by section 129 (4) of the Companies Act, 1948, which sends with this return a certificate in the form set out below or an assurance company which has complied with the provisions of section 7 (4) of the Assurance Companies Act, 1909, there must be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

Additional Certificate to be given in the case of an Exempt Private Company by the Persons signing the above-mentioned Certificates

We certify that, to the best of our knowledge and belief, the conditions mentioned in subsection (2) of section one hundred and twenty-nine of the Companies Act, 1948, are satisfied at the date of this return and have been satisfied at all times since . . . . . *

Signed . . . . . , Director.

Signed . . . . . , Secretary.

---

† In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

* Insert "1st July, 1948" (the date of the commencement of the Companies Act, 1948) or, if the company was registered after that date, the date on which it was registered, or, if the proviso to s. 129 (1) of the Companies Act, 1948, has effect in relation to the return, the time at which it was shown to the Board of Trade that the conditions mentioned in the certificate were satisfied.

Banking Companies

A banking company, in order to avail itself of the benefit of s. 432 of the Companies Act, 1948, must add to this return a statement of the names of the several places where it carries on business.

Sections 129, 410. SEVENTH SCHEDULE

CONDITIONS AS TO INTERESTS IN SHARES AND DEBENTURES OF EXEMPT PRIVATE COMPANY

Basic Conditions

1. The basic conditions as to the shares or debentures of the company whose exemption is in question are—

(*a*) that no body corporate is the holder of any of the shares or debentures; and

(*b*) that no person other than the holder has any interest in any of the shares or debentures;

but these conditions are subject to the exceptions provided for by the following paragraphs of this Schedule.

Exceptions for normal Dealings of a business Nature

2.—(1) The rules contained in the following sub-paragraphs of this paragraph shall apply for the purposes both of the basic conditions and of the exceptions from those conditions.

(2) Where any share or debenture or any interest in any share or debenture is subject to a charge in favour of a banking or finance company by way of security for the purposes of a transaction entered into in the ordinary course of its business as such—

(*a*) any interest under the charge, whether of the banking or finance company or a nominee for it, shall be disregarded; and

(*b*) if the banking or finance company or its nominee is the holder of the share or debenture, the person entitled to the equity of redemption shall be treated as the holder, whether he has a present right to redeem or not.

(3) Any interest under a contract for the transfer of any share or debenture or of any interest in any share or debenture shall, until execution of an instrument of transfer by the parties, be disregarded unless execution thereof is unreasonably delayed.

(4) Subject to sub-paragraph (2) of this paragraph, on execution of an instrument of transfer of a share or debenture, the transferee and not the transferor shall be treated as the holder, notwithstanding that the transfer requires registration with the company, unless registration is refused.

(5) Any interest of the company itself in any of its shares or debentures, and any lien or charge arising by operation of law and affecting any of the shares or debentures shall be disregarded.

Exceptions for Cases of Death and for Family Settlements

3.—(1) The basic conditions shall be subject to exceptions for—

(*a*) any shares or debentures forming part of the estate of a deceased holder thereof, so long as administration of his estate has not been completed; and

(*b*) any shares or debentures held by trustees on the trusts of a will or family settlement disposing of the shares or debentures, so long as no body corporate has for the time being any immediate interest under the said trusts other than—

(i) a body corporate established for charitable purposes only and having no right to exercise or control the exercise of any part of the voting power at any general meeting of the company;

(ii) a body corporate which is a trustee of the said trusts and has such an interest only by way of remuneration for acting as trustee thereof.

(2) For the purposes of this paragraph—

(*a*) shares or debentures held by trustees on trusts arising on an intestacy shall, if the shares or debentures or an interest therein formed part of the intestate's estate at the time of his death, be treated as if the trusts arose under a will disposing of the shares or debentures;

(*b*) the expression "family settlement" means a settlement made either—

(i) in consideration or contemplation of an intended marriage of the settlor or any of the settlor's issue or in pursuance of a contract entered into in consideration or contemplation of any such marriage; or

(ii) otherwise in favour of any of the following persons, that is to say the settlor, his parents and grandparents, and any other individual who at the date of the settlement is a member of the company or, in the case of a settlement of debentures, a member or debenture holder of the company, and the wife or husband and issue, and the wife or husband of any of the issue, of the settlor, his parents, or any such other individual, and persons taking in the event of a failure of the issue or any class of the issue of any person taking under the settlement;

(*c*) the expressions "parent", "grandparent" and "issue" shall be construed as if the stepchild, adopted child or illegitimate child of any person were that person's child;

(*d*) any reference to a wife or husband shall include a former wife or husband and a reputed wife or husband;

(*e*) the expression "will" includes any testamentary disposition;

(*f*) any reference to a will or family settlement disposing of any shares or debentures shall include a will or family settlement disposing of an interest under another will or family settlement disposing of the shares or debentures.

Exception for Cases of Disability

4. Where the person entitled to any share or debenture or any interest in any share or debenture is of unsound mind or otherwise under any disability, and by reason thereof the share, debenture or interest is vested in an administrator, curator or other person on behalf of the person entitled thereto, then in relation to the share, debenture or interest the person in whom it is so vested and the person entitled thereto shall be treated for the purposes of this Schedule as if they were the same person.

Exception for Trusts for Employees

5. The basic conditions shall be subject to an exception for any shares or debentures held by trustees for the purposes of a scheme maintained for the benefit of employees of the company, including any director holding a salaried employment or office in the company.

Exception for Shares held by Exempt Private Companies

6.—(1) The first of the basic conditions shall be subject to an exception for shares held by another private company which is itself an exempt private company:

Provided that this exception shall not apply, if, taking all the following companies together, that is to say—

(*a*) the company whose exemption is in question (hereafter in this Schedule referred to as "the relevant company");

(*b*) any company holding shares to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company; and

(*c*) any further company taken into account for the purposes of this proviso in determining the right to be so treated of any company holding any such shares as aforesaid;

the total number of persons holding shares in those companies is more than fifty, joint shareholders being treated as a single person and the companies themselves and (subject to sub-paragraph (4) of this paragraph) their employees and former employees being disregarded.

(2) Where the relevant company and another company hold shares in each other, the other company shall be treated for the purposes of the foregoing sub-paragraph as an exempt private company if—

(*a*) in determining its right to be so treated the exception in that sub-paragraph would apply to the shares in it held by the relevant company, on the assumption that the relevant company was an exempt private company; and

(*b*) in all other respects the other company is entitled to be so treated;

and where another company's right to be so treated depends on the application to any shares in it of that sub-paragraph, and the application thereof to those shares depends indirectly on the relevant company's right to be so treated, this sub-paragraph shall apply as if those shares were held by the relevant company.

(3) Where by virtue of this paragraph any shares are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for any interest in those shares which any person has by virtue of debentures of the company holding those shares, or as trustee of a deed for securing an issue of debentures of that company.

(4) In the proviso to sub-paragraph (1) of this paragraph, the direction that employees and former employees of the companies shall be disregarded in computing the number of shareholders shall not apply to a person holding shares in a company of which he is not for the time being an employee unless, having been formerly in the employment of that company, he held, while in that employment, and has continued after the determination of that employment to hold, shares in that company.

Exception for Banking or Finance Company providing Capital

7.—(1) The first of the basic conditions shall be subject to an exception for any shares or debentures held by or by a nominee for a banking or finance company, where the banking or finance company acquired the shares or debentures or its interest therein in the ordinary course of its business as such and by arrangement with the relevant company or its promoters:

Provided that this exception shall not apply if the banking or finance company has the right (or, where there is more than one such company holding shares or debentures to which this exception has to be applied in determining the relevant company's right to be treated as an exempt private company, they have between them the right) to exercise or control the exercise of one fifth or more of the total voting power at any general meeting of the relevant company.

(2) Where by virtue of the foregoing sub-paragraph any shares or debentures are excepted from the first of the basic conditions, the second of those conditions shall be subject to an exception for the banking or finance company itself, where the shares or debentures are held by a nominee for it, and for any interest in those shares or debentures which any person has by virtue of debentures of the banking or finance company or as trustee of a deed for securing an issue of debentures of that company.

Exceptions for Bankruptcies, Liquidations, etc.

8. The basic conditions shall be subject to exceptions for—

(*a*) any shares or debentures forming part of the assets in a bankruptcy or liquidation of a holder thereof; and

(*b*) any shares or debentures held either—

(i) on trusts created for the benefit of his creditors generally by a person having an interest therein; or

(ii) otherwise for the purposes of any composition or scheme made or approved under any Act by a court or an officer of a court for arranging the affairs of such a person.

Meaning of "banking or finance company"

9. In this Schedule the expression "banking or finance company" means any body corporate or partnership whose ordinary business includes the business of banking and any other body corporate whose ordinary business includes the business of lending money or of subscribing for shares or debentures, except that it does not include any such other body corporate unless either—

(*a*) its shares are quoted or dealt in on a recognised stock exchange; or

(*b*) it is designated for the purposes of this paragraph by order of the Board of Trade; or

(*c*) it is a subsidiary of a body corporate whose shares are so quoted or dealt in or which is so designated.

EIGHTH SCHEDULE

Sections 56, 149, 152, 157, 454.

ACCOUNTS

PRELIMINARY

1. Paragraphs 2 to 11 of this Schedule apply to the balance sheet and 12 to 14 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II of this Schedule in the case of a holding company and by Part III thereof in the case of companies of the classes there mentioned; and this Schedule has effect in addition to the provisions of sections one hundred and ninety-six and one hundred and ninety-seven of this Act.

PART I

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

Balance Sheet

2. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified—

(*a*) any part of the issued capital that consists of redeemable preference shares, and the earliest date on which the company has power to redeem those shares;

(*b*) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

(*c*) the amount of the share premium account;

(*d*) particulars of any redeemed debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off,—

(*a*) the preliminary expenses;

(*b*) any expenses incurred in connection with any issue of share capital or debentures;

(*c*) any sums paid by way of commission in respect of any shares or debentures;

(*d*) any sums allowed by way of discount in respect of any debentures; and

(*e*) the amount of the discount allowed on any issue of shares at a discount.

4.—(1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that—

(*a*) where the amount of any class is not material, it may be included under the same heading as some other class; and

(*b*) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets shall also be distinguished from current assets.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5.—(1) The method of arriving at the amount of any fixed asset shall, subject to the next following sub-paragraph, be to take the difference between—

(*a*) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(*b*) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) The foregoing sub-paragraph shall not apply—

(*a*) to assets for which the figures relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay; or

(*b*) to assets the replacement of which is provided for wholly or partly—

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue; or

(*c*) to any investment, of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or

(*d*) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown—

(*a*) the aggregate of the amounts referred to in paragraph (*a*) of that sub-paragraph; and

(*b*) the aggregate of the amounts referred to in paragraph (*b*) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (*b*) of this paragraph, there shall be stated—

(*a*) the means by which their replacement is provided for; and

(*b*) the aggregate amount of the provision (if any) made for renewals and not used

6. The aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings:

Provided that—

(*a*) this paragraph shall not require a separate statement of any of the said three amounts which is not material; and

(*b*) the Board of Trade may direct that it shall not require a separate statement of the amount of provisions where they are satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

7.—(1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)—

(*a*) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(*b*) where—

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

8.—(1) There shall be shown under separate headings—

(*a*) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments;

(*b*) if the amount of the goodwill and of any patents and trademarks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written

off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(*c*) the aggregate amount of any outstanding loans made under the authority of provisos (*b*) and (*c*) of subsection (1) of section fifty-four of this Act;

(*d*) the aggregate amount of bank loans and overdrafts;

(*e*) the net aggregate amount (after deduction of income tax) which is recommended for distribution by way of dividend.

(2) Nothing in head (*b*) of the foregoing sub-paragraph shall be taken as requiring the amount of the goodwill, patents and trademarks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a recognised stock exchange.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11.—(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say—

(*a*) the period during which it is exercisable;

(*b*) the price to be paid for shares subscribed for under it.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(8) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(9) The basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material.

(10) The basis on which the amount, if any, set aside for United Kingdom income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account

12.—(1) There shall be shown—

(*a*) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(*b*) the amount of the interest on the company's debentures and other fixed loans;

(*c*) the amount of the charge for United Kingdom income tax and other United Kingdom taxation on profits, including, where practicable, as United

Kingdom income tax any taxation imposed elsewhere to the extent of the relief, if any, from United Kingdom income tax and distinguishing where practicable between income tax and other taxation;

(*d*) the amounts respectively provided for redemption of share capital and for redemption of loans;

(*e*) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(*f*) subject to sub-paragraph (2) of this paragraph, the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;

(*g*) the amount of income from investments, distinguishing between trade investments and other investments;

(*h*) the aggregate amount of the dividends paid and proposed.

(2) The Board of Trade may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (1) (*f*) of this paragraph, if the Board is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

18. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

14.—(1) The matters referred to in the following sub-paragraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for United Kingdom income tax is computed.

(4) Whether or not the amount stated for dividends paid and proposed is for dividends subject to deduction of income tax.

(5) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which any items shown in the profit and loss account are affected—

(*a*) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(*b*) by any change in the basis of accounting.

Part II

Special Provisions where the Company is a Holding or Subsidiary Company

Modifications of and Additions to Requirements as to Company's own Accounts

15.—(1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and—

(*a*) the references in Part I of this Schedule to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(*b*) paragraph 5, sub-paragraph (1) (*a*) of paragraph 12, and sub-paragraph (2) of paragraph 14 of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing—

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since they respectively became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members;

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable:

Provided that the Board of Trade may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (*b*) and (*c*) of the last foregoing sub-paragraph shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

(*a*) the company is itself the subsidiary of another body corporate; and

(*b*) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company—

(*a*) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(*b*) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

16.—(1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a

fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

Consolidated Accounts of Holding Company and Subsidiaries

17. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III of this Schedule, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

19. Sections one hundred and ninety-six and one hundred and ninety-seven of this Act shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

20. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

(*a*) sub-paragraphs (2) and (3) of paragraph 15 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and

(*b*) there shall be annexed the like statement as is required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

22. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by sub-paragraph (6) of paragraph 15 of this Schedule where there are no group accounts.

PART III

EXCEPTIONS FOR SPECIAL CLASSES OF COMPANY

23.—(1) A banking or discount company shall not be subject to the requirements of Part I of this Schedule other than—

(*a*) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except sub-paragraph (1) (*d*)), paragraphs 9 and 10, and paragraph 11 (except sub-paragraph (8)); and

(*b*) as respects its profit and loss account, those of sub-paragraph (1) (*h*) of paragraph 12, paragraph 13 and sub-paragraphs (1), (4) and (5) of paragraph 14;

but, where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The accounts of a banking or discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) In this paragraph the expression "banking or discount company" means any company which satisfies the Board of Trade that it ought to be treated for the purposes of this Schedule as a banking company or as a discount company.

24.—(1) In relation to an assurance company within the meaning of the Assurance Companies Acts, 1909 to 1946, which is subject to and complies with the requirements

of those Acts as respects the preparation and deposit with the Board of Trade of a balance sheet and profit and loss account, the foregoing paragraph shall apply as it applies in relation to a banking or discount company, and such an assurance company shall also not be subject to the requirements of sub-paragraphs (1) (*a*) and (8) of paragraph 8 and sub-paragraphs (4) to (7) and sub-paragraph (10) of paragraph 11 of this Schedule:

Provided that the Board of Trade may direct that any such assurance company whose business includes to a substantial extent business other than assurance business shall comply with all the requirements of the said Part I or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

(2) Where an assurance company is entitled to the benefit of this paragraph, then any wholly owned subsidiary thereof shall also be so entitled if its business consists only of business which is complementary to assurance business of the classes carried on by the assurance company.

(3) For the purposes of this paragraph a company shall be deemed to be the wholly owned subsidiary of an assurance company if it has no members except the assurance company and the assurance company's wholly owned subsidiaries and its or their nominees.

25.—(1) A company to which this paragraph applies shall not be subject to the following requirements of this Schedule, that is to say—

(*a*) as respects its balance sheet, those of paragraph 4 (except so far as the said paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(*b*) as respects its profit and loss account, those of sub-paragraph (1) (*a*), (*e*) and (*f*) of paragraph 12;

but a company taking advantage of this paragraph shall be subject, instead of the said requirements, to any prescribed conditions as respects matters to be stated in its accounts or by way of note thereto and as respects information to be furnished to the Board of Trade or a person authorised by them to require it.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I of this Schedule from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) This paragraph applies to companies of any class prescribed for the purposes thereof, and a class of companies may be so prescribed if it appears to the Board of Trade desirable in the national interest:

Provided that, if the Board of Trade are satisfied that any of the conditions prescribed for the purposes of this paragraph has not been complied with in the case of any company, they may direct that so long as the direction continues in force this paragraph shall not apply to the company.

26. Where a company entitled to the benefit of any provision contained in this Part of this Schedule is a holding company, the reference in Part II of this Schedule to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only as they apply to the separate accounts of that company.

PART IV

INTERPRETATION OF SCHEDULE

27.—(1) For the purposes of this Schedule, unless the context otherwise requires,—

(*a*) the expression "provision" shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(*b*) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(*c*) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account and the expression "revenue reserve" shall mean any reserve other than a capital reserve;

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

(*a*) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(*b*) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

28. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, or on any stock exchange of repute outside Great Britain, and the expression "unquoted investment" shall be construed accordingly.

Section 182. NINTH SCHEDULE

MATTERS TO BE EXPRESSLY STATED IN AUDITORS' REPORT

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit.

2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3.—(1) Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

(2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(*a*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*b*) in the case of the profit and loss account, of the profit or loss for its financial year;

or, as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Eighth Schedule to this Act are not required to be disclosed.

4. In the case of a holding company submitting group accounts whether, in their opinion, the group accounts have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company, or, as the case may be, so as to give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which by virtue of Part III of the Eighth Schedule to this Act are not required to be disclosed.

Section 277. TENTH SCHEDULE

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION IN SCOTLAND

PART I

ORDERS WHICH ARE TO BE FINAL

Orders under section two hundred and sixty-four as to the time for proving debts and claims.

Orders under section two hundred and sixty-eight 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.

Orders under section three hundred and forty-six as to meetings for ascertaining wishes of creditors or contributories.

Orders under section three hundred and forty-nine as to the examination of witnesses in regard to the property or affairs of a company.

PART II

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER DISPOSED OF BY INNER HOUSE

Orders under section two hundred and twenty-six, two hundred and thirty-one, two hundred and fifty-six, three hundred and ninety-seven, four hundred and two or four hundred and three restraining or permitting the commencement or the continuance of legal proceedings.

Orders under subsection (4) of section two hundred and thirty-eight limiting the powers of provisional liquidators.

Orders under section two hundred and forty-two, three hundred and four or three hundred and fourteen appointing a 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 subject to supervision.

Orders under section two hundred and forty-five sanctioning the exercise of any power by a liquidator other than the powers specified in paragraphs (c), (d), (e) and (f) of subsection (1).

Orders under section two hundred and fifty-eight requiring the delivery of property or documents to the liquidator.

Orders under section two hundred and seventy one as to the arrest and detention of an absconding contributory and his property

Orders under section three hundred and eleven for continuance of winding up subject to supervision.

Section 315. ELEVENTH SCHEDULE

PROVISIONS OF THIS ACT WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT

Section	*Subject Matter*
235.	Statement of company's affairs to be submitted to official receiver.
236.	Report by official receiver.
237.	Power of court to appoint liquidators.
238.	Appointment and powers of provisional liquidator.
239.	Appointment, style, etc., of liquidators in England.
240.	Provisions where person other than official receiver is appointed liquidator.
241.	Provisions as to liquidators in Scotland.
242 except subs. (5).	General provisions as to liquidators.
246.	Exercise and control of liquidator's powers in England.
247.	Books to be kept by liquidator in England.
248.	Payments of liquidator in England into bank.
249.	Audit of liquidator's accounts in England.
250.	Control of Board of Trade over liquidators in England.
251.	Release of liquidators in England.
252.	Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
253.	Constitution and proceedings of committee of inspection.
254.	Powers of Board of Trade in England where no committee of inspection.
255.	Additional powers of committee of inspection in Scotland.
263.	Appointment in England of special manager.
270.	Power in England to order public examination of promoters and officers.
278.	Delegation to liquidator of certain powers of court in England.
368.	Power in England to appoint official receiver as receiver for debenture holders or creditors.

Sections 425, 454. TWELFTH SCHEDULE

FEES TO BE PAID TO THE REGISTRAR OF COMPANIES

PART I

TABLE OF FEES

Matter in respect of which Fee is payable	*Amount of Fee*
For registration of a company limited by shares.	If the nominal capital does not exceed £2,000, the sum of £2. If the nominal capital exceeds £2,000 but does not exceed £5,000, the sum of £2 with the addition of £1 for each £1,000 or part of £1,000 of nominal capital in excess of £2,000. If the nominal capital exceeds £5,000 but does not exceed £100,000, the sum of £5 with the addition of 5s. for each £1,000 or part of £1,000 of nominal capital in excess of £5,000. If the nominal capital exceeds £100,000, the sum of £28 15s. 0d. with the addition of 1s. for each £1,000 *or part of £1,000 of nominal capital in* excess of £100,000.
For registration of a company not having a share capital.	If the number of members stated in the articles does not exceed 25, the sum of £2. If the number of members stated in the articles exceeds 25, but does not exceed 100, the sum of £2 with the addition of £1 for each 25 members or fraction of 25 members in excess of the first 25. If the number of members stated in the articles exceeds 100 but is not stated to be unlimited, the sum of £5 with the addition of 5s. for each 50 members or fraction of 50 members after the first 100. If the number of members is stated in the articles to be unlimited, the sum of £20.
For registration of a company limited by guarantee and having a share capital or an unlimited company having a share capital.	The same amount as would be charged for registration if the company were limited by shares or the same amount as would be so charged if the company had not a share capital, whichever is the higher.
For registration of an increase in the share capital of any company.	An amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its capital as increased and the amount which would have been so payable by reference to its capital immediately before the increase.
For registration of an increase in the membership of a company limited by guarantee or an unlimited company.	An amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its membership as increased and the amount which would have been so payable by reference to its membership immediately before the increase.
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 amount as is charged for registering a new company.

Matter in respect of which Fee is payable	*Amount of Fee*
For registering any document by this Act required or authorised to be registered or required to be delivered, sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager, the statement required to be sent to the registrar by the liquidator in a winding up in England or a document required to be delivered under section four hundred and sixteen of this Act.	Five shillings.
For making a record of any fact by this Act required or authorised to be recorded by the registrar.	Five shillings.

PART II

LIMITATIONS ON OPERATION OF PART I

1. Where in the case of a company limited by guarantee and having a share capital or an unlimited company having a share capital, an increase of share capital is made at the same time as an increase of membership, the company shall pay whichever fee is the higher, but not both.

2. The total of the fees payable by any company by reference to its membership shall in no case exceed twenty pounds.

3. The total of the fees payable by any company by reference to its share capital or of the fees payable by it by reference to its membership and the fees payable by it by reference to its share capital, shall in no case exceed fifty pounds.

Sections 433, 454. THIRTEENTH SCHEDULE

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.

Section 435. FOURTEENTH SCHEDULE

PROVISIONS OF THIS ACT APPLIED TO UNREGISTERED COMPANIES

Subject matter	*Provisions applied*	*Limitations on Application*
Prospectuses and allotments.	Sections thirty-seven to forty-six, fifty, fifty-one and fifty-five, and the Fourth Schedule.	To apply so far only as may be specified by regulations made by the Board of Trade and to such bodies corporate as may be so specified.
Annual return ...	Sections one hundred and twenty-four to one hundred and twenty-nine and four hundred and thirty-two, and the Sixth and Seventh Schedules.	Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects any period thereafter to apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Accounts and audit.	Sections one hundred and forty-seven to one hundred and sixty-three, one hundred and ninety-six, one hundred and ninety-seven and four hundred and thirty-three, the Eighth Schedule (except sub-paragraphs (*a*) to (*d*) of paragraph 2, sub-paragraphs (*c*), (*d*) and (*e*) of paragraph 3 and sub-paragraph (1) (*c*) of paragraph (8) and the Ninth Schedule.	To apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.
Investigations ...	Sections one hundred and sixty-four to one hundred and seventy-five.	—
Register of directors and secretaries.	Section two hundred.	—
Registration of documents, enforcement and other supplemental matters.	Sections one hundred and ninety-eight, four hundred and twenty-five to four hundred and twenty-eight, four hundred and thirty-six to four hundred and thirty-eight, four hundred and forty to four hundred and forty-six and four hundred and fifty, subsection (1) of section four hundred and fifty-four, section four hundred and fifty-five and the Twelfth and Fifteenth Schedules.	To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this Schedule.

Section 438. FIFTEENTH SCHEDULE

PROVISIONS REFERRED TO IN SECTION 438 OF THIS ACT

Section or provision of Schedule	*Subject matter*
15.	Conclusiveness of certificate of incorporation.
80.	Statement in lieu of prospectus to be delivered to registrar by company on ceasing to be private company.
88.	Matters to be stated and reports to be set out in prospectus.
48.	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

Section or provision of Schedule	*Subject matter*
52.	Return as to allotments.
95.	Registration of charges created by companies registered in England.
96 (1).	Duty of company to register charges created by company.
97.	Duty of company to register charges existing on property acquired.
106.	Application of Part III to charges created, and property subject to charge acquired, by company incorporated outside England.
109.	Restrictions on commencement of business.
125. (except para. (*a*) of subs. (1)).	Particulars in annual return of company not having a share capital.
128.	Certificates to be sent by private company with annual return.
129 (1).	Certificate of satisfaction of conditions constituting a company an exempt private company.
130.	Statutory meeting and statutory report.
162 (1), (3).	Auditors' report and right to information and explanations.
181.	Restrictions on appointment or advertisement of director.
305.	Notice by liquidator of his appointment.
372 (2).	Abstract of receiver's receipts and payments.
374.	Delivery to registrar of accounts of receivers and managers.
407.	Documents, etc., to be delivered to registrar by oversea companies carrying on business in Great Britain
409.	Return to be delivered to registrar by oversea company where documents, etc., altered.
410.	Accounts of oversea company.
411.	Obligation to state name of oversea company, whether limited, and country where incorporated.
451.	Annual report by Board of Trade.
Sch. VI, Part I, paras. 2, 4, 6.	Particulars in annual return of company having a share capital

Section 456. SIXTEENTH SCHEDULE

AMENDMENTS OF OTHER ACTS

The Assurance Companies Acts, 1909 *to* 1946

1. The Assurance Companies Acts, 1909 to 1946, shall have effect as if—

(*a*) for subsection (4) of section two of the Assurance Companies (Winding Up) Act, 1933, as substituted by the Assurance Companies (Winding Up) Act, 1935, there were substituted the following subsection:—

"(4) Where an appointment is made under this section the provisions of sections one hundred and sixty-six and one hundred and sixty-seven of the Companies Act, 1948, shall apply with respect to an inspector appointed under this section in like manner as they apply to an inspector appointed under section one hundred and sixty-four of that Act, and any such refusal as under subsection (3) of the said section one hundred and sixty-seven is, or might be, made the ground of the punishment of an officer or agent of the company or other body corporate whose affairs are investigated by virtue of the said section one hundred and sixty-six, shall also be a ground on which the company may, on the petition of the Board of Trade presented by leave of the court, be wound up by the court in accordance with the provisions of the Companies Act, 1948"; and

(*b*) the powers conferred on the Board of Trade and the Industrial Assurance Commissioner respectively by virtue of subsection (3) of section seven of the Assurance Companies Act, 1946, to make regulations providing for the modification, in consequence of the passing of that Act, of the forms set out in the Schedule to the Assurance Companies Act, 1909, extended to the modification, having regard to the provisions of the Eighth Schedule to this Act, of any form set out in the Schedules to either of those Acts.

The Prevention of Fraud (Investments) Act, 1939

2.—(1) Subsection (2) of section two of the Prevention of Fraud (Investments) Act, 1939, shall have effect as if for paragraphs (*b*), (*c*) and (*d*) thereof there were substituted the following paragraphs:—

"(*b*) issuing any prospectus to which—

(i) section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act; or

(ii) section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section four hundred and eighteen of that Act;

(*c*) issuing any document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company; and

(*d*) issuing any form of application for shares in, or debentures of, a corporation together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act; or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (*c*) of this subsection".

(2) Subsection (2) of section thirteen of the said Act shall have effect as if for paragraphs (*a*) and (*b*) thereof there were substituted the following paragraphs:—

"(*a*) in relation to any distribution of a prospectus to which section thirty-eight of the Companies Act, 1948, applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act or section four hundred and seventeen of that Act applies or would apply if not excluded by paragraph (*b*) of subsection (5) of that section or by section four hundred and eighteen of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which the said section thirty-eight applies or would apply if not excluded as aforesaid; and

(ii) contains all the matters and is issued with the consents which, by virtue of sections four hundred and seventeen and four hundred and nineteen of that Act it would have to contain and be issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company;

(*b*) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—

(i) a prospectus which complies with the requirements of section thirty-eight of the Companies Act, 1948, or is not required to comply therewith because excluded by paragraph (*b*) of subsection (5) of that section or by section thirty-nine of that Act, or complies with the requirements of Part X of that Act relating to prospectuses and is not issued in contravention of section four hundred and nineteen of that Act, or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (ii) of paragraph (*a*) of this subsection,

or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or".

3. Sub-paragraph (iii) of paragraph (*a*) of subsection (3) of the said section thirteen shall have effect as if for the words "a subsidiary company as defined by section one hundred and twenty-seven of the Companies Act, 1929", there were substituted the words "a subsidiary company as defined by section one hundred and fifty-four of the Companies Act, 1948".

The Companies Act, 1947

4. At the end of section fifty-eight of the Companies Act, 1947, there shall be added the following subsection:—

"(4) In this section the expression "director" includes any person occupying the position of director by whatever name called."

5.—(1) Subsections (1), (4) and (5) of section one hundred and fifteen of the Companies Act, 1947, shall have effect subject to the amendments respectively set out in sub-paragraphs (2), (3) and (4) of this paragraph.

(2) In subsection (1), for the words "subsections (1) to (6) of the section of this Act relating to preferential payments in a winding up" there shall be substituted the words "section ninety-one of this Act."

(3) In subsection (4), for the words "The provisions of this Act relating to a fraudulent preference of a surety or guarantor", there shall be substituted the words "Section ninety-two of this Act".

(4) In subsection (5), for the words "The provisions of this Act relating to the liability in respect of a rentcharge on land disclaimed under section two hundred and sixty-seven of the principal Act", there shall be substituted the words "Section ninety-nine of this Act".

6. In subsection (3) of section one hundred and seventeen of the Companies Act, 1947, for the words from "and subsections (3) to (6)" to the end of the subsection there shall be substituted the words "and section one hundred and sixty-seven of the Companies Act, 1948, subsection (1) of section one hundred and sixty-eight thereof and so much of subsection (2) of that section as relates to forwarding a copy of the inspector's report to the registered office of the company shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section one hundred and sixty-four of that Act, but with the substitution for references to the company or other body corporate and its affairs of references to the manager under the scheme and to the administration of the scheme".

Section 459. SEVENTEENTH SCHEDULE

ENACTMENTS REPEALED

PART I

GENERAL REPEALS

Session and Chapter	Short Title.	Extent of Repeal
19 & 20 Geo. 5. c. 23.	The Companies Act, 1929.	The whole Act.
24 & 25 Geo. 5. c. 23.	The Workmen's Compensation (Coal Mines) Act, 1934.	In section three, in subsection (6), the words from "and (b)" to the end of paragraph (*c*), and the words "or the company, as the case may be".
25 & 26 Geo. 5. c. 8.	The Unemployment Insurance Act, 1935.	In section twenty, subsection (1).
26 Geo. 5 & 1 Edw. 8. c. 32.	The National Health Insurance Act, 1936.	In section one hundred and seventy-seven, subsection (1).
1 Edw. 8 & 1 Geo. 6. c. 54.	The Finance Act, 1937.	In Part III of the Fifth Schedule, in paragraph 5, the words from "in the winding-up" to "that charge" and the words "and companies".

SEVENTEENTH SCHEDULE (PART I)—*continued.*

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. 6. c. 57.	The War Risks Insurance Act, 1939.	Section five.
5 & 6 Geo. 6. c. 21.	The Finance Act, 1942.	In section twenty, subsections (2) and (3), and in subsection (4) the words "and the last foregoing subsection shall not apply to a company registered in Scotland".
7 & 8 Geo. 6. c. 15.	The Reinstatement in Civil Employment Act, 1944.	In section eighteen, subsections (2) and (3), and subsection (4) so far as it relates to those subsections.
9 & 10 Geo. 6. c. 62.	The National Insurance (Industrial Injuries) Act, 1946.	In section seventy-one, subsection (1), and in the Ninth Schedule the entry relating to the Companies Act, 1929.
9 & 10 Geo. 6. c. 67.	The National Insurance Act, 1946.	In section fifty five, subsection (1).
10 & 11 Geo. 6. c. 47.	The Companies Act, 1947.	Sections one to fifty-seven and fifty nine to ninety. In section ninety-one, subsection (3), in subsection (4) the words "and two hundred and ninety-eight", in subsection (5) the words from "and in relation to" to the end of the subsection, and subsections (7) and (8). In section ninety-two, subsection one. Sections ninety-three to ninety-eight and one hundred to one hundred and fourteen. In section one hundred and fifteen, in subsection (1), the words "other than a company within the stannaries" and the words from "and also" to the end of the subsection. Sections one hundred and eighteen to one hundred and twenty-one. In section one hundred and twenty-two, in subsection (1), the words from "and, except" to the end of the subsection, and subsections (2) to (7). In section one hundred and twenty-three, in subsection (1), the words from "and this Act" to the end of the subsection, and subsection (3) so far as it relates to Part I of the Ninth Schedule. The First to Eighth Schedules, and Part I of the Ninth Schedule.

PART II

PROVISIONS OF THE COMPANIES ACT, 1947, REPEALED EXCEPT FOR PURPOSES OF SECTION ONE HUNDRED AND FIFTEEN THEREOF

Provision	*Extent of Repeal*
Section ninety-one ...	The whole section except so far as it has effect for the purposes of subsection (1) of section one hundred and fifteen of the Companies Act, 1947.
Section ninety-two ...	The whole section except as applied by subsection (4) of the said section one hundred and fifteen.
Section ninety-nine ...	The whole section except as applied by subsection (5) of the said section one hundred and fifteen.

Section 459.

EIGHTEENTH SCHEDULE

ENACTMENTS SAVED

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND
(7 & 8 Vict. c. 113, s. 47)

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.

COMPANIES ACT, 1947*

(10 & 11 GEO. 6, c. 47)

Extension of Registration of Business Names Act, 1916, to companies.

58.—(1) In section one of the Registration of Business Names Act, 1916 (which requires registration under that Act of all individuals and firms carrying on business under a business name), there shall be inserted after paragraph (*c*) thereof the following paragraph:—

"(*d*) every company as defined in the Companies Act, 1929, carrying on business under a business name which does not consist of its corporate name without any addition;".

(2) Subsection (1) of section three (which relates to the particulars to be registered), and the proviso to section five (which relates to the time for registration), of the first-mentioned Act shall apply in relation to registration by virtue of this section as if references therein to the passing of that Act were references to the coming into force of this section.

(3) Section thirteen of that Act (which relates to the removal of names from the register where a firm or individual ceases to carry on business) shall apply in relation to a company registered under that Act by virtue of this section, which ceases to carry on business in such circumstances as to require registration thereunder, as it applies in relation to a firm which ceases to carry on business, but with the substitution for the reference to the partners in the firm of a reference to the directors and any liquidator of the company.

Amendments as to preferential payments.

91.—(1) The maximum amount to which, under subsection (1) of section two hundred and sixty-four of the principal Act, priority is to be given—

(*a*) to a debt for the wages or salary of a clerk or servant; or

(*b*) to a debt for the wages of a workman or labourer; or

(*c*) to any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation;

shall be two hundred pounds (instead of being fifty pounds in the cases referred to in paragraphs (*a*) and (*c*) of this subsection or twenty-five pounds in the case referred to in paragraph (*b*) thereof).

(2) The period within which services must have been rendered by a workman or labourer for his wages in respect thereof to have priority under the said subsection (1) shall be the same as in the case of a clerk or servant, that is to say, four months (instead of two months).

(4) For the purposes of the said section two hundred and sixty-four any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

(5) The debts which are to be paid in priority under the said section two hundred and sixty-four shall include all accrued holiday remuneration becoming payable to a clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment with the company before or by the effect of the winding up order or resolution.

* The Act of 1947 was repealed by the Act of 1948 to the extent specified in Sched. 17. Those parts which were not repealed are set out below.

(6) For the purposes of this section—

(*a*) the expression "accrued holiday remuneration" includes in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would in the ordinary course have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday; and

(*b*) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period.

Amendments as to fraudulent preference.

92.—(2) Where, in the case of a company wound up in England, anything made or done after the coming into force of this section is void under the said section two hundred and sixty-five as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(3) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(4) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Liability for rentcharge on company's land after dissolution or disclaimer.

99.—(1) Where by operation of law land in England vests subject to a rentcharge in the Crown or any other person either—

(*a*) on the dissolution of a company; or

(*b*) on a disclaimer under section two hundred and sixty-seven of the principal Act;

that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section shall apply to land vesting and sums accruing due before, as well as after, the coming into force thereof.

(4) In this section the expression "company" includes any body corporate.

AMENDMENTS ETC. OF ACTS OTHER THAN PRINCIPAL ACT

Bankruptcy.

115.—(1) Subsection (1) of section thirty-three of the Bankruptcy Act, 1914, and subsection (1) of section one hundred and eighteen of the Bankruptcy (Scotland) Act, 1913, shall have effect subject to the like amendments as are by subsections (1) to (6) of the section of this Act relating to preferential payments in a winding up made in relation to the winding up of a company, but with the substitution for references to the company and to the winding up order or resolution of references to the bankrupt and to the receiving order or, in the case of a person dying insolvent, to the deceased and to his death.

(2) The rights conferred by sections forty and forty-one of the Bankruptcy Act, 1914, on the official receiver or trustee in bankruptcy in relation to executions against the goods or other property of the debtor and attachments of debts due to the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(3) In subsection (1) of section forty-four of the Bankruptcy Act, 1914 (which relates to fraudulent preferences), for the reference to three months there shall be substituted a reference to six months, and in the Act of the Parliament of Scotland, 1696, c. 5 (which relates to similar matters), for any reference to sixty days there shall be substituted a reference to six months.

(4) The provisions of this Act relating to a fraudulent preference of a surety or guarantor shall apply also in relation to the Bankruptcy Act, 1914 (with the necessary modification of any reference to a company), as if a reference to the said section forty-four of that Act were substituted in those provisions for the reference to section two hundred and sixty-five of the principal Act.

(5) The provisions of this Act relating to the liability in respect of a rentcharge on land disclaimed under section two hundred and sixty-seven of the principal Act shall apply also in relation to land disclaimed under section fifty-four of the Bankruptcy Act, 1914.

(6) Subsection (1) of this section shall not apply where the date of the receiving order (or, in relation to the estate of a person dying insolvent, the date of his death) occurred before the coming into force of this section and subsection (3) of this section shall not apply in relation to anything made or done before the coming into force thereof.

(7) In the application of this section to Scotland, references to the receiving order shall be construed as references to the award of sequestration.

Registration of business names.

116.—(1) The power conferred by section fourteen of the Registration of Business Names Act, 1916, on the registrar under that Act to refuse registration of a business name shall (without prejudice to the specific provisions of that section) extend to any name which is in his opinion undesirable.

(2) Where registration of a business name is refused under the said section fourteen, any person carrying on business under that name in such circumstances as to require registration under that Act shall be liable under section seven thereof to the same penalties as if he had without

reasonable excuse made default in furnishing a statement of particulars with respect to that name.

(3) So much of any provision of the Registration of Business Names Act, 1916, as requires a person's nationality of origin to be stated shall cease to have effect.

(4) So much of section twenty-two of the Registration of Business Names Act, 1916, as provides that references in that Act to a former christian name or surname or to a change of name shall have any special meaning in the case of natural born British subjects shall cease to have effect, and—

(*a*) references in that Act to a former christian name or surname shall not, in the case of any person, 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 or has been changed or disused for a period of not less than twenty years; and

(*b*) an individual or firm shall not require to be registered under that Act by reason only of a change of his name, or of the name of a member of the firm, if the change has taken place before the person who has changed his name has attained the age of eighteen years or if not less than twenty years have elapsed since it took place.

(5) Where by virtue of the last foregoing subsection an individual or firm registered under the Registration of Business Names Act, 1916, no longer requires to be so registered

(*a*) the registrar, if so requested by the individual or firm, shall remove him or it from the register; and

(*b*) section eleven of that Act shall no longer require the individual or firm to keep exhibited the certificate of registration or a copy thereof;

and where, in any other case, the particulars registered under that Act in respect of any individual or firm include a former name or surname which by virtue of the last foregoing subsection no longer requires to be included among those particulars, the registrar, if so requested by the individual or firm, shall amend the particulars by leaving out that name or surname.

Prevention of fraud (unit trusts).

117.—(1) In the Schedule to the Prevention of Fraud (Investments Act, 1939 (which relates to the constitution of an authorised unit trust scheme for the purposes of that Act)

(*a*) in paragraph 1 for the reference to the sale price of units there shall be substituted a reference to the manager's prices for units on a sale and a purchase respectively; and at the end of that paragraph there shall be inserted the words "and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly"; and

(*b*) in paragraph 2 (which relates among other things to securing that the property will be vested in the trustee before unit certificates are issued) after the words "will be vested in him" there shall be inserted the words "or, subject to any prescribed conditions, in a nominee for him approved by the Board of Trade"; and

(*c*) after paragraph 2 there shall be inserted the following paragraph—

"2A. For prohibiting or restricting the issue by or on behalf of the manager of advertisements, circulars or other documents containing any statement with respect to the sale price of units, or the payments or other benefits received or likely to be received by holders of units, or containing any

invitation to buy units, unless the document in question also contains a statement of the yield from the units."

(2) The terms of any trust created before the coming into force of this section in pursuance of a unit trust scheme may, notwithstanding anything in any deed, be varied or supplemented by a deed made between the trustee and the manager under the scheme, and containing such provisions as may be certified by the Board of Trade to be consequential on the passing of the foregoing subsection.

(3) The Board of Trade may appoint one or more competent inspectors to investigate and report on the administration of any unit trust scheme within the meaning of the said Act, if it appears to the Board—

(*a*) that it is in the interests of unit holders so to do; and

(*b*) that the matter is one of public concern;

and subsections (3) to (6) of section one hundred and thirty-five of the principal Act and subsection (4) of the section of this Act relating to the inspection of a company's affairs on the application of its members shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under the said section one hundred and thirty-five, but with the substitution for references to the company and its affairs of references to the manager under the scheme and to the administration of the scheme.

(4) The expenses of any investigation under the last foregoing subsection shall be defrayed by the Board of Trade out of moneys provided by Parliament.

Construction and application of principal Act and this Act.

122.—(1) In this Act the expression "the principal Act" means the Companies Act, 1929.

Short title, citation, commencement and repeal.

123.—(1) This Act may be cited as the Companies Act, 1947.

(2) This Act shall come into force on such day as the Board of Trade may by order appoint, and different days may be appointed for the purpose of different provisions thereof.

(3) The provisions of the principal Act specified in Part I of the Ninth Schedule to this Act and the provisions of the Registration of Business Names Act, 1916, specified in Part II thereof are hereby repealed to the extent specified in that Schedule.

Subsection (3) is repealed as to Part I of the Ninth Schedule.

Ninth Schedule

Part II

Enactments of Registration of Business Names Act, 1916, Repealed

In subsection (1) of section three, the words "and if that nationality is not the nationality of origin, the nationality of origin", in both places where they occur.

In subsection (1) of section eighteen, the words "and if his nationality is not his nationality of origin his nationality of origin" in paragraph (*a*), and the words "and if the nationality is not the nationality of origin, the nationality of origin" in paragraph (*b*).

In section twenty-two, in the definition of a former christian name or surname, the words from the first "shall not," to "and," and in the definition of a change of name the words from the first "in the case of," to the first "or".

In the Schedule, the words "and if that nationality is not the nationality of origin, the nationality of origin".

APPENDIX 3

TABLES OF COMPARISON

BETWEEN

THE NEW AND THE EARLIER ACTS

Note —

In this Table—

1929 = The Companies Act, 1929 (19 & 20 Geo. 5, c. 23)

1947 = The Companies Act, 1947 (10 & 11 Geo. 6, c. 47)

COMPANIES ACT, 1929

Section or Schedule of 1929	Section or Schedule of Companies Act, 1948
1	1
2	2
3	3
4	4
5 (1)	5 (1)
(2)	5 (10)
(3)	
(4)	
(5)	
(6)	
(7)	
6	6
7 (1)	7 (1)
(2)	7 (1), (2)
(3)	7 (3)
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	—
18 (1)	19 (1)
(2)	19 (3)
(3)	19 (1), (4)
(4)	19 (5)
(5)	19 (7)
19 (1)	18 (1)
(2)	18 (2)
(3)	19 (7)
(4)	18 (3)
	19 (7)
(5)	18 (4)
	19 (7)
20	20
21	21
22	22
23	24
24	25
25	26
26	28
27 (1)	30 (1)
(2)	30 (3)
(3)	29
28	31
29	32
30	33
31	34
32	35
33	36
34 (1)	37
(2)	41 (1)
(3)	41 (3)
(4)	41 (2)
(5)	41 (1)
35	38
36	42
37 (1)	43 (1), (2), 46
(2)	43 (4)
(3)	—
(4)	40 (3), 43 (5)
38	45
39	47
40 (1)	48 (1)
(2)	48 (3)
(3)	48 (4)
41	49
42	52
43	53
44 (1)	Sch. VIII, 3 (*c*), (*d*)
(2)	—
45 (1)	54 (1)
(2)	Sch. VIII, 8 (1) (*c*)
(3)	54 (2)
46 (1)	58 (1)
(2)	Sch. VIII, 2 (*a*)
(3)	58 (2)
(4)	58 (4)
(5)	58 (5)
47 (1)	57 (1)
(2)	57 (2)
(3)	57 (3), Sch. VIII, 3 (*e*)
48	59
49	60
50	61
51	62
52	63
53	64
54 (1)	65 (1), Sch. VIII, 2 (*b*)
(2)	—
55	66
56	67
57	68
58	69
59	70
60	71
61	72
62 (1)	73
(2)	74
63	75
64	76
65	77
66	78
67	80
68	81
69	82
70	83
71	84
72	85
73 (1)	87 (1), (6)
(2)	87 (2)
(3)	87 (3)
(4)	87 (4)
(5)	87 (5)
74	89
75 (1)	90 (1)
(2)	90 (2)
(3)	Sch. VIII, 2 (*d*)
(4)	90 (3)
(5)	90 (4)
(6)	91
76	92
77	93
78 (1)	94 (1)
(2)	94 (3)
(3)	94 (5)
79	95
80	96
81	97
82 (1)	98 (1)
(2)	98 (2)
(3)	98 (3)
(4)	—
83	99

Section or Schedule of 1929.	Section or Schedule of Companies Act, 1948.
84	100
85	101
86	102
87	103
88	104
89 (1)	105
90	106
91	—
92	107
93	108
94	109
95 (1)	110 (1)
(2)	110 (4)
96 (1)	111 (1)
(2)	111 (2)
(3)	111 (4)
97	112
98 (1)	110 (2), 113 (1)
(2)	113 (2)
(3)	113 (3)
(4)	113 (4)
99	115
100	116
101	117
102	118
103	119
104	120
105	121
106	122
107	123
108 (1)	121 (1), Sch. VI, 5
(2)	124 (1), Sch. VI, 5
(3)	124 (1), Sch. VI, 3, 4, 6
(4)	124 (1)
(5)	
109	125
110 (1)	126 (1)
(2)	—
(3)	127 (1), (2), (4), 129 (1)
(4)	124 (3), 125 (3), 126 (2), 127 (3)
(5)	124 (4), 125 (4), 126 (2), 127 (3)
111	128
112 (1)	131 (1)
(2)	131 (5)
(3)	131 (2)
113	130
114	132
115 (1)	133 (1), (2), 134
(2)	135 (1), (2)
116	139
117 (1)	141 (1)
(2)	141 (2)
(3)	141 (3)
(4)	—
(5)	141 (4)
(6)	141 (5)
118	143
119	144
120	145
121	146
122 (1)	147 (1)
(2)	147 (3)
(3)	147 (4)
123 (1)	148 (1)
(2)	148 (2), 157 (1)
(3)	148 (3), 157 (3)
124 (1)	Sch. VIII, 2
(2)	Sch. VIII, 3 (a), 8 (1) (b)
(3)	Sch. VIII, 3 (b)
(4)	
125	Sch. VIII, 15 (2)
126	—
127	—
128 (1)	197 (1)
(2)	197 (2)
(3)	—
(4)	197 (3)
(5)	
129 (1)	155 (1), 156 (1), 162 (2)
(2)	155 (2)
(3)	155 (3), 156 (3)
130 (1)	158 (1), (2), (3)
(2)	158 (4)
131	133
132 (1)	159 (1)
(2)	-
(3)	—
(4)	159 (5)
(5)	159 (6)
(6)	—
133 (1)	161 (2)
(2)	161 (5)
(3)	—
134 (1)	162 (1)
(2)	162 (3)
(3)	—
135 (1)	164 (1)
(2)	164 (2)
(3)	167 (1)
(4)	167 (2)
(5)	167 (3)
(6)	168 (1), (2)
136 (1)	169 (1)
(2)	169 (2)
(3)	—
(4)	—
137	—
138	171
139 (1)	176
(2)	176
140 (1)	181 (1)
(2)	181 (2)
(3)	181 (4)
(4)	181 (5)
141	182
142	187
143	180
144 (1)	200 (1), (2)
(2)	200 (4), (5)
(3)	200 (6)
(4)	200 (7)
(5)	200 (8)
(6)	200 (9)
145 (1)	201 (1)
(2)	201 (2)
(3)	201 (3)
(4)	200 (9), 201 (4)
146	202
147	203
148	—
149	199
150 (1)	192 (1)
(2)	192 (2)
(3)	193 (1)
(4)	193 (2), (3)
(4A)	193 (3), (4)
(4B)	193 (5)
(5)	194 (2)
(6)	194 (4)
151	204
152	205
153 (1)	206 (1)
(2)	206 (2)
(3)	206 (3)
(4)	206 (4)
(5)	206 (6)
154	208
155 (1)	209 (1)
(2)	209 (3)
(3)	209 (4)
(4)	209 (5)
156	211
157	212
158	213
159	214
160	215
161	216
162	217
163	218
164	—
165	219
166	220
167	221
168	222
169	223
170	224
171 (1)	225 (1)
(2)	225 (3)
172	226
173	227
174	228
175	229
176	230
177	231
178	232
179	233
180	234
181	235

Section or Schedule of 1929.	Section or Schedule of Companies Act, 1948.
182	236
183	237
184	238
185	239
186	240
187	241
188	242
189	243
190	244
191	245
192	246
193	247
194	248
195 (1)	249 (1)
196	250
197	251
198	252
199	253
200	254
201	255
202	256
203	257
204	258
205	259
206	260
207	261
208	262
209	263
210	264
211	265
212	266 (1)
213	267
214	268
215	269
216	270
217	—
218	271
219	272
220	273
221	274
222	275
223	276
224 (1)	277 (1)
(2)	206 (5), 277 (2)
(3)	277 (3)
(4)	277 (4)
225	278
226	279
227	280
228	281
229	282
230 (1)	283 (1)
(2)	283 (2)
(3)	283 (4)
231	284
232	285
233	286
234	287
235	289
236	290
237	292
238	293
239	294
240	295
241	296
242	297
243	298

Section or Schedule of 1929.	Section or Schedule of Companies Act, 1948
244	299
245	300
246	301
247	302
248	303
249	304
250	305
251	306
252	307
253	308
254	309
255	310
256	311
257	312
258	313
259	314
260	315
261	316
262	317
263	318
264 (1)	319 (1), (2)
(2)	319 (3)
(3)	319 (4)
(4)	319 (5)
(5)	319 (6)
(6)	319 (7)
(7)	319 (8)
265 (1)	320 (1)
(2)	320 (4)
(3)	320 (2)
(4)	320 (3)
266	322 (1)
267	323
268	325
269 (1)	326 (1)
(2)	326 (2)
(3)	326 (4)
(4)	326 (5)
270	327
271	328
272	329
273	330
274	331
275 (1)	332 (1)
(2)	332 (2)
(3)	332 (3)
(4)	•
(5)	— —
(6)	332 (4)
(7)	332 (1)
276	333
277 (1)	334 (1)
(2)	334 (2)
(3)	334 (3)
(4)	
(5)	334 (4)
(6)	334 (5)
(7)	334 (6)
(8)	— —
278 (1)	335
(2)	335
(3)	— —
279	337
280	338
281	339
282	340
283	341
284 (1)	342 (1)

Schedule of 1929, Section or	Section or Schedule of Companies Act, 1948
(2)	•
(3)	342 (2)
285	343
286	344
287	345
288	346
289	347
290	348
291	349
292	350
293	351
294	352
295	353
296	354
297	357
298	358 (1)
299	359
300	360
301	361
302	362
303	363
304	364
305	365
306 (1)	366
(2)	366
(3)	•
307	368
308	370
309	371 (1), (3)
310	374
311	375
312	424
313	425
314 (1)	426 (1)
	427 (1)
(2)	426 (2)
(3)	426 (3)
(4)	426 (5)
315	428
316	377
317	378
318	379
319	380
320	381
321	382
322	383
323	384
324	385
325	386
326	387
327	425 (1)
328	389
329	390
330	391
331	392
332	393
333	394
334	395
335	396
336	397
337	398
338 (1)	399
(2)	400
(3)	405
339	401
340	402
341	403
342	404

Section or Schedule of 1929.	Section or Schedule of Companies Act, 1948.
343	406
344 (1)	407 (1), (2), (3)
(2)	407 (3)
(3)	407 (3)
345	408
346	409
347	410
348	411
349	412
350	413
351	414
352	415
353	416
354 (1)	417 (1), (3), 420 (1)
(2)	417 (5)
(3)	423 (1)
(4)	423 (2)
(5)	422
(6)	421
(7)	423 (3)
355 (1)	417 (1)
(2)	417 (2)
(3)	417 (4)
(4)	417 (6)
356	—
357	434 (1)
358	429
359	430
360	431
361	432
362	438
363	-
364	439
365	440
366	442 (1)
367	444
368	445
369	446
370	437
371	447
372 (1)	448 (1)
(2)	448 (2)
(3)	448 (3)
(4)	448 (4)
373	449
374	- -
375	450
376	451
377	452
378	453
379	454 (2)
380	455
381	—
382	—
383	460 (1)
384	461
385	—
Sch. I	Sch. I
Sch. II	Sch. II
Sch. III	Sch. III
Sch. IV	Sch. IV
Sch. V	Sch. V
Sch. VI	Sch. VI, Part II
Sch. VII	Sch. XIII
Sch. VIII	206 (5), Sch. X
Sch. IX	Sch. XI
Sch. X	Sch. XII
Sch. XI	Sch. XV
Sch. XII	
Pt. I	—
Pt. II	Sch. XVIII

COMPANIES ACT, 1947

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948.
1 (1)	131 (1)
(2)	131 (2)
(3)	131 (3)
(4)	131 (4), (5)
(5)	131 (5)
2 (1)	133 (1), (2)
(2)	133 (3)
(3)	141 (2), (4)
(4)	130 (2), 158 (1), 159 (5)
(5)	130 (2), 158 (1)
(6)	142
3	140
4 (1)	137 (1)
(2)	137 (2)
(3)	—
5 (1)	136 (1)
(2)	136 (2)
(3)	136 (3)
(4)	136 (4)
(5)	138, 141 (4)
(6)	136 (5), 138
6	131 (2), 135 (1)
7	143 (1)
8	145 (4)
9	210
10	72 (2)
11 (1)	209 (1)
(2)	209 (1)
(3)	209 (2)
(4)	209 (2)
(5)	209 (3)
(6)	209 (6)
12 (1)	147 (2)
(2)	147 (3)
13 (1)	149 (1)
(2)	149 (2)
(3)	149 (3)
(4)	149 (4)
(5)	149 (5)
(6)	149 (6)
(7)	157 (1)
(8)	147 (3), 149 (7)
14	150
15	151
16	152
17	153
18	154
19	157 (2)
20	147 (4), 148 (3), 149 (6), 150 (3), 157 (3)
21 (1)	156 (1), (2)
(2)	156 (3)
(3)	158 (1)
(4)	158 (1), (4)
22 (1)	162 (1), 438, Sch. XV
(2)	162 (3), (4)
23	161
24 (1)	159 (1), (2), (3)
(2)	159 (4)
(3)	160 (1)
(4)	160 (2)
(5)	160 (3)
(6)	159 (2)
(7)	159 (5), 160 (4)
(8)	159 (7), Sch. VIII, 13
25	163
26 (1)	176, 177 (1), 178
(2)	235 (2)
(3)	177 (2)
(4)	179
27 (1)	125 (1), 200 (1), (3), (4), (7)
	Sch. VI, 6
(2)	200 (3)
(3)	200 (5)
(4)	200 (4)
(5)	—
(6)	200 (2)
(7)	200 (2), (9)
(8)	200 (9)
28	183
29	184
30	185
31	186
32	181 (3)
33	188
34	189
35	190
36 (1)	191
(2)	193 (1)
(3)	193 (3)
(4)	193 (3), (4), (5)
(5)	193 (3)
(6)	194 (1)
(7)	194 (3)
37	195
38 (1)	196 (1)

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948
(2)	196 (2)
(3)	196 (3)
(4)	196 (4)
(5)	196 (5)
(6)	196 (6)
(7)	196 (7)
(8)	196 (8)
(9)	196 (9)
(10)	—
39 (1)	197 (1)
(2)	197 (1), (2)
(3)	197 (4)
40 (1)	207 (1)
(2)	207 (2)
(3)	207 (3)
(4)	207 (4)
(5)	206 (6)
41 (1)	198 (1), 207 (5)
(2)	198 (2)
(3)	198 (3), 207 (5)
(4)	198 (4), 207 (5)
(5)	199 (3)
42 (1)	164 (1), (2)
(2)	167 (1)
(3)	167 (5)
(4)	167 (4)
(5)	166
(6)	167 (1), (2), (3), (5), 169 (1), (2)
(7)	168 (2)
(8)	168 (1), (2), 169 (1), 171
43 (1)	165
(2)	166, 167 (1)-(5), 168 (1), (2), 169 (1), (2), 171
(3)	168 (2)
(4)	—
44 (1)	169 (3)
(2)	169 (4)
(3)	169 (5)
(4)	—
45	170
46	172
47	173
48	174
49	175
50 (1)	110 (2)
(2)	111 (3), 120 (3)
(3)	110 (3)
(4)	110 (4), 111 (4), 120 (7)
(5)	114, 120 (7)
51	110 (1)
52 (1)	124 (1), 125 (1)
(2)	124 (1), 126 (1), Sch. VI, 5
(3)	—

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948.
53 (1)	125 (1), Sch. VI, 2
(2)	127 (1), (2)
(3)	124 (1)
(4)	124 (2)
(5)	124 (4)
(6)	Sch. VI, 5
54	129
55 (1)	126 (1), 127 (1) 128
(2)	438, Sch. XV
56	107 (1) (2)
57	108 (1) (4)
58	-
59	50
60 (1)	50 (1)
(2)	51 (2)
(3)	51 (3)
(4)	51 (4)
(5)	109 (1)
(6)	51 (5)
(7)	51 (6)
61 (1)	Sch. IV, 5, 7, 9, 12, 13, 14, 25
(2)	Sch. IV, 9, 10
(3)	-
(4)	Sch. IV, 22, 23, 24, 26
62 (1)	Sch. IV, 19, 20
(2)	Sch. IV, 19, 20, 27
(3)	Sch. IV, 19, 20
(4)	Sch. IV, 19
(5)	Sch. IV, 21
(6)	Sch. IV, 30
(7)	Sch IV, 29
63 (1)	40 (1), (2)
(2)	41 (1)
(3)	41 (3)
(4)	41 (2), (3)
(5)	41 (4)
(6)	426 (1)
64 (1)	38 (5)
(2)	39 (1)
(3)	39 (2), 50 (7)
(4)	41 (1)-(4), 426 (1)
65 (1)	43 (1)-(4)
(2)	43 (4)
(3)	43 (2)
(4)	- -
66	44
67 (1)	30 (1)
(2)	30 (4), 48 (1), Schs. III, V
(3)	30 (2), 48 (2)
(4)	Schs. III, V

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948
(5)	30 (4), 48 (5)
(6)	30 (3), 48 (4)
(7)	438, Sch. XV
68 (1)	55 (1)
(2)	55 (2)
(3)	30 (5), 46, 48 (6)
(4)	30 (5), 40 (3) 46, 48 (6)
69 (1)	74
(2)	110 (1), 112 (1)
70	73
71 (1)	58 (1)
(2)	58 (3)
(3)	Schs. III V, VIII, 2 (a)
(4)	58 (5)
72 (1)	56 (1)
(2)	Sch. VIII, 2 (c)
(3)	56 (2)
(4)	58 (1)
(5)	56 (3)
73 (1)	54 (1)
(2)	54 (1)
74 (1)	86, 125 (1), 438, Sch VI, 2, Sch. XV
(2)	87 (1), (2)
75	88
76 (1)	5 (1), (10)
(2)	5 (1)
(3)	5 (2)
(4)	5 (3)
(5)	5 (4)
(6)	5 (5)
(7)	5 (6), 19 (6)
(8)	5 (7)
(9)	5 (8)
(10)	5 (9), (10)
77 (1)	23 (1)
(2)	23 (2)
(3)	23 (1) (3)
(4)	23 (1)
(5)	23 (1)
78 (1)	17
(2)	18 (2)
(3)	388
(4)	-
79 (1)	19 (2), 389
(2)	19 (2)-(5), (7)
80	27
81 (1)	7 (1), (2), Sch XII
(2)	7 (3), 425 (1), Sch XII
(3)	425 (1), Sch. XII
82 (1)	32 (4)

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948.
(2)	427 (3)
83	367
84 (1)	372 (1)
(2)	372 (2)
(3)	372 (3)
(4)	372 (4)
(5)	372 (5)
(6)	372 (6), 374 (1)
(7)	372 (7), 438, Sch. XV
85 (1)	373 (1)
(2)	373 (2)
(3)	373 (3)
(4)	373 (4)
(5)	373 (5)
(6)	426 (1)
(7)	426 (4)
(8)	373 (6), 426 (1)
86 (1)	375 (1), (2), (3)
(2)	375 (1)
87 (1)	369 (1)
(2)	369 (2)
(3)	371 (2)
(4)	369 (3), 371 (4)
88	376
89 (1)	95 (2), 458 (1)
(2)	—
(3)	100
(4)	—
90	225 (2)
91 (1)	319 (1), (2)
(2)	319 (1)
(3)	358 (1)
(4)	319 (8), 358 (2)
(5)	319 (1), (4), 358 (1), (2)
(6)	319 (8), 358 (2)
(7)	319 (8)
(8)	94 (1), (2), (4), 319 (9), 358 (3)
92 (1)	320 (1), (3)
(2)	321 (1)
(3)	321 (2)
(4)	321 (3)
93 (1)	322 (1)
(2)	322 (1)
94 (1)	289 (1), (2)
(2)	289 (3)
(3)	288 (1), (2)
(4)	291
(5)	283 (5), 288 (1)
95 (1)	289 (1), 299 (1)
(2)	290 (6), 300 (6)
(3)	293 (7), 295 (2)
(4)	303 (1)
	315 (1)
96 (1)	—
(2)	29
(3)	274 (1)
(4)	325 (1), 326 (3)
97 (1)	256 (3), 307 (3), 460 (2)
(2)	274 (2)
(3)	279 (1), 305 (1)
(4)	249 (4)
(5)	249 (5)
(6)	—
(7)	266 (2)
98	343 (1)
99 (1)	324 (1), 356 (1), 460 (1)
(2)	324 (2), 356 (1), 460 (1)
(3)	324 (3), 356 (1), 460 (1)
(4)	356 (2), 460 (1)
100	355
101 (1)	332 (1), (2), (3)
(2)	332 (3)
(3)	331 (1), 458 (2)
(4)	—
(5)	336, 460 (1)
102	441
103 (1)	443 (1), (9)
(2)	443 (2)
(3)	443 (3)
(4)	443 (4)
(5)	443 (5)
(6)	443 (6)
(7)	443 (7)
(8)	443 (8)
(9)	443 (10)
104 (1)	442 (1), (4)
(2)	442 (2)
(3)	442 (3)
(4)	442 (4)
105 (1)	52 (3), 78 (2), 80 (2), 96 (3), 105 (2), 131 (5), 155 (3), 156 (3), 158 (3), 331 (1), 433 (4)
(2)	130 (9)
(3)	201 (3), (4)
(4)	48 (4), 338 (2), 370 (2), 414
106	—
107 (1)	377, 378, 379, 380, 381, 394 (3), (6)
(2)	395 (2)
(3)	399 (1)
108	135
109 (1)	427 (1), (2)
(2)	
110 (1)	417 (1), (3), 419 (1), 421, 422
(2)	420 (1)
(3)	426 (1)
(4)	420 (2)
(5)	417 (5), 418 (1), (2), 420 (1), (2)
(6)	419 (1), 420 (1), 422
(7)	419 (2), 423 (1), (3)
111	408
112 (1)	410 (1), (2)
(2)	410 (1)
(3)	438, Sch. XV
113 (1)	407 (1), (2), 409, 415
(2)	407 (2)
114	411
115	—
116	—
117	—
118 (1)	456, Sch. XVI
(2)	456, 457, Sch. XVI
(3)	456, Sch. XVI
119	436
120 (1)	454 (1)
(2)	454 (2)
(3)	65 (1), 322 (1), 362 (4), 459 (3)
121 (1)	454 (3)
(2)	—
(3)	—
(4)	—
122 (1)	455 (1), 456, Sch. XVI, 4
(2)	455 (1)
(3)	455 (4), 459 (3)
(4)	71, 104 (2), 108 (4), 161 (2), 162 (8), 197 (1), 205, 235 (2), 236 (2), 269,

Section or Schedule of 1947.	Section or Schedule of Companies Act, 1948.
	270 (1),
	328 (1), (3),
	329, 330,
	334 (1),
	(2), (4),
	338 (2),
	353 (7),
	370 (2),
	440 (2),
	448 (1),
	450 (2),
	455 (1)
(5)	455 (1)
(6)	455 (3)
(7)	1 (1),
	15 (1),
	234,
	399 (1),
	416,
	425 (2),
	428 (1),
	440, 442,
	444, 445,
	449, 450,
	451, 452,
	453 (1),
	461 (1)
	Sch. XII
123	—
Sch. I	Sch. VIII
Sch. II	Sch. IX
Sch. III	Sch. VII
Sch. IV	Schs. III, V
Sch. V	52 (3),
	78 (2)
	80 (2),
	96 (3)
	105 (2),
	131 (5),
	155 (3),
	156 (3),
	158 (3)
	331 (1),
	433 (4)
Sch. VI	Sch. XIV
Sch. VII	71, 104 (2)
	108 (4),
	161 (2),
	162 (3),
	197 (1),
	205,
	235 (2),
	236 (2)
	269,
	270 (1),
	328 (1), (3),
	329, 330,
	334 (1),
	(2), (4),
	338 (2),
	353 (7),
	370 (2),
	440 (2),
	448 (1),
	450 (2)
Sch. VIII	1 (1),
	15 (1),
	234,
	399 (1),
	416,
	426 (3),
	428 (1),
	440, 442,
	444, 445,
	449, 450,
	451, 452,
	453 (1),
	461 (1),
	Sch. XII
Sch. IX	—

COMPARATIVE TABLE OF CLAUSES OF TABLE A

Clauses of Table A, 1929.	Corresponding Clauses of Table A, 1948.	Clauses of Table A, 1929.	Corresponding Clauses of Table A, 1948.	Clauses of Table A, 1929.	Corresponding Clauses of Table A, 1948.
1	1	36	—	72	88
2	2, 3	37	45	73	89
		38	46	74	90
3	4	39	47	75	91
4	8	40	48	76	92
5	9	41	49	77	94
6	10	42	50	78, 79	95
7	11	43	51		
8	12	44	52	80	96
9	13	45	53	81	98
10	14	46	54	82	99
11	15	47	55	83	100
12	17	48	56	84	101
13	18	49	57	85	102
14	19	50	58	86	103
15	20	51	59	87	104
16	21	52	60	88	105
17	22	53	61	89	114
18	23	54	62	90	115
19	24–28	55	63	91	116
20	29	56	64	92	118
21	30	57	65	93	117
22	32	58	67	94, 95	121
23	33	59	68		
24	34	60	69	96	122
25	35	61	70	97	123
26	36	62	72	98	124
27	37	63	74	99	125
28	38	64	75	100	126
29	39	65	76	101	127
30	40	66	77	102	130
31	41	67	80	103, 104	131
32	42	68	107		
33	43	69	79	105	132
34	44	70	86	106	133
35	—	71	113	107	134

THE RULES OF THE SUPREME COURT (COMPANIES) (No. 2), 1948

No. 1880 (L. 22)

Made	*6th August*, 1948
Laid before Parliament ...	*12th August*, 1948
Coming into Operation ...	*1st October*, 1948

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. Order LIIIB (which, as amended by the Rules of the Supreme Court (Companies), 1948,[1] relates to procedure on applications under the Companies Act, 1948) shall be deleted and the following Order shall stand in lieu thereof, namely:—

"ORDER LIIIB

PROCEDURE ON APPLICATIONS UNDER THE COMPANIES ACT, 1948

Interpretation.

1. In this Order—

"The Act" means the Companies Act, 1948.

"The Court" includes any Judge of the Chancery Division and any Judge who for the time being exercises the jurisdiction of the High Court to wind up companies.

"Judge" means any such Judge as aforesaid, and includes any Registrar, Master, or other officer exercising the powers of any such Judge.

"The petition", "The motion", "The summons" mean the petition, motion or summons presented, made or taken out pursuant to this Order.

"The inquiry" means the inquiry made as to the debts claims or liabilities of or affecting the company or as to any such debts claims or liabilities ordered by the Court under this Order.

"The company" means the company to which any application under this Order relates.

Unless the context otherwise requires, expressions defined in the Act shall have the meanings so defined.

Office for issue of petitions, etc.

2. Every petition (except a petition specified in Rule 5 (*h*)), every notice of motion (except a motion specified in Rule 6) and every summons (except a summons specified in Rule 8 (*g*) or in Rule 8 (*h*)) to which this Order relates shall be brought to and issued out of the

[1] SI 1948, No. 1756.

office of the Registrar Companies Court but every petition specified in Rule 5 (*h*), every notice of motion specified in Rule 6 and every summons specified in Rule 8 (*g*) or in Rule 8 (*h*) may at the option of the applicant or petitioner be brought to and issued out of either (*a*) such office or department as is specified in Order V, Rule 9, or (*b*) the office of the Registrar Companies Court:

Provided, however, that nothing in this Rule shall prevent any cause or matter being commenced or carried on in the District Registry of Liverpool or the District Registry of Manchester which could have been so commenced or carried on apart from this Rule.

Application of Rules of Supreme Court.

3. The Rules of the Supreme Court for the time being in force and the general practice of that Court, including the course of procedure and practice in Chambers, shall apply as regards all proceedings in relation to applications to which this Order relates so far as may be practicable, except if and so far as the Act or this Order otherwise provides. In particular if and when the Court is for the time being a Judge of the Chancery Division, the provisions of Order V, Rule 9A, shall apply to all such proceedings as being business assigned within the meaning of that Rule.

Title of petition, etc.

4.—(1) Every petition, notice of motion and summons and all notices, affidavits and other proceedings under any petition, notice of motion or summons shall be intituled in the High Court of Justice, Chancery Division, and in the matter of the company, and in the matter of the Companies Act, 1948, and where the company is in liquidation there shall be added after the words "Chancery Division" the words "Companies Court".

(2) An application for leave under subsection (1) of section 188 of the Act shall be intituled in the matter of the company in relation to which the applicant was convicted or was guilty of such an offence or of such conduct as is mentioned in the said subsection and in the matter of the Companies Act, 1948.

Applications by petition.

5. The following applications shall be made by petition—

(*a*) Applications to cancel an alteration of objects under section 5 of the Act.

(*b*) Applications to cancel an alteration in the form of the constitution of the company by substituting a memorandum and articles for a deed of settlement under section 895 of the Act.

(*c*) Applications to cancel an alteration in conditions in the memorandum under section 28 of the Act.

(*d*) Applications to confirm a reduction of capital under section 67 of the Act.

(*e*) Applications to confirm the reduction of any share premium account or any capital redemption reserve fund under section 56 (1) or section 58 (1) (*d*) of the Act.

(*f*) Applications to cancel any variation of the rights of holders of special classes of shares under section 72 of the Act.

(*g*) Applications to sanction the issue of shares at a discount under section 57 of the Act.

(*h*) Applications to sanction a compromise or arrangement under section 206 (2) of the Act.

(*i*) Applications to restore a company's name to the register under section 353 (6) of the Act.

(*j*) Applications for relief by officers of a company or by persons employed as auditors by a company under section 448 (2) of the Act.

Applications by motion or summons.

6. Applications to rectify the register of members of a company under section 116 of the Act shall be made by motion or summons.

Applications by motion.

7. The following applications shall be made by motion:—

(*a*) Applications for relief in case of default in delivering documents to the Registrar of Companies under section 52 (8) of the Act.

(*b*) Applications for relief in case of default by a private company in complying with the provisions of its articles under section 29 of the Act.

(*c*) Applications for a declaration that the affairs of a company ought to be investigated under section 165 of the Act.

(*d*) Applications to inquire into the case of officers or agents of a company who have refused to produce any document or answer any question under section 167 (3) of the Act or (where inspectors were appointed before the 1st July 1948 or were appointed to continue an inspection begun by inspectors appointed before the 1st July 1948) under section 137 (8) of the Companies Act, 1929.

(*e*) Applications that shares or debentures shall cease to be subject to restrictions imposed by the Board of Trade under section 174 (3) of the Act.

Applications by summons.

8. The following applications shall be made by summons:—

(*a*) Applications to inspect the register of members or the index of names of members of a company or to obtain copies of such register under section 118 (4) of the Act.

(*b*) Applications to inspect the minutes of proceedings at general meetings of a company or to obtain copies thereof under section 146 (4) of the Act.

(*c*) Applications to inspect the register of directors' holdings of shares or debentures under section 195 (9) of the Act, or the register of directors and secretaries under section 200 (8) of the Act.

(*d*) Applications to inspect copies of instruments creating a charge and to inspect the register of charges under section 105 (8) of the Act.

(*e*) Applications to inspect any register of holders of debentures or to obtain copies thereof or of any trust deed for securing debentures under section 87 (5) of the Act.

(*f*) Applications for and in regard to meetings of a company under section 135 of the Act.

(*g*) Applications for meetings of creditors or members of a company under section 206 (1) of the Act.

(*h*) Applications for facilitating reconstructions or amalgamations of companies under section 208 of the Act, where the matters to which such applications relate have not been dealt with, or

fully dealt with, on the hearing of the petition to sanction the compromise or arrangement to which they relate.

(*i*) Applications in regard to delivery of certificates or debentures under section 80 (3) of the Act.

(*j*) Applications for enforcing the duty of a company or of a receiver or manager to make returns or render accounts under section 375 or section 428 of the Act.

(*k*) Applications for leave to be a director of or to manage a company under section 188 (1) of the Act.

(*l*) Applications to extend the time for registering documents under section 5 (7) or section 395 of the Act or under Rule 12 of this Order.

(*m*) Applications to extend the time for the issue of shares at a discount under section 57 (1) (*d*) of the Act.

(*n*) Applications to extend the time for registration of a charge or to rectify any omission or mis-statement with respect to any charge or in a memorandum of satisfaction under section 101 of the Act.

(*o*) Applications for the purpose of preventing or settling the terms of, the acquisition of shares under section 209 of the Act.

(*p*) Applications that a person should be examined on oath under section 167 (4) of the Act.

(*q*) Applications for directions by a receiver or manager under section 369 (1) of the Act.

(*r*) Applications for inspection or production of the books of a company under section 441 of the Act.

(*s*) Applications for summoning a meeting of debenture holders under section 88 (4) of the Act.

(*t*) Applications that a company should not be bound to circulate a statement under section 140 (5) of the Act.

(*u*) Applications that an auditor's or a director's representations should not be sent out or read at a meeting under section 160 (3) or section 184 (3) of the Act.

Appearance to summons.

9. A respondent to an originating summons issued pursuant to Rule 6 or Rule 8 of this Order shall not be required to enter an appearance except where such summons is issued pursuant to paragraph (*h*) or paragraph (*j*) of Rule 8.

Summons for directions.

10.—(1) Where the petition has been presented pursuant to paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) or (*j*) of Rule 5 of this Order, or where an order is sought under section 208 of the Act, an application shall in every case be made by summons in Chambers to the Judge for directions as to the proceedings to be taken.

(2) Upon the hearing of the summons, or upon any adjourned hearing or hearings thereof or any subsequent application, the Judge may make such order or orders and give such directions as he may think fit as to all the proceedings to be taken, and more particularly with respect to the following matters, that is to say—

(*a*) the publication of notices;

(*b*) in cases where the Court orders an inquiry as to the debts, claims or liabilities of or affecting a company or as to any of such debts, claims or liabilities, the proceedings to be taken for

settling the list of creditors entitled to object, including the dispensing with the observance of section 67 (2) of the Act as regards any class or classes of creditors; fixing the date with reference to which the list of such creditors is to be made out, and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in any of the Rules of this Order or not.

In such cases the first order upon the summons for directions may be in the Form No. 30 in Appendix L with such variations as the circumstances may require.

Procedure on inquiry.

11. In cases where the Court has ordered any such inquiry as aforesaid, the following provisions shall apply:—

Affidavit as to creditors.

(*a*) The company shall, within seven days after such order or such further or other time as the Judge may allow, file in the office of the Registrar an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing so far as possible the names and addresses of the creditors of the company to whom such enquiry extends. The said list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims or liabilities to which the enquiry extends, or in the case of any such debt payable on a contingency or not ascertained or any such claim admissible to proof in a winding-up of the company the value, so far as can be justly estimated, of such debt or claim. Every such list and an office copy of every such affidavit shall be left at the office of the Registrar not later than one day after the filing of the affidavit.

Form of affidavit.

(*b*) The person making any such affidavit shall state therein his belief that the list verified by such affidavit is correct, and that there was not at the date so fixed as aforesaid any debt, claim or liability which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in such list and any debts, claims or liabilities to which the enquiry does not extend, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the Form No. 31 set out in Appendix L, with such variations as the circumstances of the case may require.

Inspection of list of creditors.

(*c*) Copies of such list containing the names and addresses of such creditors, and the total amount so due to them (including the value of any debts or claims estimated as aforesaid), but omitting the amounts due to them respectively, or (as the Judge shall think fit) complete copies of such list, shall be kept at the registered office of the company and at the offices of the solicitors to the company and their London agents (if any) and any person desirous of inspecting the same may at any time during the ordinary hours of business inspect and take extracts from the same on payment of the sum of one shilling.

Notice to creditors.

(*d*) The company shall, within seven days after the filing of such affidavit, or such further or other time as the Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, the effect of the order directing the inquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (such time to be fixed by the Judge) within which, if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each such creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 32 set out in Appendix L, with such variations as the circumstances of the case may require.

Advertisement of petition and of list of creditors.

(*e*) Notice of the presentation of the petition, of the effect of the order directing the inquiry and of the list of creditors shall, after the filing of the affidavit mentioned in paragraph (*a*) of this Rule, be published at such times, and in such newspapers as the Judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not but are entitled to be entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company. Such notice may be in the Form No. 33 set out in Appendix L, with such variations as the circumstances of the case may require.

Affidavit as to result of paragraphs (d) and (e) of this Rule.

(*f*) The company shall, within such time as the Judge shall direct, file in the Office of the Registrar an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in paragraphs (*d*) and (*e*) of this Rule required to be sent in, stating the result of such notices respectively and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof, not included in the inquiry. Such affidavit shall also state which of the persons who are entered in the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid have been paid or have consented to the proposed reduction. Such affidavit may be in

the Form No. 84 set out in Appendix L. with such variations as the circumstances of the case may require; and such list and an office copy of such affidavit shall be left at the office of the Registrar within such time as the Judge shall direct.

Proceedings where claim not admitted.

(*g*) If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim whether admitted or not or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company is willing to appropriate in such manner as the Judge shall direct the full amount of such debt or claim, the company shall, if the Judge think fit so to direct, send to the creditor a notice that he is required to come in and establish his title to be entered on the list or as the case may be to come in and prove such debt or claim or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the Judge for adjudicating upon such titles, debts and claims and such notice shall be sent in the manner mentioned in paragraph (*d*) of this Rule, and may be in the Form No. 85 set out in Appendix L. with such variations as the circumstances of the case may require.

Costs of proof.

(*h*) Such creditors as come in to prove their titles, debts or claims in pursuance of any such notice as is mentioned in paragraph (*g*) of this Rule shall be allowed their costs of proof against the company and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under an administration judgment.

Certificate as to creditors.

(*i*) The result of the settlement of the list of creditors shall be stated in a certificate by the Registrar and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company is willing to appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 67 (2) of the Act, and this Order, and the debts or claims (if any) the full amount of which the company does not admit or is not willing to appropriate or the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 67 (2) of the Act and the persons to or by whom the same are due or claimed. The said certificate shall also state what creditors have under paragraph (*g*) of this Rule come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the inquiry does not extend or to show therein the several amounts of the debts or

claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

Evidence of consent of creditor.

(*j*) The consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding-up of the company may be evidenced in any manner which the Judge shall think reasonably sufficient having regard to the amount of his debt or claim and all the circumstances of the case.

Certificate before hearing of petition.

(*k*) The petition shall not be heard until the expiration of at least eight clear days from the filing of such certificate as is mentioned in paragraph (*i*) of this Rule.

Advertisement of hearing.

(*l*) Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the Judge shall direct. Such notices may be in the Form No. 36 set out in Appendix L, with such variations as the circumstances of the case may require.

Delivery of office copy order under section 57 of the Act to Registrar of Companies.

12. Unless in any particular case the Court shall otherwise direct every order sanctioning the issue of shares at a discount shall contain a direction that an office copy of such order shall be delivered to the Registrar of Companies for registration within ten days from the date thereof or within such further or other time as the Court may allow and that the order shall not take effect till such office copy has been so delivered.

Form of order under section 208 of the Act.

13. Where an application is made under section 208 of the Act the order may be in the Form No. 37 set out in Appendix L, with such variations as the circumstances of the case may require.

District Registries.

14. Where a matter is pending in a District Registry, affidavits shall be filed and proceedings shall be taken in such matter in the District Registry ".

THE COMPANIES (WINDING-UP) RULES, 1949*

(S.I. 1949, No. 330 (L.4))

Made	*23rd February*, 1949
Laid before Parliament .	*3rd March*, 1949
Coming into Operation .	*14th March*, 1949

I, William Allen, Viscount Jowitt, Lord High Chancellor of Great Britain, with the concurrence of the President of the Board of Trade, in exercise of the powers conferred upon me by Section 365 (1) of the Companies Act, 1948,[1] and of all other powers enabling me in that behalf do hereby make the following Rules:—

PRELIMINARY

Interpretation of terms.

1. In these Rules, unless the context or subject-matter otherwise requires:—

"The Act" means the Companies Act, 1948.

"The Company" means a company which is being wound-up, or against which proceedings to have it wound-up or proceedings under section 210 of the Act have been commenced.

"Judge" means in the High Court the Judge who for the time being exercises the jurisdiction of the High Court to wind-up Companies, and in any County Court the Judge thereof.

"Prescribed" in relation to fees or charges means prescribed by the Rules of the Supreme Court.

"Proceedings" means the proceedings in the winding-up of a Company under the Act, or proceedings under section 210 of the Act.

"Registrar" means in the High Court any of the Registrars in Bankruptcy of the High Court, and any person who shall be appointed to fill the office of Registrar under these Rules, and where a winding-up of a Company is in the District Registry of Liverpool or Manchester means the District Registrar; and in a County Court, where there are joint Registrars means either of such Registrars, or a Deputy Registrar, and in any Court other than the High Court, means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a Registrar or Master.

"The Rules" means these Rules, and includes the prescribed Forms.

"Sealed" means sealed with the seal of the Court.

"Taxing Officer" means the Officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

* These Rules are reproduced as in King's Printers' Copy, and the Printers of this book take no responsibility for the errors therein.

[1] 11 & 12 Geo. 6, c. 38.

Unless the context otherwise requires words or expressions contained in these Rules shall bear the same meaning as in the Act or any statutory modification thereof.

Application of rules.

2.—(1) Subject to the limitations hereinafter mentioned, these Rules shall apply to the proceedings in every winding-up under the Act which shall commence on and after the date on which these Rules come into operation and to all proceedings under section 210 of the Act, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date in the winding-up of a Company which commenced on or after the first day of January, 1891.

(2) Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the Court, or only to such proceedings and to proceedings in a creditors' voluntary winding-up, shall not apply to the proceedings in a voluntary winding-up, or, as the case may be, in a members' voluntary winding-up, whether any such voluntary winding-up is or is not being continued under the supervision of the Court.

(3) Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up, whether by the Court or voluntarily or subject to the supervision of the Court, shall not apply to proceedings under section 210 of the Act.

Use of forms in Appendix.

3. The forms in the Appendix, where applicable, and where they are not applicable, forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable, any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct :

Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *London Gazette*.

COURT AND CHAMBERS

Office of Registrar in High Court.

4.—(1) All proceedings in the High Court shall from time to time be attached to one or more of the Registrars, who shall, together with the necessary clerks and officers, and subject to the Act and Rules, act under the general or special directions of the Judge.

(2) Every other Registrar may act for and in place of such Registrar as above-mentioned in all proceedings under the Acts and Rules, including the holding of public examinations, and when so acting such other Registrar shall be deemed to be the Registrar for the purposes of the Act and Rules.

(3) In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act, or by transfer, or otherwise, the Registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a Master, Registrar, or Taxing Master.

Matters in High Court to be heard in Court and Chambers.

5.—(1) The following matters and applications in the High Court shall be heard in open Court :—

(*a*) Petitions.

(*b*) Appeals to the High Court from the Board of Trade and from the Official Receiver when acting as Official Receiver and not as Liquidator.

(*c*) Applications under section 343 of the Act.

(*d*) Applications under section 352 of the Act.

(*e*) Applications for the committal of any person to prison for contempt.

(*f*) Such matters and applications as the Judge may from time to time by any general or special order direct to be heard in open Court.

(2) Examinations of persons summoned before the High Court under section 268 of the Act shall be held in Court or in Chambers as the Court shall direct.

(3) Every other matter or application in the High Court under the Act to which the Rules apply may be heard and determined in Chambers.

Proceeding in Courts other than High Court.

6.—(1) In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court : -

(*a*) Petitions.

(*b*) Public Examinations.

(*c*) Applications under sub-section (1) of section 334 of the Act.

(*d*) Applications to rectify the Register.

(*e*) Appeals from the Official Receiver and Board of Trade.

(*f*) Appeals from any decision or act of the Liquidator.

(*g*) Applications relating to the admission or rejection of proofs.

(*h*) Proceedings under section 333 of the Act.

(*i*) Applications under section 352 of the Act.

(*j*) Applications under section 348 of the Act.

(*k*) Applications under sub-section (1) and (2) of section 332 of the Act.

(*l*) Applications under section 188 of the Act.

(*m*) Applications under sub-section (2) of section 448 of the Act.

(*n*) Applications for the committal of any person to prison for contempt.

(*o*) Such matters and applications as the Judge may from time to time by any general or special order direct to be heard in open Court.

(2) Any other matter or application may be heard and determined in Chambers.

Applications in Chambers.

7. Subject to the provisions of the Act and Rules, in every Court : -

(1) The Registrar may under the general or special directions of the Judge hear and determine any application or matter which under the Act and Rules may be heard and determined in Chambers.

(2) Any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court.

(3) Any matter or application may, if the Judge or, as the case may be, the Registrar thinks fit, be adjourned from Chambers to Court or from Court to Chambers.

Motions and Summonses. *Form 1.*

8.—(1) Every application in Court other than a petition shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the sittings of the Court.

(2) Every application in Chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

Place of Sitting of County Court.

9. Subject to the orders of the Lord Chancellor the place of sitting of each County Court having jurisdiction under the Act shall, for the purposes of such jurisdiction, be the town and place in which the Court holds its sittings for the general business of the Court.

Times for holding Courts other than the High Court.

10. Subject to the provisions of the Act, the times of the sitting of each Court other than the High Court, in matters relating to the winding-up of Companies and applications under section 210 of the Act, shall be those which are appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

PROCEEDINGS

Title of proceedings. *Forms 2 and 3*

11.—(1) Every proceeding shall be dated, and shall, with any necessary additions, be intituled in the matter of the company to which it relates and in the matter of the Companies Act, 1948, and otherwise as in Forms 2 or 3 whichever is appropriate. Numbers and dates may be denoted by figures.

(2) The first proceeding shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings subsequent to the first proceeding shall bear the same number as the first proceeding.

Written or printed proceedings.

12. All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Process to be sealed.

13. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any proceedings shall be sealed.

Issue of Summonses.

14. Every summons in proceedings in the High Court shall be prepared by the applicant or his solicitor and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's office a duplicate which shall be stamped with the appropriate stamp and filed.

Orders.

15. Every order, whether made in Court or in Chambers, shall be drawn up by the Registrar, unless in any proceeding, or classes of proceedings, the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made.

File of proceedings in office of Registrar (High Court).

16. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the High Court shall be kept and remain of record in the office of the Registrar and, subject to the directions of the Court, shall be placed in one continuous file, and no proceedings shall be filed in the Central Office.

File of proceedings in Courts other than High Court.

17. In Courts other than the High Court a file of proceedings shall be kept on which, subject to the directions of the Court, all petitions, affidavits, summonses, orders, proofs, notices, depositions and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order.

Office copies.

18. In every Court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

Inspection of file.

19. Every person who has been a director or officer of a Company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of the prescribed fee, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or be furnished with such copies or extracts on payment of the prescribed fee.

Use of file by Board of Trade and Official Receiver.

20. Where, in the exercise of their functions under the Act or Rules, the Board of Trade or the Official Receiver requires to inspect or use the file of proceedings the Registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be.

Defacement of stamps.

21. Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt

of the document deface the stamp thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other Court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

Service of Process and Enforcement of Orders

Service of Process in County Court.

22.—(1) It shall be the duty of the Registrar of a County Court to serve such orders, summonses, petitions and notices as the Court may require him to serve and to execute warrants and other process.

(2) Nothing in this Rule shall require any order, summons, petition, or notice, to be served by a bailiff or officer of the Court which is not specially by the Act or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

Service by post.

23. All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons or document shall be considered as served at the time that the same ought to be delivered in the ordinary course of post by the post office, and notwithstanding the same may be returned by the post office.

Validity of Service.

24. No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of Orders.

25.—(1) Every order of a Court having jurisdiction to wind up a Company, made in the exercise of the powers conferred by the Act and Rules, may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

(2) Every such order of a County Court and every process issued therein may be enforced, executed and dealt with not only by such Court but by any County Court, whether such County Court has jurisdiction to wind up a Company or not, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned Court in the exercise of its ordinary jurisdiction.

Petition

Form of petition. *Forms 4, 5 and 5a.*

26. Every petition shall be in the Forms Nos. 4, 5 or 5a in the Appendix with such variations as circumstances may require.

Presentation of petition.

27. A petition shall be presented at the office or chambers of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the Registrar may, at any time before the Petition has been advertised, alter the time appointed and fix another time.

Advertisement of petition. *Forms 6 and 6a.*

28. Every petition shall be advertised seven clear days before the hearing as follows :—

(1) In the case of a Company whose registered office, or if there shall be no such office then whose principal or last known principal place of business, is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs.

(2) In the case of any other Company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known principal place of business, as the case may be, of such Company is or was situate, or in such other newspaper as shall be directed by the Court.

(3) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 84, and an advertisement of a petition for the winding-up of a Company by the Court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not within the time hereby prescribed or within such extended time as the Registrar may allow duly advertise the petition in the manner prescribed by this Rule the appointment of the time and place at which the petition is to be heard shall be cancelled by the Registrar and the petition shall be removed from the file unless the Judge or the Registrar shall otherwise direct.

Service of petition. *Forms 7 and 8.*

29. Every petition shall, unless presented by the Company, be served upon the Company at the registered office, if any, of the Company, and if there is no registered office, then at the principal or last known principal place of business of the Company, if any such can be found, by leaving a copy with any member, officer or servant of the Company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the Company as the Court may direct; and where the Company is being wound up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding-up the affairs of the Company.

Verification of petition. *Forms 9 and 10.*

30. Every petition shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Copy of petition to be furnished to creditor or contributory.

31. Every contributory, or in the case of a petition for the winding-up of a Company every creditor, of the Company shall be entitled to be furnished by the solicitor of the petitioner with a copy of the petition within 24 hours after requiring same, on paying the prescribed charge for such copy.

PROVISIONAL LIQUIDATOR

Appointment of Provisional Liquidator. *Form 11*

32.—(1) After the presentation of a petition for the winding-up of a Company by the Court, upon the application of a creditor, or of a contributory, or of the Company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the Court, if it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the Provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the Provisional Liquidator is ordered to take possession, and the duties to be performed by the Provisional Liquidator.

(3) Subject to any order of the Court, if no order for the winding-up of the Company is made upon the petition, or if an order for the winding-up of the Company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the Company subject to the supervision of the Court, the Provisional Liquidator shall be entitled to be paid, out of the property of the Company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, including such sum as is or would be payable under the scale of fees for the time being in force where the Official Receiver is appointed Provisional Liquidator, and may retain out of such property the amounts of such costs, charges, and expenses.

(4) Where any person other than the Official Receiver has been appointed Provisional Liquidator and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these Rules the Provisional Liquidator shall pay the Official Receiver such sum, if any, as the Court directs.

HEARING OF PETITIONS AND ORDERS MADE THEREON

Attendance before hearing to show compliance with rules.

33. After a petition has been presented, the petitioner, or his solicitor shall, on a day to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised,

that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the Rules as to petitions have been duly complied with by the petitioner. No order shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this Rule.

Notice by persons who intend to appear. *Form 12*

34. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address, not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition, or if such day be a Monday, not later than one o'clock in the afternoon of the Saturday previous to such day. The notice shall be in Form 12 with such variations as circumstances may require. A person who has failed to comply with this Rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

List of names and addresses of persons who appear on the petition. *Form 13*

35. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors; such list shall be in Form 13. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his solicitor or London agent, to the Court prior to the hearing of the petition.

Affidavits opposition and reply.

36.—(1) Affidavits in opposition to a petition shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor or London agent, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or his solicitor or London agent.

Substitution of creditor or contributory for withdrawing petitioner.

37. When a petitioner for an order that a Company be wound up by the Court or subject to the supervision of the Court is not entitled to present a petition, or whether so entitled or not, where he (1) fails to advertise his petition within the time prescribed by these Rules or such extended time as the Registrar may allow or (2) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or (3) if appearing, does not apply

for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by these rules or consents to withdraw his petition, be made in Chambers at any time.

ORDER TO WIND-UP A COMPANY AND ORDER UNDER SECTION 210 OF THE ACT *Forms 14 and 15*

Notice that winding-up order has been pronounced to be given to Official Receiver.

38. When an order for the winding-up of a Company, or for the appointment of a Provisional Liquidator prior to the making of an order for the winding-up of the Company, has been made, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require.

Documents for drawing up order to be left with Registrar.

39. It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a Company or an order under Section 210 of the Act is pronounced in Court to leave at the Registrar's office all the documents required for the purpose of enabling the Registrar to complete the order forthwith.

No appointment for settling order.

40. Except in the case of an order made under section 210 of the Act it shall not be necessary for the Registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Contents of winding-up order. *Forms 11 and 16.*

41. An order to wind up a Company or for the appointment of a Provisional Liquidator shall contain at the foot thereof a notice stating that it will be the duty of such of the persons who are liable to make out or concur in making out the Company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

Transmission and advertisement of winding-up order. *Forms 17, 18 and 103 (1).*

42.—(1) When an order that a Company be wound up, or for the appointment of a Provisional Liquidator has been made :—

(*a*) Three copies of the order sealed with the seal of the Court shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver.

(*b*) The Official Receiver shall cause a sealed copy of the order to be served upon the Company by prepaid letter addressed to it at its registered office (if any) or if there is no registered office at its principal or last known principal place of business or upon such other person or persons, or in such other manner as the Court may direct, and if the order is that the Company be wound

up by the Court, shall forward to the Registrar of Companies the copy of the order which by section 230 of the Act is directed to be so forwarded by the Company or otherwise as may be prescribed.

(*c*) The Official Receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.

(*d*) The Official Receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

(2) An order for the winding-up of a Company subject to the supervision of the Court shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the Court shall direct.

(3) Where an Order under section 210 of the Act has been made, an office copy of the order shall, unless the Court otherwise orders, be served by the petitioner on the Company and on the Registrar of Companies in like manner as, under paragraph 1 (*b*) of this Rule, the Official Receiver is required to serve a sealed copy of the order, and where such order involves a reduction of capital or alteration of the memorandum of association, the Act and Rules of the Supreme Court relative to such matters shall apply as the Court may direct.

Notice to the Sheriff or Officer charged with execution.

43. For the purposes of section 326 of the Act a notice that (1) a winding-up petition has been presented, or (2) a winding-up order has been made, or (3) a provisional liquidator has been appointed, or (4) a meeting has been called at which there is to be proposed a resolution for the voluntary winding-up of the company, or (5) a resolution has been passed for the voluntary winding-up of the company, shall be in writing and shall be addressed, where the execution is in respect of a judgment of the High Court, to the Sheriff, and in any other case, to the officer charged with the execution, and may be served by being delivered by hand or by registered post, in the case of a notice to a Sheriff, at the office of the Under-Sheriff, and in any other case, at the office of the officer charged with the execution :

Provided that where a winding-up petition is presented or a winding-up order is made or a provisional liquidator is appointed in a County Court, the filing of the petition or the making of the order or the appointment of a provisional liquidator shall, for the purposes of section 326 of the Act, be sufficient notice to the Registrar of that Court, that the petition has been presented or the order made or the provisional liquidator appointed, as the case may be.

TRANSFERS OF ACTIONS AND PROCEEDINGS

Transfer of actions.

44.—(1) Where an order has been made for the winding-up of a Company then if such order was made by the High Court or if the proceedings have been transferred to the High Court the Judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the Company, and any action or proceeding by a mortgagee or debenture holder of the Company against the Company, for the purpose of realising his security, or by any other person for the

purpose of enforcing a claim against the Company's assets or property, which is pending in the High Court or before any Judge thereof shall without further order be transferred to the Judge of the High Court. In the case of applications in Chambers in actions so transferred where the practice in winding-up is different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2) Where any action brought by or against a Company against which a winding-up order has been made is transferred to the Judge of the High Court, the Registrar may, under the general or special directions of the Judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in Chambers. These provisions shall apply to the proceedings in any action in which by the Rules of the Supreme Court or otherwise the Chamber proceedings are directed to be dealt with by the Registrar.

Transfer of proceedings by Judge of High Court. *Form 19*

45. The Judge of the High Court may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court.

Form 19

Transfer of proceedings by Judge of Court other than High Court or Palatine Court.

46. The Judge of any Court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding-up of a Company, not being the High Court or a Palatine Court.

Notice of application to Official Receiver.

47. In a winding-up by the Court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the Official Receiver of the Court in which the proceedings are pending and on the Official Receiver of the Court to which the proceedings are sought to be transferred.

Procedure where proceedings transferred. *Form 20*

48. When an order for the transfer of proceedings has been made:—

(1) The person on whose application the transfer has been made shall lodge with the Registrar of the Court to which the proceedings are transferred a sealed copy of the order of transfer.

(2) In a winding-up by the Court the Official Receiver of the Court to which the proceedings are transferred shall (unless the Court which orders the transfer or the Court to which the proceedings are transferred shall direct that some other Official Receiver shall become Official Receiver in the proceedings) become the Official Receiver in the proceedings.

(3) The records of the proceedings shall be transmitted to the Registrar of the Court to which the proceedings are transferred, and in a winding-up by the Court such Registrar, as soon as he has received the records, shall give notice of the transfer to the Official Receiver of his Court, or other the person who has become Official Receiver in the proceedings and such Official Receiver shall give notice of the transfer to the Board of Trade.

(4) The proceedings shall receive a new distinctive number.

Transfer of jurisdiction of County Court.

49. Whenever the Lord Chancellor by order shall exclude any County Court from having jurisdiction under the Act, or shall attach the district or any part of the district of a County Court to any other County Court, any proceedings pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order and thereupon the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

SPECIAL MANAGER

Appointment of Special Manager.

50.—(1) An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings, and such report shall either state the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager, or that it is, in the opinion of the Official Receiver, desirable that the fixing of such remuneration should be deferred. No affidavit by the Official Receiver in support of the application shall be required.

(2) The remuneration of the special manager shall, unless the Court in any case otherwise directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver.

Accounting by Special Manager. *Form .*

51. Every special manager shall account to the Official Receiver, and the Special Manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added by the Official Receiver to his accounts.

STATEMENT OF AFFAIRS

Preparation of statement of affairs. *Form 72*

52.—(1) A person who under section 235 of the Act has been required by the Official Receiver to submit and verify a statement of affairs of a Company, shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the Registrar the verified statement of affairs.

(2) The Official Receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (*a*) (*b*) (*c*) or (*d*) of subsection (2) of section 235 of the Act for the purpose of investigating the Company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

Extension of time for submitting statement of affairs.

53. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which

thereupon remove the Liquidator or Special Manager, and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this Rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the Court for another Liquidator to be appointed, and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

PUBLIC EXAMINATION

Consideration of report.

61. The consideration of a report made by the Official Receiver pursuant to subsection (2) of section 236 of the Act shall be before the Judge of the Court personally in Chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

Procedure consequent on order for public examination. *Form 27.*

62. Where the Judge makes an order under section 270 of the Act, directing any person or persons to attend for public examination :—

(*a*) The examination shall be held before the Judge : Provided that in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons, including any application as to costs, be held and heard and determined before the Registrar or before any of the persons mentioned in subsection (9) of the said section.

(*b*) The Judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined.

(*c*) Where on an examination held before the Registrar, or one of the persons mentioned in subsection (9) of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the Judge.

Application for day for holding examination.

63. Upon an order directing a person to attend for public examination being made, the Official Receiver shall, unless the Judge shall otherwise direct, without further order, take an appointment for the public examination to be held.

Appointment of time and place for public examination. *Form 28.*

64. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

Notice of public examination to creditors and contributories. *Form 103 (3).*

65.—(1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as

the Official Receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the gazette a notice of the time and place fixed for the adjourned examination.

Default in attending. *Form 29.*

66.—(1) If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

(2) A warrant of arrest issued by the High Court under this Rule shall be issued in the Central Office of the Supreme Court pursuant to an order of the Court directing such issue.

Notes of examination to be filed. *Forms 30 and 31.*

67. The notes of every public examination shall, after being signed as required by subsection (7) of section 270 of the Act, be filed with the Registrar.

PROCEEDINGS BY OR AGAINST DIRECTORS, PROMOTERS, AND OFFICERS

Applications by or against delinquent directors, officers and promoters.

68.—(1) An application made to the Court under any of the following provisions of the Act:—

(*a*) Section 333.

(*b*) Subsections (1) or (2) of section 332.

(*c*) Section 188.

(*d*) Subsection (2) of section 448.

shall in any court other than the High Court be made by motion to the Court. In the High Court the application shall be made by a summons returnable in the first instance in Chambers. The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, and, unless otherwise ordered, shall be served, in the manner in which an originating summons is required by the Rules of the Supreme Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. Where any such application is made by summons no affidavit or report shall be filed before the return of the summons.

(2) On the return of the summons the Court may give such directions as it shall think fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross examination either before the Judge on the hearing in Court or in Chambers of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Official Receiver or Liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

(8) Where any such order as is mentioned in paragraph (2) of this Rule has directed that points of claim and defence shall be delivered then if subsequently to such order and before the summons has been set down for trial or adjourned to the Judge either party wishes to apply for any further direction as to any interlocutory matter or thing he shall restore the summons to the Registrar's list and shall give two clear days' notice in writing to the other party stating the grounds of the application. A copy of such notice shall be filed with the Registrar two clear days before the day for which the summons is restored.

Notice of application.

69. Where the application is made by motion the Court may at any time before making an order require the Official Receiver or Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application and may give any directions it may see fit with regard to any of the matters mentioned in paragraph (2) of the last preceding Rule. Notice of any such intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

Hearing of application.

70.—(1) Where any application under section 188 of the Act is made or heard after a public examination under section 270 of the Act which has been held before the Registrar or any of the persons mentioned in subsection (9) of the said section 270 then unless the Judge shall otherwise direct such application shall be heard and determined by such Registrar or other person.

The Judge shall personally hear all other applications under the said section 188: Provided that in the High Court the Judge may direct that such applications or any of them shall be heard and determined by the Registrar.

(2) Where any order has been made under the said section, any application for leave arising out of such order shall be made in the winding-up of the Company in relation to which such order was made and the dissolution of the Company or the stay of all proceedings in such winding-up shall not be a bar to such application or to the granting of leave.

Use of depositions taken at public examinations.

71. Where, in the course of the proceedings in a winding-up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 270 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in paragraph (1) of Rule 68, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made, who, under section 270 of the Act and the order for the public examination, was or had the opportunity of being present at and taking part in the examination:

Provided that before any such notes of a public examination shall be

used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

WITNESSES AND DEPOSITIONS

Shorthand Notes. *Forms 37 and 38*

72. If the Court or the officer of the Court before whom any examination under the Act and Rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding two guineas a day, and a sum not exceeding 1s. per folio of 72 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the Company as may be directed by the Court.

Committal of contumacious witness. *Form 3.*

73.—(1) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to the Judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The Registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge, and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such report may be made immediately.

Depositions at private examinations.

74.—(1) The Official Receiver may attend in person, or by an assistant Official Receiver, or by counsel or by solicitors employed for the purpose, any examination of a witness under section 268 of the Act, on whosesoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 268 of the Act, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an

examination (other than the notes of the depositions of a person examined at a public examination under section 270 of the Act) shall be forthwith lodged in the Chambers of the Registrar but shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, or any Provisional Liquidator other than the Official Receiver, while he is acting as Provisional Liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

Disclaimer

Disclaimer. *Forms 35 and 36.*

75.—(1) Any application for leave to disclaim any part of the property of a Company pursuant to subsection (1) of section 323 of the Act shall be by ex parte summons. Such summons shall be supported by an affidavit showing who are the parties interested and what their interests are. On the hearing of the summons the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(2) Where a liquidator disclaims a leasehold interest he shall forthwith file the disclaimer at the office of the Registrar. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the liquidator the disclaimer shall be inoperative. A disclaimer shall be in the Form No. 35 and a notice of disclaimer in the Form No. 36 in the Appendix with such variations as circumstances may require.

(3) Where any person claims to be interested in any part of the property of a Company which the liquidator wishes to disclaim he shall at the request of the liquidator furnish a statement of the interest so claimed by him.

Vesting of Disclaimed Property

Vesting of Disclaimed Property.

76.—(1) Any application under subsection (6) of section 323 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any persons shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by demise (including a chargee by way of legal mortgage), or under-lessee of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by the above-mentioned subsection and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security upon the property, and the Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and if he sees fit to make such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN A WINDING-UP BY THE COURT

Report by Official Receiver on arrangements and compromises.

77. In a winding-up by the Court, if application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the Company, and as to any other matters which, in the opinion of the Official Receiver or the Board of Trade, ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING UP BY THE COURT

Collection and distribution of Company's assets by Liquidator.

78.—(1) The duties imposed on the Court by subsection (1) of section 257 of the Act in a winding-up by the Court with regard to the collection of the assets of the Company and the application of the assets in discharge of the Company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.

(2) For the purpose of the discharge by the Liquidator of the duties imposed by subsection (1) of section 257 of the Act, and paragraph (1) of this Rule, the Liquidator in a winding-up by the Court shall, for the purpose of acquiring or retaining possession of the property of the Company, be in the same position as if he were a Receiver of the property appointed by the High Court, and the Court may on his application enforce such acquisition or retention accordingly.

Power of Liquidator to require delivery of property. *Form* [illegible]

79. The powers conferred on the Court by section 258 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a Company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happen to be in his hands for the time being and to which the Company is *primâ facie* entitled.

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT

Liquidator to settle list of contributories. *Form 38.*

80. Unless the Court shall dispense with the settlement of a list of contributories the Liquidator shall with all convenient speed after his appointment settle a list of contributories of the Company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories. As regards representative contributories the Liquidator shall, so far as practicable, observe the requirements of subsection (2) of section 257 of the Act.

Appointment of time and place for settlement of list. *Forms 39 and 40.*

81. The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person

whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest.

Settlement of list of contributories. *Form 41*

82. On the day appointed for settlement of the list of contributories the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the Company.

Notice to contributories. *Forms 42 and 43*

83. The Liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the Court to vary the list. *Form 44.*

84.—(1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list.

(2) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a Company.

Variation of or addition to list of contributories. *Form 45*

85. The Liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

CALLS

Calls by Liquidator. *Forms 46, 47 and 48*

86. The powers and duties of the Court in relation to making calls upon contributories conferred by section 260 of the Act, shall and may be exercised, in a winding-up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 278 of the Act, and to the following regulations :—

(1) Where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call.

(2) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call,

and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper circulating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the Committee of Inspection to be laid before the meeting, in reference to the said intended call.

(3) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the Committee shall be given by resolution, which shall be passed by a majority of the members present.

(5) Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

Application to the Court for leave to make a call. *Forms 49 to 52*

87. In a winding-up by the Court an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Document making the call. *Form 53.*

88. When the Liquidator is authorised by resolution or order to make a call on the contributories he shall file with the Registrar a document making the call in the Form 53 in the Appendix with such variations as circumstances may require.

Service of notice of a call. *Forms 48, 52, 54 and 56*

89. When a call has been made by the Liquidator in a winding-up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

Enforcement of call. *Forms 56, 57 and 58*

90. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the Liquidator.

PROOFS

Proof of debt.

91. In a winding-up by the Court every creditor shall subject as hereinafter provided prove his debt, unless the Judge in any particular

winding-up shall give directions that any creditors or class of creditors shall be admitted without proof.

Mode of proof.

92. A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the Official Receiver or if a Liquidator has been appointed, to the Liquidator; and in any other winding-up the affidavit may be so sent to the Liquidator.

Verification of proof.

93. An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Contents of proof. *Form 59*

94. An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers if any, by which the same can be substantiated. The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

Statement of security.

95. An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

Proof before whom sworn.

96. An affidavit proving a debt may in a winding-up by the Court be sworn before an Official Receiver, or Assistant Official Receiver, or any Officer of the Board of Trade or any Clerk of an Official Receiver duly authorised in writing by the Court or the Board of Trade in that behalf.

Costs of proof.

97. A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

Discount.

98. A creditor proving his debt shall deduct therefrom (*a*) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim and (*b*) all trade discounts.

Periodical payments.

99. When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the Liquidator remains in occupation of premises demised to a Company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the Company, or the Liquidator, of rent during the period of the Company's or the Liquidator's occupation.

Interest.

100. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding-up, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

Proof for debt payable at a future time.

101. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Proof under section 319.

102. Unless the Official Receiver or Liquidator shall in any special case otherwise direct formal proof of the debts mentioned in paragraph (*c*) of subsection (1) of section 319 of the Act shall not be required.

Workmen's wages. *Form 60*

103. In any case in which it appears that there are numerous claims for wages or accrued holiday remuneration by workmen and others employed by the Company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production of bills of exchange and promissory notes.

104. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the Company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, Chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Transmission of proofs to Liquidator.

105. Where a Liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

ADMISSION AND REJECTION OF PROOFS AND PREFERENTIAL CLAIMS AND APPEAL TO THE COURT

Notice to Creditors to prove.

106.—(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding-up may from time

to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the Company are to prove their debts or claims, and to establish any title they may have to priority under section 319 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or as the case may be from objecting to such distribution.

(2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the Statement of Affairs as a creditor, who has not proved his debt, and to every person mentioned in the Statement of Affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the Company and whose claim has not been admitted.

(3) All the Rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

Examination of proof. *Form 61.*

107. The Liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

Appeal by creditor.

108. If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding-up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection.

Expunging at instance of Liquidator.

109. If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging at instance of creditor.

110. The Court may also expunge or vary a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

Oaths.

111. For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding-up by the Court, may administer oaths and take affidavits.

Official Receiver's powers.

112. In a winding-up by the Court the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

Filing proofs by Official Receiver.

113. In a winding-up by the Court the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

Proofs to be filed. *Form 6.*

114. Every Liquidator in a winding-up by the Court other than the Official Receiver shall on the first day of every month, file with the Registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.

Procedure where creditor appeals.

115. The Liquidator in a winding-up by the Court, including the Official Receiver when he is Liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

Time for dealing with proofs by Official Receiver.

116. Subject to the power of the Court to extend the time in a winding-up by the Court, the Official Receiver as Liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

Time for dealing with proofs by Liquidator.

117. Subject to the power of the Court to extend the time, the Liquidator in a winding-up by the Court, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with shall in writing either admit or reject it wholly or in part, or require further evidence in support of it: Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Cost of appeals from decisions as to proofs.

118. The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends in a Winding-up by the Court

Dividends to creditors. *Forms 63 to 68 and 103 (4) and (5).*

119.—(1) Not more than two months before declaring a dividend the Liquidator in a winding-up by the Court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and shall at the same time give notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted : but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the Liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the Registrar under Rule 114, which list shall be in the Form 66 or 67 in the Appendix as the case may be. If the winding-up is in a Court other than the High Court the list shall, on payment of the prescribed fee, be examined by the Registrar, with the proofs tendered for filing and if found correct shall be certified by the Registrar. If the winding-up is in the High Court the Liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(6) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the Liquidator a document in the Form 68 in the Appendix which shall be a sufficient authority for payment of the dividend to the person therein named.

Return of capital to contributories. *Forms 69, 70 and 103 (6).*

120. Every order by which the Liquidator in a winding-up by the Court is authorised to make a return to contributories of the Company shall, unless the Court shall otherwise direct, contain or have

appended thereto a Schedule or List (which the Liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made. The Schedule or list shall be in the Form 70 in the Appendix with such variations as circumstances shall require, and the Liquidator shall send a notice of return to each contributory.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO A WINDING-UP BY THE COURT

First meetings of creditors and contributories.

121. Unless the Court otherwise directs, the meetings of creditors and contributories under section 239 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a Special Manager has been appointed then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

Notice of first meetings to Board of Trade. *Form 105 (2)*

122. The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

Summoning of first meetings.

123. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

Form of notices of first meetings. *Forms 71 and 72*

124. The notices of first meetings of creditors and contributories may be in Forms 71 and 72 in the Appendix, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

Notice of first meeting to officers of company. *Form 73*

125. The Official Receiver shall also give to each of the Officers of the Company, who in his opinion ought to attend the first meetings of creditors and contributories, seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every Officer who receives notice of such meeting to attend if so required by the Official Receiver, and if any such Officer fails to attend the Official Receiver shall report such failure to the Court.

Summary of statement of affairs.

126.—(1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the Company's Statement of Affairs, and to each person appearing from the Company's books or otherwise to be a contributory of the Company a summary of the Company's Statement of Affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make. The

proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

(2) Where prior to the winding-up order the Company has commenced to be wound up voluntarily the Official Receiver may, if in his absolute discretion he sees fit so to do, send to the persons aforesaid or any of them an account of such voluntary winding-up showing how such winding-up has been conducted and how the property of the Company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding-up.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO WINDING-UP BY THE COURT AND OF CREDITORS IN RELATION TO A CREDITORS' VOLUNTARY WINDING-UP.

Liquidator's meetings of creditors and contributories.

127.—(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 346 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator in any winding-up by the Court may himself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

(2) In any creditors' voluntary winding-up the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding-up (such meetings and all meetings of creditors which a Liquidator or a Company is by the Act required to convene in or immediately before such a voluntary winding-up and all meetings convened by a creditor in a voluntary winding-up under these Rules are hereinafter called voluntary liquidation meetings).

Application of rules as to meetings.

128. Except where and so far as the nature of the subject-matter or the context may otherwise require the Rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the said Rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

Summoning of meetings. *Form 75.*

129.—(1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the Company's books to be a creditor of the Company notice of the meeting of creditors, and to every person appearing by the Company's books or otherwise to be a contributory of the Company notice of the meeting of contributories.

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement

of Affairs of the Company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the Company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 297 of the Act the continuing Liquidator or if there is no continuing Liquidator any creditor may summon the meeting.

(4) This Rule shall not apply to meetings under section 293 or section 300 of the Act.

Proof of notice. *Forms 76 and 77*

130. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be by some officer of the Company or its solicitor or the clerk of such Company or solicitor, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of meetings.

131. Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of calling meetings.

132. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the Company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This Rule shall not apply to meetings under sections 293 or 297 of the Act.

Chairman of meeting. *Form 78*

133. Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him shall be Chairman of the meeting. At every other meeting of creditors or contributories the Chairman shall be such person as the meeting by resolution shall appoint. This Rule shall not apply to meetings under section 293 of the Act.

Ordinary resolution of creditors and contributories.

134. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present

personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the Company.

Copy of resolution to be filed.

135. The Official Receiver or as the case may be the Liquidator shall file with the Registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding-up by the Court.

Non-reception of notice by a creditor.

136. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournments. *Form 79.*

137. The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

Quorum.

138.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat in the case of a creditors' meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven or more than twenty-one days from the day from which the meeting was adjourned.

Creditors entitled to vote.

139. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver, not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he claims to be due to him from the Company. In the case of a Court meeting or Liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the Company and such proof has been admitted wholly or in part before the date on which the meeting is held : Provided that this and the next four following Rules shall not

apply to a Court meeting of creditors held prior to the first meeting of creditors.

This Rule shall not apply to any creditors or class of creditors who by virtue of the Rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

Cases in which creditors may not vote.

140. A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the Company, and against whom a Receiving Order in Bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Votes of secured creditors.

141. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Creditor required to give up security.

142. The Official Receiver or Liquidator may, within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent: Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

Admission and rejection of proofs for purpose of voting.

143. The Chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Statement of Security.

144. For the purpose of voting at any voluntary liquidation meetings, a secured creditor shall, unless he surrender his security, lodge with the Liquidator or, where there is no Liquidator, at the Registered Office of the Company, before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

Minutes of meeting. *Form 74.*

145.—(1) The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the Chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 74 in the Appendix.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT AND TO MEETINGS OF CREDITORS IN A CREDITORS' VOLUNTARY WINDING-UP

Proxies.

146. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 139 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other the Chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding Rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

Form of proxies. *Forms 80 and 81.*

147. Every instrument of proxy shall be in accordance with the appropriate form in the Appendix.

Forms of proxy to be sent with notices.

148. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

General proxies.

149. A creditor or a contributory may give a general proxy to any person.

Special proxies.

150. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof :—

(*a*) for or against the appointment or continuance in office of any specified person as Liquidator or Member of the Committee of Inspection, and;

(*b*) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

Solicitation by Liquidator to obtain proxies.

151. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

Proxies to Official Receiver or Liquidator.

152. A creditor or a contributory in a winding-up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding-up the Liquidator or if there is no Liquidator the Chairman of a meeting to act as his general or special proxy.

Holder of proxy not to vote on matter in which he is financially interested.

153. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the Company otherwise than as a creditor rateably with the other creditors of the Company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

Proxies. *Forms 80 and 81*

154.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case a proxy shall be lodged with the Official Receiver or Liquidator in a winding-up by the Court, with the Company at its Registered Office for a meeting under section 293 of the Act, and with the Liquidator or if there is no Liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding-up not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

Use of proxies by deputy. *Form 78*

155. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

Filling in where creditor blind or incapable.

156. The proxy of a creditor blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence: Provided that such witness shall have certified at the foot of the proxy that all such insertions have been made at the request and in the presence of the creditor before he attached his signature or mark.

ATTENDANCE AND APPEARANCE OF PARTIES

Attendance at proceedings.

157.—(1) Every person for the time being on the list of contributories of the Company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of. If the Court shall be of opinion that the attendance of any

such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the Company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person who shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the Company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

Attendance of Liquidator's Solicitor.

158. Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

LIQUIDATOR AND COMMITTEE OF INSPECTION

Remuneration of Liquidator.

159.—(1) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If the Board of Trade are of opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the Liquidator.

(3) If there is no Committee of Inspection, the remuneration of the Liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the Official Receiver as Liquidator.

(4) This Rule shall only apply to a Liquidator appointed in a winding-up by the Court.

Limit of remuneration.

160. Except as provided by the Act or the Rules, a Liquidator shall not under any circumstances whatever make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the Company of which he is Liquidator, or who is employed in or in connection with the winding-up of the Company, any gift, remuneration, or pecuniary or other consideration of benefit whatever beyond the remuneration to which under the Act and the Rules he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

Dealings with assets.

161. Neither the Liquidator, nor any member of the Committee of Inspection of a Company shall, while acting as Liquidator or member of such Committee, except by leave of the Court, either directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, become purchaser of any part of the Company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade in a winding-up by the Court or of any creditor or contributory in any winding-up, and the Court may make such order as to costs as the Court shall think fit.

Restriction on purchase of goods by Liquidator.

162. Where the Liquidator carries on the business of the Company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

Committee of Inspection not to make profit.

163. No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself, or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the Company. In a winding-up by the Court if it appears to the Board of Trade or in a voluntary winding-up if it appears to the Committee of Inspection or to any meeting of creditors or contributories that any profit or payment has been made contrary to the provisions of this Rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the Liquidator's accounts or otherwise.

Costs of obtaining sanction of Court.

164. In any case in which the sanction of the Court is obtained under the two last preceding Rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the Company's assets.

Sanction of payments to Committee.

165. Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the Company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such Committee.

Discharge of costs before assets handed to Liquidator.

166.—(1) When a Liquidator appointed by the Court has notified his appointment to the Registrar of Companies and has given security to the Board of Trade, the Official Receiver shall forthwith put the Liquidator into possession of all property of the Company of which the Official Receiver may have custody: Provided that such Liquidator,

before the assets are handed over to him by the Official Receiver, shall have discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the Company, together with interest on such advances at the rate of four pounds per centum per annum, and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the Company, whether incurred before or after he has been put into such possession.

(2) The Official Receiver shall be deemed to have a lien upon the Company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator all such information respecting the estate and affairs of the Company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

(4) This and the next following Rule shall only apply in a winding-up by the Court.

Resignation of Liquidator.

167. A Liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the Company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the Liquidator, he shall file with the Registrar a memorandum of his resignation and shall send notice thereof to the Official Receiver, and the resignation shall thereupon take effect. In any other case the Liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

Office of Liquidator vacated by his insolvency.

168. If a Receiving Order in Bankruptcy is made against a Liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and Rules shall be deemed to have been removed.

PAYMENTS INTO AND OUT OF A BANK

Payments out of Bank of England.

169. All payments out of the Companies Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

Special Bank account. *Forms 82 and 83.*

170.—(1) Where the Liquidator in a winding-up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the Company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the Company, and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

(2) Where application is made to the Board of Trade to authorise the Liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

BOOKS

Record Book.

171. In a winding-up by the Court the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the Company's affairs; but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the Official Receiver, or the Board of Trade.

Cash Book.

172. In a winding-up by the Court the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the Rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) In a winding-up by the Court a Liquidator other than the Official Receiver shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

(3) In a creditors' voluntary winding-up the Liquidator shall keep such books as the Committee of Inspection or if there is no such Committee as the creditors direct and all books kept by the Liquidator shall be submitted to the Committee of Inspection or if there is no such Committee to the creditors with any other books documents papers and accounts in his possession relating to his office as Liquidator or to the company as and when the Committee of Inspection or if there is no such Committee the creditors direct.

INVESTMENT OF FUNDS

Investment of assets in securities and realisation of securities. *Forms 84 and 85*

173.—(1) Where in a winding-up by the Court or in a creditors voluntary winding-up the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of the Company should be invested, they shall sign a certificate and request, and the Liquidator shall transmit such certificate and request to the Board of Trade.

(2) Where the Committee of Inspection in any such winding-up are of opinion that it is advisable to sell any of the securities in which the moneys of the Company's assets are invested they shall sign a certificate and request to that effect, and the Liquidator shall transmit such certificate and request to the Board of Trade.

(8) Where there is no Committee of Inspection in any such winding-up as is mentioned in paragraphs (1) and (2) of this Rule and in every members' voluntary winding-up whether under the supervision of the Court or not, if a case has in the opinion of the Liquidator arisen under section 362 of the Act for an investment of funds of the Company or a sale of securities in which the Company's funds have been invested, the Liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment or sale mentioned in the certificate, and the Board of Trade may thereupon, if they think fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

ACCOUNTS AND AUDIT IN A WINDING-UP BY THE COURT

Audit of Cash Book. *Form 86*

174. The Committee of Inspection shall not less than once every three months audit the Liquidator's Cash Book and certify therein under their hands the day on which the said book was audited.

Board of Trade audit of Liquidator's accounts. *Form 87*

175.—(1) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts, a summary of the Company's statement of affairs, showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The Liquidator shall also at the end of every six months forward to the Board of Trade, with his Accounts, a report upon the position of the liquidation of the Company in such form as the Board of Trade may direct.

(2) When the assets of the Company have been fully realised and distributed, the Liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the Liquidator shall be verified by him by affidavit.

Liquidator carrying on business. *Forms 88 and 89*

176.—(1) Where the Liquidator carries on the business of the Company, he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amounts of the receipts and payments on such trading account.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any), or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

Copy of accounts to be filed.

177. When the Liquidator's accounts have been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the Registrar, and that copy, together with a copy of the said account delivered to the Court for filing in accordance with section 249 of the Act, shall be open

to the inspection of any person on payment of the same fee as is payable with respect to the inspection of the file of proceedings under Rule 19.

Summary of accounts.

178.—(1) The Liquidator shall prepare a summary of such accounts and shall, subject to any dispensation granted by the Board of Trade under subsection (5) of section 249 of the Act, send a printed copy of that summary by post to every creditor and contributory.

(2) The cost of printing and posting such copy shall be a charge upon the assets of the Company.

Affidavit of no receipts or payments.

179. Where a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the Company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments.

Proceedings on resignation, etc., of Liquidator. Disposal of books.

180.—(1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Official Receiver or, as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of Liquidator. The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver or, as the case may be, to the new Liquidator, all the books, documents, papers and accounts which he is by this Rule required to deliver on his release.

(2) The Board of Trade may, at any time during the progress of the liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers and documents of the Company or of the Liquidator as are no longer required for the purpose of the liquidation may be sold, destroyed or otherwise disposed of.

Expenses of sales.

181. Where property forming part of a Company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

FINAL ACCOUNT IN VOLUNTARY WINDING-UP *Form 110*

182. The account required by sections 290 and 300 of the Act to be made up by the Liquidator as soon as the affairs of the Company are fully wound up shall be in Form No. 110 in the Appendix.

TAXATION OF COSTS *Form 30*

Taxation of costs payable by or to Official Receiver or Liquidator or by Company.

183. Every solicitor, manager, accountant, auctioneer, broker or other person employed by an Official Receiver or Liquidator in a

winding-up by the Court shall on request by the Official Receiver or Liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the Official Receiver or Liquidator for the purpose of taxation and, if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the Liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the Official Receiver or Liquidator shall be in Form No. 90 in the Appendix.

Notice of appointment.

184. Where a bill of costs or charges in any winding-up has been lodged with the Taxing Officer, he shall give notice of an appointment to tax the same, in a winding-up by the Court, to the Official Receiver, and in every winding-up, to the Liquidator and to the person to or by whom the bill or charges is or are to be paid, as the case may be.

Lodgement of Bill.

185. The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a Liquidator, shall be lodged with the Official Receiver, and if incurred after the appointment of a Liquidator, shall be lodged with the Liquidator. The Official Receiver or the Liquidator, as the case may be, shall lodge the bill or charges with the proper Taxing Officer.

Copy of the Bill to be furnished.

186. Every person whose bill or charges in a winding-up by the Court is or are to be taxed shall, on application either of the Official Receiver or the Liquidator, furnish a copy of his bill or charges so to be taxed, on payment of the prescribed charge, which payment shall be charged on the assets of the Company. The Official Receiver shall call the attention of the Liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

Applications for costs.

187. Where any party to, or person affected by, any proceeding, other than a proceeding under section 210 of the Act, desires to make an application for an order that he be allowed his costs, or any part of them, incidental to such proceeding, and such application is not made at the time of the proceeding :—

(1) Such party or person shall serve notice of his intended application on the Official Receiver or on the Liquidator as the case may be.
(2) The Official Receiver or Liquidator may appear on such application and object thereto.
(3) No costs of or incidental to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Certificate of taxation. *Form 91.*

188. Upon the taxation of any bill of costs, charges or expenses being completed, the Taxing Officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges and expenses, together with the allowance or certificate, shall be filed with the Registrar.

Certificate of employment.

189. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker or other person employed by an Official Receiver or Liquidator, is or are payable out of the assets of the Company, a certificate in writing, signed by the Official Receiver or Liquidator, as the case may be, shall on the taxation be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the appointment of a solicitor to assist the Liquidator in the performance of his duties and the instructions given to such solicitor by the Liquidator.

Sheriff's costs.

190. In any case in which, pursuant to subsection (1) of section 326 of the Act, a sheriff is required to deliver goods or money to a Liquidator such sheriff shall without delay bring in his bill of costs for taxation and they shall be taxed by the Taxing Officer and unless such bill of costs is brought in for taxation within one month from the date when the sheriff makes such delivery the Liquidator may decline to pay the same.

Taxation of sheriff's costs after deduction.

191. If a Liquidator shall in writing require any costs which a sheriff has deducted under subsection (2) of section 326 of the Act to be taxed, the sheriff shall within seven days from the date of the request bring in such costs for taxation and they shall be taxed by the Taxing Officer and any amount disallowed on such taxation shall forthwith be paid over by the sheriff to the Liquidator.

Scale of costs in a County Court, and taxation.

192. In a County Court all costs properly incurred in a winding up by the Court shall be allowed on the Lower Scale in Appendix N to the Rules of the Supreme Court, as increased by Order LXV, Rule 10 and Rule 10A of the said Rules, and costs shall be taxed by the Registrar in person.

Review of taxation at instance of Board of Trade.

193.—(1) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the Company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a Registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by the Taxing Officer of the High Court.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the Taxing Officer of the High Court to appoint a time for the review of such taxation and thereupon such Taxing Officer shall appoint a time for the review of, and shall review, such taxation and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by the Taxing Officer of the High Court, the Registrar whose taxation is to be reviewed shall forward to the said Taxing Officer the bill which is required to be reviewed.

(4) The Board of Trade may appear upon the review of the taxation and if, upon the review of the taxation, the bill is allowed at a lower

sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the Official Receiver or the Liquidator, or other person entitled thereto. The certificate of the Taxing Officer shall, in every case of a review by him under this Rule, be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) The costs of and incidental to the review shall be paid out of the assets of the Company or otherwise as the Taxing Officer or the Court may direct : Provided that the cost of the attendance of a principal shall not be allowed if in the opinion of the Taxing Officer he could have been sufficiently represented by his London agent.

Costs and Expenses Payable out of the Assets of the Company

Liquidator's charges.

194.—(1) Where a Liquidator or Special Manager in a winding-up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or Rules to be performed by himself.

(2) Where a Liquidator is a solicitor he may contract that the remuneration for his services as Liquidator shall include all professional services.

Costs payable out of the assets. Costs.

195.—(1) The assets of a Company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the Company has previously commenced to be wound up voluntarily such remuneration, costs and expenses as the Court may allow to a Liquidator appointed in such voluntary winding-up shall, subject to any order of the Court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887,[2] apply, subject to that Act as modified by the Act, be liable to the following payments, which shall be made in the following order of priority, namely:—

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next.—The remuneration of the special manager (if any).

Next.—The costs and expenses of any person who makes or concurs in making, the Company's statement of affairs.

Next.—The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the Company.

Next.—The necessary disbursements of any Liquidator appointed in the winding-up by the Court, other than expenses properly incurred in preserving realising or getting in the assets heretofore provided for.

Next.—The costs of any person properly employed by any such Liquidator.

[2] 50 & 51 Vict. c. 43.

Next.—The remuneration of any such Liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Board of Trade.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 56 and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar. The Taxing Officer shall, before passing the bills or charges of a solicitor, satisfy himself that the appointment of a solicitor to assist the Liquidator in the performance of his duties has been duly sanctioned: Provided that the Official Receiver when acting as Liquidator may, without taxation, pay and allow the costs and charges of any person employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of 5 guineas so, however, that the Board of Trade may require such costs or charges to be taxed by the Taxing Officer.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against a Company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the Company or the Liquidator, or the rights of the person to whom such costs are payable.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF COMPANIES

Conclusion of winding-up.

196. The winding-up of a Company shall, for the purposes of section 342 of the Act, be deemed to be concluded

(*a*) in the case of a Company wound up by order of the Court, at the date on which the order dissolving the Company has been reported by the Liquidator to the Registrar of Companies, or at the date of the order of the Board of Trade releasing the Liquidator pursuant to section 251 of the Act.

(*b*) in the case of a Company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the Company, unless at such date any funds or assets of the Company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

Forms 77 to 79

Times for sending Liquidator's statements, and regulations applicable thereto.

197. In a voluntary winding-up or a winding up under the supervision of the Court, the statements with respect to the proceedings in and position of the liquidation of a Company the winding-up of which is not concluded within a year after its commencement shall be sent to the Registrar of Companies twice in every year as follows

(1) The first statement, commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction,

and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent. In cases in which the assets of the Company have been fully realised and distributed before the expiration of a half-yearly interval a final statement shall be sent forthwith.

(2) Subject to the next succeeding Rule, Form No. 92, and where applicable Forms 94, 95 and 96, with such variations as circumstances may require, shall be used, and the directions specified in the Form (unless the Board of Trade otherwise direct) be observed in reference to every statement.

(3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

Affidavit of no receipts or payments. *Forms 92 and 93*

198. Where, in a voluntary winding-up or a winding-up under the supervision of the Court, a Liquidator has not during any period for which a statement has to be sent received or paid any money on account of the Company, he shall, at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the Liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF A LIQUIDATOR

Payment of undistributed and unclaimed money into Companies Liquidation Account.

199.—(1) All money in the hands or under the control of a Liquidator of a Company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator, shall forthwith on the expiration of the six months be paid into the Companies Liquidation Account.

(2) In a voluntary winding-up or a winding-up under the supervision of the Court, all other money in the hands or under the control of a Liquidator of a Company, representing unclaimed or undistributed assets or held by the Company in trust which, under subsection (1) of section 848 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this Rule, any moneys in the hands of the Liquidator at the date of the dissolution of the Company representing unclaimed or undistributed assets or dividends or held by the Company in trust in respect of dividends or other sums due to any person

as a member of the Company shall forthwith be paid by him into the Companies Liquidation Account.

(4) A Liquidator, whose duty it is to pay into the Companies Liquidation Account at the Bank of England money representing unclaimed or undistributed assets of the Company or held by the Company in trust in respect of dividends or other sums due to any person as a member of the Company, shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying in order shall be an authority to the Bank of England to receive the payment.

(5) In a voluntary winding-up or a winding-up under the supervision of the Court, money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the Companies Liquidation Account pursuant to paragraph (2) of this Rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account: Provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account. If and when the money represented by the securities is required wholly or in part for the purposes of the Liquidation, the Board of Trade may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other monies paid into the said Account may be dealt with.

Liquidator to furnish information to Board of Trade. *Form 91*

200. In a voluntary winding-up or a winding up under the supervision of the Court, every person who has acted as Liquidator of any Company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the Company or held by the Company in trust in respect of dividends or other sums due to any person as a member of the Company, and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

Board of Trade may call for verified accounts. *Forms 92, 93 to 96*

201.—(1) In a voluntary winding-up or a winding-up under the supervision of the Court, the Board of Trade may at any time order any such person as is mentioned in the preceding Rule to submit to them an account verified by affidavit of the sums received and paid by him as Liquidator of the Company, and may direct and enforce an audit of the account.

(2) For the purposes of section 313 of the Act, and the Rules, the Court has and may exercise all the powers conferred by the Bankruptcy Act, 1914,[3] with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 848 of the Act.

Application to the Court for enforcing an account, and getting in money.

202. An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England

[3] 4 & 5 Geo. 5, c. 59.

pursuant to section 343 of the Act shall be made by motion and, where the winding-up is by or under the supervision of the Court, shall be made to and dealt with by the Judge, and in a voluntary winding-up shall be made to and dealt with by the Judge of the High Court.

Application for payment out by person entitled.

203. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 343 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct.

Application by Liquidator for payment out.

204. A Liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 343 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the Liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

RELEASE OF LIQUIDATOR IN A WINDING-UP BY THE COURT

Proceedings for release of Liquidator. *Forms 98 to 100 and 103 (a).*

205.—(1) A Liquidator in a winding-up by the Court, before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding-up.

(2) When the Board of Trade have granted to a Liquidator his release, a notice of the order granting the release shall be gazetted. The Liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the Company's assets.

Disposal of books and papers.

206.—(1) The Board of Trade may order that the books and papers of a Company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the Company) as the Board thinks proper.

(2) Any creditor or contributory may make representations to the Board with regard to the destruction of such books and papers and may appeal to the Court from any order made by the Board under this Rule.

(3) Subject to any order of the Court, the Board of Trade may by a further order vary or rescind any order made by it under this Rule.

(4) A resolution for the destruction of the books and papers of such a Company within the said period of five years, or any shorter period fixed by an order of the Board in force at the date of such resolution, shall not take effect until the expiration of such period of five years or of such shorter period unless the Board shall otherwise direct.

(5) At least one week's notice shall be given to the Board of Trade of any application to the Court for an order for the destruction of the books and papers of a Company before the expiration of such period of five years or shorter period.

Official Receivers and Board of Trade

Appointment.

207.—(1) Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

(2) When the Board of Trade appoint any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be given by letter to the Court to which such Official Receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights and powers, and be subject to all the liabilities of an Official Receiver.

Removal.

208. Where an Official Receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the Official Receiver was attached.

Personal performance of duties.

209. The Board of Trade may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding-up of Companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant Official Receivers.

210. An assistant Official Receiver appointed by the Board of Trade shall be an officer of the Court as fully as the Official Receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in Court or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

Power of Officers of Board of Trade and Official Receivers clerks in certain cases to act for Official Receivers.

211. In the absence of the Official Receiver, any Officer of the Board of Trade duly authorised for the purpose by the Board of Trade and any clerk of the Official Receiver duly authorised by him in writing may, by leave of the Court, act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

Duties where no assets.

212. Where a Company against which a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

Accounting by Official Receiver.

213.—(1) Where a Liquidator is appointed by the Court in a winding-up by the Court, the Official Receiver shall account to the Liquidator.

(2) If the Liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as may be deemed expedient.

(3) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is Liquidator, but he

shall account in such manner as the Board of Trade may from time to time direct.

Official Receiver to act for Board of Trade where no committee of inspection.

214. Where there is no Committee of Inspection in a winding-up by the Court any functions of the Committee of Inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver.

Appeals from Board of Trade and Official Receiver.

215. An Appeal in the High Court against a decision of the Board of Trade, or an Appeal to the Court from an act or decision of the Official Receiver acting otherwise than as Liquidator of a Company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced or made.

Applications under s. 250 and s. 334 (3) of the Act.

216.—(1) An application by the Board of Trade to the Court to examine on oath the Liquidator or any other person, pursuant to section 250 of the Act, or to confer on the Board, or any person designated by the Board for the purpose with respect to the Company concerned, the powers of investigating the affairs of the Company mentioned in sub-section (3) of section 334 of the Act, shall be made *ex parte*, and shall be supported by a report to the Court filed with the Registrar, stating the circumstances in which the application is made.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS

Books to be kept by Officers of Courts. *Forms 101 and 102*

217.—(1) In the High Court the Registrar, and in the District Registries of the High Court at Liverpool and Manchester respectively, the District Registrars of the High Court, and in a Court other than the High Court the Registrar shall keep books according to the Forms 101 and 102 in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2) The Officers of the Courts whose duty it is to keep the books prescribed by these Rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

GAZETTING IN A WINDING-UP BY THE COURT

Gazetting Notices. *Form 103*

218.—(1) All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or the Rules requiring publication in the *London Gazette* shall be gazetted by the Board of Trade.

(2) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations at the expense of the Company's assets or otherwise as the Board of Trade may direct.

Filing Memorandum of Gazette Notices.

Form 104

219.—(1) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings, the Official Receiver or Liquidator, as the case may be, shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the Official Receiver or Liquidator, as the case may be, shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted shall be left with the Official Receiver or Liquidator, as the case may be, by the person who inserts the advertisement.

(4) A memorandum under this Rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

ARRESTS AND COMMITMENTS

To whom warrants may be addressed.

220. A warrant of arrest or any other warrant issued under the provisions of the Act and Rules may be addressed to such Officer of the Court as the Court may in each case direct, or to the Registrar of any County Court, whether such County Court has jurisdiction to wind up a Company or not.

Prison to which person arrested on Warrant is to be taken.

221. Where the Court issues a warrant for the arrest of a person under any of the provisions of the Act or Rules, the prison (to be named in the warrant of arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases of orders of commitment made in the exercise by the Court of its ordinary jurisdiction.

Forms 10 and 106

Execution of Warrant of Arrest outside ordinary jurisdiction of Court.

222. Where a warrant for the arrest of a person has been issued by a Court other than the High Court under any of the provisions of the Act and Rules, the Registrar or other Officer of the Court to whom the warrant is addressed may send the warrant of arrest to the Registrar of any other Court (other than the High Court) within the ordinary jurisdiction or district of which such person shall then be or be believed to be, with a warrant in the Form 105 endorsed thereon or annexed thereto, under the seal of the Court from which the warrant originally issued, requiring execution of the warrant by the Court to which it is so sent, and the Registrar of the last-mentioned Court shall seal or stamp the warrant with the seal of his Court and endorse on it a notice in the Form 106 and all Constables and Peace Officers shall aid and assist within their respective districts in the execution of such warrant.

Prison to which a person arrested is to be conveyed, and production and custody of persons arrested.

223.—(1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Act and Rules (other than sections 268 and 271 of the Act and Rule 66 of the Rules) he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended and kept therein for the time mentioned

in the warrant of commitment, unless sooner discharged by the order of the Court which originally issued the warrant of commitment, or otherwise by law.

(2) Where a person is arrested under a warrant issued under section 268 or section 271 of the Act or under Rule 66 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended and the Governor or Keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law: Provided that where any such person is conveyed to a prison other than the prison used by the Court which originally issued the warrant in cases of orders of commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may by order direct such person to be transferred to such last mentioned prison and on receipt of such order the Governor or Keeper of the prison to which such person has been conveyed shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the Governor or Keeper of such last mentioned prison shall, on production of such Order and of the warrant of arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

MISCELLANEOUS MATTERS

Board of Trade orders.

224. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the Rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's Printer and purport to be issued under the authority of the Board of Trade.

Enlargement or abridgment of time.

225. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

Formal defect not to invalidate proceedings.

226.—(1) No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of an Official Receiver, Liquidator or member of a Committee of Inspection shall vitiate any act done by him in good faith.

Application of existing procedure.

227. In all proceedings in or before the Court, or any Judge, Registrar or Officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice, procedure and regulations shall, unless the Court otherwise in any special case directs, in the High Court be in accordance with the Rules of the Supreme Court and practice of the High Court.

and in a Palatine Court and County Court in accordance, as far as practicable, with the existing Rules and practice of the Court in proceedings for the administration of assets by the Court.

Petitions in Liverpool and Manchester District Registries.

228. The provisions of Rule 2 of the Rules of the Supreme Court, 1887,[4] relating to petitions in the District Registries of Liverpool and Manchester, shall apply to petitions presented in those Registries under the Act and Rules.

Annulment.

229. The Companies (Winding-up) Rules, 1929,[5] and all rules amending or supplementing the same and the forms thereby prescribed,[6] are hereby revoked and annulled, except so far as they relate to any winding-up which commenced before the first day of January, 1891 : Provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said rules and orders shall be revived by reason of the revocation and annulment hereby effected.

Short title and commencement.

230. These Rules may be cited as the Companies (Winding-up) Rules, 1949. They shall come into operation on the fourteenth day of March, 1949.

Jowitt, C.

I concur, *Harold Wilson*,
President of the Board of Trade.

The 28rd day of February, 1949.

[4] Rules of the Supreme Court, May, 1887 (S.R. & O. Rev. 1904, XII, Supreme Court, E., p. 131)
[5] S.R. & O. 1929 (No. 612), p. 208
[6] See S.R. & O. 1929 (No. 1177), p. 340; 1931 (No. 70), p. 104; 1932 (No. 802), p. 186; 1933 (No. 234), p. 521; 1937 (No. 115), p. 424 and 1944 (No. 655), I, p. 45

INDEX

A List, 392

Abridged Prospectus, 336

Abroad,
execution of deeds, 480
property situate, company charging, 261, 264
seal for use, 249, 480
shareholders resident, notices to, 221

Accounts, 209 *et seq.*, 533 *et seq*
articles, provisions in, 211
audit of, 215
copies of, to members, 213
directors' duty to keep, 209
directors' emoluments to be shown, 211, 560
group accounts, 210
inspection of,
by members, 212
by debenture holders, 213
directors, right of, 212
inspectors, Board of Trade, by, 213
liabilities of directors if not kept, 211
obligation to keep, 209
receivers and managers of, 634
Table A as to, 682
winding-up, right of inspection ceases on, 212

Actions,
calls for, 128
company, against, service of writs on, 222
debenture holder, by, 312, 319
in name of company, 229
minority of members, by, 229
stay of, in winding-up, 404

Adjournment of General Meetings,
discretion of chairman, as to, 156
meeting, of, no fresh notice necessary, 156
resolutions at, 156

Adjusting,
rights of contributories, 394

Advertisements,
bearer debenture holder, to, 290
notice to shareholders by, 221
winding-up petition, of, 384
injunction to restrain, 384

Affidavits,
winding-up, in, 384

Age Limit,
directors, 184

Agent,
application for shares by, 83, 318
director, how far an, 157, 158, 209
estoppel by acts of, 57
illegitimate profit by, 447
liability of company for acts of, 52

Agreement. *See* Contract.

Alien Enemy. *See* Enemy.

Allotment, 83 *et seq*
conditional, 92
delay in, 92
duty of directors as to, 84
filing of contract for, 90
first public, when it may be made, 84
irregular
effect of, 86
right to repudiate, 87
letter of, stamp on, 90
nominee to, 318
none necessary in case of subscribers of memorandum, 82
notice of, 88
not valid if made after opening of subscription list, 88, 489
quotation on Stock Exchange application for, 88, 490
return as to, stamp on, 90
restrictions on, 84
returns as to, 98, 490
untainted, whether director, 180
waiver of notice of, 89

Alteration,
articles of association, of, 65 *et seq*, 472
limits of, 35, 36
capital, 69, 70, 74
memorandum of association of, 59, 70
objects of company, 59
preferential rights, 72

Amalgamation, 437, 438, 564, 597
by sale of shares, 442
by sale under power in memorandum of association, 438
stamp duty on, 439

Ambiguity,
memorandum of association in, 26
prospectus, in, 347

Amendments
to proposed resolutions, 155, 156

'And Reduced',
use of, 70

Annual Meeting. *See* Meetings.

Annual Returns, 100, 520, 523
certificates to be sent with by private company, 357, 523, 711
contents of, 101, 706
list of members, 100, 101
private companies, 356, 706
signature of, 101, 522
summary, 100, 101

Application for Shares, 83
agent, by, 83

APPORTIONMENT ACT, 1870,
directors' remuneration, 168
dividends, 205

ARBITRATION,
provision in articles, 30
valuation of interest of dissentient shareholders, 436

ARRANGEMENTS, 439 *et seq.*
classes of shares, 140
combined with reconstruction, 441
creditors and contributories, with, 439
deeds of arrangement, 442
involving reduction of capital, 111
proxies, 440
under s. 206, 439
under s. 306 ..112

ARREARS
of preference dividends, 66

ART,
association formed to promote, 230

ARTICLES OF ASSOCIATION, 13, 25 *et seq*
alteration of, 35 *et seq.*, 472
breach of contract by, 37
limit of, 36
retrospective, 35
special or preferential rights in, 72
appointment of solicitor in, effect of, 30
arbitration, provision for, in, 30
binding force of, 27, 28, 475
company, how far binding on, 29
constructive notice of, 32
contract implied from acting on, 30
contract with outsider, how far, 30
copies of, members entitled to, 25, 176
definition of, in Companies Act, 9
exclusion of Table A, 25
exemption clauses, 192
members, how far binding on, 28
memorandum of association, controlled by, 26
persons dealing with company bound to read, 32
printed, must be, 28, 472
rectification by court, 37
registration of, 14, 472
regularity, presumption of, 32
signature of, by subscribers, 25, 472
stamping, 11, 25
subordinate to memorandum of association, 26
subscription, form of, 25
Table A, exclusion of, 25
ultra vires provisions in, 26
when required, 25, 472

ASSETS,
distribution of, in winding-up, 394
surplus, 394
unclaimed and undistributed, 414, 620

ASSOCIATION CLAUSE, 23

ASSOCIATIONS,
not for profit, 239
unregistered, distribution of assets of, 373

ASSURANCE COMPANIES ACTS, 1909 AND 1946...369
balance sheets, 310
deposits, 369
funds, 370
novation under Act of 1872...371
transfer and amalgamation, 371
winding up, 371

ATTORNEY *See* POWERS OF ATTORNEY.

AUDIT,
accounts, of, 215
liquidator's accounts, by Board of Trade, 390
Table A, 683

AUDITORS,
agents of company, how far, 219
appointment of, 215, 540
Board of Trade may appoint, 215
books, access to, 219, 543
disqualified persons, 216
duties of, 216 *et seq.*, 539, 543
general meetings, right to attend, 219
inspection, right of, 219
insurers, are not, 217
lien, 219
misfeasance by, 218, 110 *et seq.*
notice of intention to appoint, 215
officers of company, when, 218, 111
remuneration of, 215, 216, 540
reports by, 216
attached to balance sheet, 539
Statute of Limitations, may set up, 218

B LIST, 392

BALANCE ORDER, 393

BALANCE SHEET,
assurance company, of, 370
auditor's report to be attached to balance sheet, 539
duty as to, 216 *et seq.*
consolidated accounts, 210
contents of, 209, 210, 534, 715 *et seq.*
copies of, to be sent to members, 213, 539
duty of directors, 209
false, liability, 195
group accounts, 210
inspection, right of, 212, 534, 539
private company, 356, 522, 523
signing of, 210, 538
submitted at *ordinary meeting*, to be, 210
subsidiary companies, 210

BANK OF ENGLAND,
payment of money into, in winding-up 590

BANK OF ISSUE,
unlimited liability as to notes, 655

BANKING ACCOUNT,
power of company to keep, 47

BANKING COMPANY,
customers to be given notice on registration, 654
illegal, when, 373
privileges of, making annual returns, 655

BANKRUPTCY,
compulsory transfer of shares on, 120
director's disqualification by, 171
disclaimer of shares by trustee 119
rules apply in winding-up, when, 396
trustee in, rights as to shares, 119
voting after, 150

BEARER,
debenture to, 287 *et seq.*
indorsed conditions of, 289
negotiability, 292 *et seq*
share warrants to, 120, 503

BILLS OF EXCHANGE, 255 *et seq*., 480
acceptance by director in name of company, 32, 255
acceptance under seal, 256
company's power to issue, 255
name of company with 'limited' must appear on, 256
personal liability of director, when, 256, 257
signed 'for or on account of' the company, 255
trading company has implied power to issue, 255

BILLS OF SALE,
registration, 264, 269, 303

BLANK,
debentures in, deposit of, effect of 306
instrument of proxy, 154
transfers,
of debentures, 304
of shares, 113

BOARD MEETINGS,
irregularities at, 180
liability for not attending, 190
minutes of, 233
form of, 235
notice of, 179
proceedings at, 179
quorum at, 180
resolutions of, 181

BOARD OF TRADE,
annual report in winding-up, 662
authentication of documents, 662
control of, over liquidator, 587
investigation by inspectors, 103 213, 543–550
licence to register a company without using word 'limited', 239, 474
orders and certificates of, to be received in evidence, 662
power to inquire into share ownership, 103
power to vary requirements as to balance sheets, 210
powers, where no committee of inspection, 589
power to alter tables and forms, 662

BONA VACANTIA, 415, 625

BONUS, 206

BONUS SHARES,
gift of, illegal, 52
stamp duty on, 207
surtax on, 208
tenant for life, right of, to 206
treated as capital, when, 206

BOOK DEBTS,
mortgage of, and registration 264, 266
what are, 267

BOOKS,
charge on, 310
disposal of, in winding up 620
evidence to be in winding up 620
inspection of, 201

BORROWING, 258 *et seq*
before company entitled to commence business, 14, 15
company power of, 258
constructive notice of limit 263
exercise of, by directors, 259 262 263
implied, when, 258
limit of 258
memorandum, when must be given by 18
mode of borrowing 261
objects clause 18
overdrawing banking account is a borrowing 262
security power of company to give 259
subrogation where moneys borrowed ultra vires, 262
ultra vires 262
uncalled capital charging 259 *See* UNCALLED CAPITAL
receiver in debenture action, by 318

BREACH OF TRUST
director liability for, 190

BRIBE,
directors to 175 191

BROKERAGE
payment by company, 50, 320 *et seq*

BUILDING SOCIETY 6
company, is not a 6
liability of members 6
winding up, 377

BUSINESS *See* COMMENCEMENT OF BUSINESS
power in memorandum to sell, 438 *et seq*

BUSINESS NAMES,
registration, 212, 734

CALLS, 126 *et seq*.
action for, 127
allotment moneys not a call, 127
bankrupt member, 128
deceased member, 128
directors' discretion, 127
enforcing payment of, 128
forfeiture of shares for non-payment of, 130

CALLS—*continued*.
injunction to restrain, 129
instalments are not, 126
instalments, payable by, 127
interest on, 128
irregularity, 127
liability after forfeiture for, 182
limitation, period for, 127
misrepresentation, no defence to action for, 129
notice of call, time for, 127
pari passu, should be, 127
payment in advance of, 129
power of court to make, in winding up, 590
power of making, a trust, 126
resolution for, 127, 181
specialty debts, are, 128
transferee's liability for arrears of, 110
transferor, while transfer unregistered, liable for, 110
winding-up, in, 127, 393, 394

CANCELLATION OF SHARES,
not agreed to be taken, 74, 75

CAPITAL,
accretions to, 201
alterations of, 69 *et seq.*
under Table A, 674
amount of, to be stated in memorandum, 21
cancellation of, 74, 75
circulating, what is, 201
classes of shares, 22, 64, 65, 70
dividends, payment out of, ultra vires, 200
duty on, 14, 71
'fixed', loss of, whether it affects profits, 201
increase of, 69
notice to be given to registrar, 70
interest on, payment of, 208, 497
loss of, 76
dividends notwithstanding, 203
nominal, how fixed, 21, 64
reduction of, 73. *See* REDUCTION OF CAPITAL.
reorganisation of, 80
reserve, mortgaging, 260
uncalled, mortgaging, 259. *See* UNCALLED CAPITAL.

CAPITALISATION OF PROFITS, 207
surtax, on, 208, 452

CARRYING ON BUSINESS
with less than seven (or two) members, prohibition against, 43

CASH,
dividends, payable in, 207
meaning of, 100
payment for shares in, 96

CERTIFICATE,
debenture stock, of, 311
deposit of, 301, 302
form of, 311
estoppel of company, by. *See* ESTOPPEL.
exemption, of, 337, 482
forged, 123
incorporation, of, 38
conclusiveness of, 38, 39, 473
form of, 14
scrip, stamps on, 125
shares,
delivery, time limit, 122
deposit of, by way of equitable mortgage, 125
estoppel by, 124
form of, 122
lost, renewing, 125
note at foot, 125
object of, 122, 123
prima facie evidence, to be, 122, 502
stamp not required for, 125

CERTIFICATION, 117
effect of, 117
estoppel by, 117
Stock Exchange rules, 118

CHAIRMAN,
adjournment of meeting, discretion as to, 149, 156
declaration when conclusive, 149, 150, 226
general meetings, of, 149
minutes signed by, prima facie evidence, 233

CHANGE,
name, of, by company, 239, 474
registered office, of, 231

CHARGE *See* DEBENTURE; FLOATING CHARGE; MORTGAGES AND CHARGES.
books, on, validity of, 310
'created', when, 267
floating, nature of, 296
registration of, 263, 512
specific, after floating charge, 296, 299

CHARGING ORDERS,
effect of, 114

CHARITY,
association formed to promote, 239, 474

CHARTER,
company incorporated by royal, 2
powers of, 2

CHEQUE,
by company, 256
when 'payment' for shares, 86

CIRCULAR,
a prospectus, when, 333, 663

'CIRCULATING' CAPITAL, 201, 202

CLASS MEETINGS, 72, 73

'CLOGGING THE EQUITY',
debentures, as affecting, 273, 305

CLOSING REGISTER
of debentures, 281
of members, 103

CO-DIRECTOR,
fraud of, directors not liable for, 190

COLLECTING SOCIETIES,
restrictions on voting by collectors 151

COLONIAL COMPANIES,
winding-up, 377

COLONIAL REGISTER OF MEMBERS *See* DOMINION REGISTER

COMMENCEMENT OF BUSINESS 44
companies inviting subscriptions for shares, 44
companies not so inviting, 44
contracts before, are provisional only 45
minimum subscription before when requisite, 44
private companies, 15, 355 356
restrictions on, 44, 514

COMMERCE,
association formed to promote 230

COMMISSION,
for subscribing or underwriting shares 97, 329, 491
statement in balance sheet 431
underwriter, to See UNDERWRITING

COMMITTEE,
delegation by directors to 181
resolution for appointment of 182

COMMITTEE OF INSPECTION
appointment of, in winding up, 391, 598
powers of the court over, 391

COMMON SEAL *See* SEAL

COMPANY,
corporate existence and powers of 41
guarantee, limited by *See* GUARANTEE COMPANY, LIMITED BY
incorporation, certificate of, 14, 38
legal persona, a, 41
partnership and, contrasted, 41 42
person is a, 41
unincorporated, 4

COMPENSATION,
for misstatement in prospectus, 348
death of director, on, 349
limitation of action for, 349
loss of office, for, 176, 557

COMPROMISE,
under s. 245 . 407, 584
under s. 206...439, 568

COMPULSORY WINDING UP ORDER *See* WINDING UP, COMPULSORY

CONCLUSIVENESS,
certificate of incorporation of, 38, 39
chairman's declaration of, 149, 150, 226

CONDITION,
application for shares on 92

CONDITIONS,
debenture to bearer, indorsed on, 288 *et seq.*
indorsed on registered debenture, 277 *et seq.*

CONSIDERATION OTHER THAN CASH
contract to be registered, 96, 97
future services, 96
illusory or fraudulent, 97

CONSOLIDATION
of classes of shares, 80
of shares 71

CONSTRUCTION
general words, of, 54
memorandum of association of 53 *et seq.*

CONSTRUCTIVE NOTICE
limit of borrowing power, of, 268
of memorandum and articles, 92 *et seq*
to company 223

CONTEMPT OF COURT
company, by 41

CONTRACT,
alteration of terms before statutory meeting 140, 484
before commencement of business 45 243 514
before incorporation 243
charge for on property abroad, 260
company, by,
capacity of company, 243, 244
how made 244 *et seq*
debentures
to issue 308,
to take 310
specific performance of, 310
directors, by
power to make 244
share qualification, to acquire, 164, 165
with company, 175
directors liability as to 157 158, 184
disclosure in prospectus, 339 360
filing under Companies Act, 1867, 98 99
form of, 244 *et seq*
implied from acting on articles 31
oral how made, 245
paid up shares, registration, 98
provisional, 45
ratification of by companies, 243
rescission of, 344
seal under 245 247
shares, to take, 61, 93 *et seq.*
signature of on behalf of company, 244
specific performance of, 95
ultra vires 243
under hand, form of 245
under seal, form of 245, 247
variation of, mentioned in prospectus, 338
voidable contract to take shares 86, 87, 314

CONTRIBUTION,
directors, between 197
member, by, of company limited by guarantee, 364

CONTRIBUTORIES,
adjusting rights of, 394, 602
balance order against, 393
bankruptcy of, 395
B list, 392

CONTRIBUTORIES—*continued.*
calls, on, 393
death of, 395
first meetings of, 388, 582
liability, 392, 578
list, settling, 392
meetings of, in winding-up, 388, 582
notice to, by liquidator, 392
petition by, to wind up, 381
set-off against, 397
voluntary winding-up, in, 423
who are, 392
wishes of, 407

CONTROLLING COMPANY,
definition of, 211
cannot hold shares in subsidiary, 92

CONTROLLING INTEREST, 456

CONVERSION,
company, of, into private company, 357
private company into public, 363
shares, of, into stock, 71, 495

CONVEYANCE,
by company, form of, 241
to company, 241

CONVICTED PERSONS,
may not manage company, 184, 555

COSTS,
payable out of assets on winding-up, 386, 423, 434
security for, 387, 661

COUNTY COURT,
jurisdiction of, 375

COUPON,
debenture to bearer, on, 288, 289

COURT,
application to, in voluntary winding-up, 420
power to convene meetings, 144
winding-up, having jurisdiction in, 375

COURTS (EMERGENCY POWERS) ACT, 331

CREDITORS,
arrangements with, 439
first meetings of, in winding-up, 388
liquidator, rights against, 395
meetings of, in winding-up, 388, 582
preferential, 317
proof by, in winding-up, 395, 396
secured, 401
set-off, 396
winding-up petition by, 379, 578
wishes of, in winding-up, 407, 434

CRIMINAL LIABILITY,
company, of, 41
directors, of, for fraud, 195
fictitious dividend, 200

CROWN DEBTS,
priority in winding-up, 398

CUMULATIVE DIVIDENDS, 65

CURRENCY,
debenture interest, 287
dividends, 207

DAMAGES,
delinquent directors, against, 184 *et seq.*

DEADLOCK,
power of court to appoint receiver, 144
winding-up, in case of, 378

DEATH,
cesser of membership by, 98
director, of, 412
of member after call, 128

DEBENTURE HOLDERS,
action, costs in, 320
conduct of, 319, 320
copy of balance sheet, right to, 212
foreclosure, 319
proof in winding-up, 320, 321
register of, 279
remedies of, 312 *et seq.*

DEBENTURES, 272 *et seq.* *And see* DEBENTURE HOLDERS; DEBENTURE STOCK; DEBENTURES TO BEARER; REGISTERED DEBENTURES.
abroad, property situate, 260
action respecting, 319
agreement to issue, 306
bearer, to, 287 *et seq.* *See* DEBENTURE TO BEARER.
capable of being registered, 291
Bills of Sale Acts, whether applicable to, 303
blank transfers, 304
book debts, charge on, 264, 267
books, charge on, 310
charge in, 276
charge, not containing, 272
classes of, 273
clogging the equity, 273, 305
conditions indorsed on, 277, 289
currency in which payable, 281
current account, to secure, 308
date for payment, 274, 275
deposit of, to raise loan, 306
discount, issue at, 305
equities, clause excluding, 280, 282
power to assign, free from, 282
floating charge in. *See* FLOATING CHARGE.
foreclosure, 319
foreign property secured on, 261
forms of, 274 *et seq.*
guarantee of, by insolvent company, 321
indorsed conditions, 277, 289
interest on, 275
proof for, 320, 321
warrant for, 284
irregular issues, 34, 307
joint debentures, 263
joint holders, 281
judgment on, effect of, 276
majority clauses, 309
meaning of, 272
negotiability, 289 *et seq.*
notice to holder, 287
of payment off, 283, 290

DEBENTURES—*continued.*
pari passu clause, object of, 278
perpetual, 301, 505
place of payment, 287
priorities of, 307
prospectus, as to, 352, 358
receiver. *See* RECEIVER.
stock, distinguished from, 273
redemption of, 282, 283
register of, 263, 508
closing, 281
registered, 274 *et seq.* *See* REGISTERED DEBENTURE.
registered holder alone recognised, 280
registration of, 263 *et seq.*, 303
re-issue, 307
seal, need not be under, 272, 277
series, not necessarily one of a, 272
set-off, 278
specific charge, 276, 309
specific performance of agreement for, 310, 507
stamp on surrender, discharge, or transfer of, 305
stock, distinguished from, 273
time for payment, 274, 275
transfer of, 280, 303
blank, 304
forged, 304
free from equities, 280-283
stamp on, 305
trust deed, secured by, 301-303
uncalled capital, charging, 259 *et seq.*, 277
undertaking, charge on, 276
underwriting, 331
winding-up accelerates payment, 284

DEBENTURE STOCK,
constituted, how, 311
distinguished from debentures, 273
form of certificate, 311
meaning of term, 273
perpetual, 301
prospectus, as to, 352, 353
receiver, appointment of, 313
remedy of holders, 312 *et seq.*
trust deed, usually secured by, 301 *et seq.*

DEBENTURE TO BEARER, 287 *et seq.*
capable of being registered, 291
conditions indorsed on, 289 *et seq.*
coupons, 288
form of, 288
negotiability of, 292
remedies of holders, 312
stamp on, 294
trust deed securing, 301

DEBTS,
inability to pay, reason to wind up, 377
proof of, in winding-up. *See* CREDITORS.

DECEIT,
action for, 350

DECLARATION,
chairman's, as to resolution being carried, 149, 150, 226
dividends, of, 204
solvency of, 417
statutory, on formation of company, 39

DEED,
company's delivery of, 248
execution abroad, 249, 480
trust, to secure debentures, 301

DEEDS OF ARRANGEMENT,
by company, whether valid, 442

DEEDS OF SETTLEMENT,
companies regulated by, 5
adoption of memorandum and articles by, 61, 640

DEFAMATION
speeches in at general meetings, privilege, 155

DEFAULT LIST, 194, 658

DEFERRED SHARES, 69
disclosure in prospectus, 69, 338

DEFINITIONS IN COMPANIES ACT, 663
'articles', 9
'debenture' includes debenture stock, 9
'director', 9
document', 9
memorandum', 10
prospectus', 10
recognised stock exchange', 10
share', 10

DEFUNCT COMPANIES
restoration to register, 40
striking off register, 40

DELAY,
allotment, in, 92
proceedings for misrepresentation, 344 *et seq.*
removal of name from register of members in obtaining, 104, 344

DELEGATION,
directors, by, 181
presumed when, 32, 33

DEPOSIT
assurance company, statutory, 369
certificates of shares on, 125
debentures, of, to raise loan, 306

DIRECTORS,
abroad, notice to, 179
absenting himself', 171
accounts,
duty to keep, 209
right to inspect, 212
acting after disqualification 173 *et seq.*
acts by, in excess of authority, 173
age limit, 181, 553
agents of company, to what extent, 157, 177, 194
appointment, 160
defective, 173
power to outsider, 161
two or more, in one resolution, 161, 552
articles, naming in, 160
assignment of office, 161
authority,
right of persons dealing with, to assume, 32, 33
warranty of, 124, 173, 263

DIRECTORS—*continued.*
bankrupt,
meaning of term, 171
undischarged, acting as, 171, 555
bills of exchange, acceptance of, 255
board meetings, must act at, 179
breach of trust by, 190, 195
bribe to, 175, 177
casual vacancy, 161
'cease to hold' shares, 171
committees of, 182
compensation against (prospectus), 348
compensation for loss of office, 176, 557
contracts by, if ultra vires, 243
in their own name, 157, 185
personal liability on, 157, 184, 237
with company, 175
contribution between, 197
court will not force, on company, 183
criminal liability, 195, 613, 615, 657 *et seq.*
death of, 412
de facto director, 175
defective appointments, 173, 551
definition of, in Act, 9
de jure, position of, 171, 175
delegation by, powers of, 181
disclosure of benefits to be obtained, 178
disclosure of interest in contract, 178, 564
discretion,
as to call, 127
court will not interfere, if bona fide, 183
transfers of shares, 109
disqualification, 170
acceptance of incompatible office, 170
acting after, 173
bankruptcy or insolvency, 170
Table A, 679
emoluments to be disclosed in accounts, 210, 560
error of judgment by, not liable for, 187, 188
first directors, 160
frauds by, 185, 195
fraudulent trading, responsibility for, 409, 616
governing director, 157, 362
indemnity, 196
interests, to be disclosed, 178
irregular proceedings, 173, 180
liability of, 184 *et seq.*, 348
action of deceit, 350
borrowing in excess of powers, 262
contracts with company, 175
criminal, 195
death, effect of, 412
exemption clauses in articles, 192
frauds, for, 185, 195
joint contribution between, 197
Limitation Act, 1939...159
misfeasance and breach of trust, 190, 195
misrepresentation in prospectus, 348
negligence, for, 186 *et seq.*
relief from, 192
ultra vires application of funds, 194
loans to, 169, 556
meetings, notice of, 179
misapplication of company's funds, 159
misfeasance by. *See* MISFEASANCE.
misfeasance proceedings against, 410
names to be stated in trade circulars, etc., 162
naming of, in articles, 162
negligence of, 186 *et seq.*
non-attendance at board meetings, 190
notice to single director, effect of, 223
number of, 163
particulars in trade catalogues, etc., 162
penalties, 194
permanent directors', 157, 362
powers of. *See* POWERS OF DIRECTORS.
proceedings of, 179
promoters, acceptance of shares from, 166
prosecution of, 195
qualification of. *See* QUALIFICATION.
quorum of. *See* QUORUM.
register of, 162, 564
register of shareholdings, 178, 559
relief of, 192
remedies against, 195
removal of, 183, 552
reports by, 209, 539
remuneration. *See* REMUNERATION.
resignation, 170
resolutions of, 181
retirement, 182, 679
rotation, 182, 679
sale by director to company, 175, 176
seal, affixing, 247
secret benefit, 177
travelling expenses, 197
trustees, in what sense, 158 *et seq.*
ultra vires acts, 173, 193
undischarged bankrupt, 173, 555
vacancies, power to act, 180
warranty of authority, 124, 173, 279

DISCLAIMER
by liquidator, 389
by trustee of bankrupt member, 119
cesser of membership, by, 95, 119

DISCLOSURE,
directors, by, interest in contract, 178
promoter, by, 323
prospectuses, in, 334 *et seq.*
underwriting, commission, 330, 331

DISCOUNT,
debentures, issue at, 305
issue of shares at, 96, 97, 491
prohibition of payment of, 491
statement in balance sheet, 331, 706

DISPUTED DEBT,
winding-up, not a ground for, 377

DISQUALIFICATION OF DIRECTORS, 170
court order, by, 184, 555
director acting after, 173
Table A, 679

DISSENTIENT SHAREHOLDERS, 436, 437

DISSOLUTION,
company, of, 414, 415, 419
restoring to register after, 40
vesting order, 415
void, may be declared within two years, 415, 628

DISTRESS,
as against debenture holders, 298
winding-up, not a ground for, 401

DIVIDENDS, 198 *et seq.*
Apportionment Act, 1870...205
capital, payment out of, ultra vires, 200
cash, company must prima facie pay in, 207
'circulating' capital, 201
construction of works, payment when allowable during, 208
cumulative, 65
currency, in which, payable, 207
debt, a, when declared, 205
declaration of, 204
power of, 198
'fixed' capital, 200, 201
forfeiture of unclaimed, 205
guarantee of, 204
interim, 206
limitation bar, 205
payment of,
implied power, 198
out of capital, 200 *et seq.*
out of profits, 200 *et seq.*
preference shares, on, 199
proportions, in which, payable, 198
registered shareholder prima facie entitled, 205
Table A, 681
tax free, 453
tenant for life and remainderman, as between, 205
transfer of shares, effect on, 205
unclaimed,
forfeiture of, 205
in winding-up, 414
warrant, 208

DOMICILE,
of company, 231

DOMINION REGISTER,
power of company to keep, 107, 518

DUTIES,
statutory, of company, 58

DUTY,
capital of companies, on, 14, 71

EJUSDEM GENERIS RULE,
in construing memorandum, 54

EMPLOYEE,
pensions for an, 444
trade secrets, duties as to, 254
winding-up,
measure of damages, 254
operates as dismissal, 254

ENEMY,
when a company is, 231

ENFORCEMENT OF SECURITY,
debenture holders, by, 312 *et seq.*

EQUITIES,
bearer debentures, 289
notice as regards shares, 134 *et seq.*
notice of, on register, 135, 136, 518
registered debenture holder, 282
transfer of debenture free from, 282

ESCROW,
execution of deed in, 249

ESTOPPEL
as to payment on shares, 124
certificate by, 123

EVIDENCE,
books to be, in winding-up, 620
certificate of incorporation, 38
declaration of chairman, 149, 226
minutes, 233
register of members prima facie, 104
winding up petition in support of, 384

EXAMINATION,
officers and other persons, of, in winding up, 112
public, winding up, in, 413

EXCESS PROFITS TAX, 456

EXCHANGE OF SHARES,
invalid, when, as a reduction of capital, 75

EXECUTION,
stay of, in compulsory winding up, 405
transfer of shares, of, 111

EXECUTORS AND ADMINISTRATORS. *See* PERSONAL REPRESENTATIVES.

EXISTING COMPANY,
defined in Act, 9

EXPERTS,
statement by, in prospectus, 341

EXPROPRIATION
of individual shareholders, 37

EXTENSION OF OBJECTS, 59 *et seq.*

EXTENSION OF TIME,
for registering charges, 269

EXTRAORDINARY GENERAL MEETING,
amendments, 155
convene, who may, 142
notice, 144 *et seq.*
special business, 145
what is, 141

EXTRAORDINARY RESOLUTION, 224

FALSE STATEMENTS,
criminal liability, of directors for, 195
in prospectus, liability, 348 *et seq.*

FEES,
directors', 166
registration, on, 14, 71
of mortgages, 270

FICTITIOUS NAME,
application for shares in, 88

FIDUCIARY RELATION,
directors', 158
promoter, of, 322

FILING,
contract for issue of shares, 99
prospectus with registrar, 333
under Act of 1867...98, 99

FIRM,
registration as a member, 102

'FIXED CAPITAL', 201

FIXTURES,
in hire-purchase agreement, charge on, 298
mortgage of, 298
receiver's right to remove, 317

FLOATING CHARGE, 279, 295 *et seq.*, 309
company's power to deal with its assets notwithstanding, 296 *et seq.*
crystallizes, when, 298
debenture, in, 279
definition of, 295 *et seq.*
effect of, 296
execution creditor and, 296
general creditors, ranks before, 296
hire-purchase agreement, as against, 298
legal mortgage, when it takes priority, 279
nature of, 295, 296
purchaser for value without notice of, 300
receiver, effect of appointment of, on, 298
registration, 264
specific mortgage, and, 279
winding-up, within twelve months of, 297, 609

FOLLOWING TRUST PROPERTY, 410

FORECLOSURE,
debenture holders, by, 319
mortgage of shares, of, 114

FOREIGN COMPANIES, 448 *et seq*
balance sheets, 448, 646
charges, must register, 448
directors, list of, 448, 644
land, power to hold, 449, 645
prospectus of, 448, 648
sale to, 437 (s. 287)
whether liable to income tax, 451
winding-up by court in England, 377, 449

FOREIGN EXCHANGE,
rate of,
in winding-up, 396
on payment of debenture, 286, 287

FOREIGN PROPERTY,
mortgaging, 261, 264

FOREIGN SEALS, 249

FOREIGNER,
shares, may take, 93

FORFEITURE,
dividends, of unclaimed, 205
shares of,
annul, power to, 131
bankrupt holder, 180
call made irregularly, 130
collusion, by, 130
damages for irregular, 132
directors' discretion, 131
injunction, against, 345
irregularity in, 130
liability after, 132
lien, enforcement of, by, 188
liquidator no power to annul, 132
relief against, 131
sale of, on, 131
sureties released, 133
to enforce charge, whether valid, 138
winding-up, after, 131

FORGED TRANSFER ACTS, 116

FORGED TRANSFERS OF SHARES, 115
estoppel by certificate, 115

FORMATION,
expenses of, power of company to pay, 47
fees on registration. *See* REGISTRATION.
preliminaries to, 13
private company. *See* PRIVATE COMPANY.

FOUNDERS' SHARES,
deferred shares, 69
promoters taking their remuneration in, 325
prospectus, statement of, in, 338

FRAUD,
civil liability of directors, 185
company liable for, 56
criminal liability of directors, 195
directors, by, 185
co-directors not liable for, when, 187
majority of members, by, against minority, 229
seal, in use of, 248

FRAUDS, STATUTE OF,
contracts by company, as affecting, 245
signature of chairman to minutes satisfies, 234. *See* LAW OF PROPERTY ACT.

FRAUDULENT
preference, 407, 608
trading, 409, 616
transfer, 410

'FREE FROM EQUITIES',
transfer of debentures, 280 *et seq.*

FRIENDLY SOCIETIES,
Acts, 7
winding-up, 377

GENERAL MEETINGS. *See* MEETINGS.

GENERAL WORDS,
construction of, 53, 54

GIFT,
by company, 444
director, to, of qualification, or as bribe, etc., 166, 177

GOODWILL,
cannot be distributed as profits, 202

GOVERNING DIRECTOR, 157

GRATUITY,
when company can grant, 50, 444

GROSS NEGLIGENCE,
what is, 188

GROUP ACCOUNTS, 210

GUARANTEE,
dividends of, 204

GUARANTEE, COMPANY LIMITED BY, 364
charitable purposes, for, 240
fees on registration, 366, 724
memorandum of, 364
mode of formation, 365
stamp duty, 366
statutory meeting, whether necessary, 140

HANDS, SHOW OF,
vote by, 151

HAWKING SHARES, 351, 352, 666, 727

HIRE PURCHASE AGREEMENT,
floating charge, as against, 298

HOLDING COMPANY,
company cannot be member of its, 93
defined, 210, 211, 537

HOLDING-OUT DOCTRINE, 104
de facto directors, 33, 173
register of members, as applicable to, 104

HOUSE TO HOUSE,
offers of shares, 351, 352, 666, 727

ILLEGAL ASSOCIATIONS, 373, 374, 654, 656
mutual assurance, 374

IMPLIED CONTRACT,
articles, from acting on, 30–32

INABILITY TO PAY DEBTS,
ground for winding-up, 377

INCIDENTAL OBJECTS,
what are, 50, 51
within power of company, are, 47, 48

INCOME TAX, 451 *et seq.*
abroad, company carrying on business, 451
appreciation of capital value, 452
assets, sale of, 451
colonial income tax, 452
directors' remuneration not to be free of, 167
expenses, deduction for, 452
foreign company carrying on business in Great Britain, 451

INCORPORATION,
certificate of. *See* CERTIFICATE OF INCORPORATION.
mode of, 13
without word 'limited', 289

INCREASE OF CAPITAL, 69, 70
notice to registrar, 70
penalty for default, 71
what classes of shares may be created, 70

INDEMNITY
by transferee of shares, 116
director, to, by promoter, 166
directors' right of, 196

'INDOOR MANAGEMENT',
irregularities in, 32, 33

INDORSED CONDITIONS,
debentures to bearer, on, 289
registered debenture, on, 277 *et seq.*

INDUSTRIAL AND PROVIDENT SOCIETIES ACTS, 1893, 1895 and 1948...6

INFANT,
allotment of shares to, misfeasance, 191
application for shares, 93
repudiation of contract to take shares, 94
transfer of shares by, 112
voidable contract to take shares, 95

'IN HIS OWN RIGHT',
meaning of, 165

INJUNCTION,
director, against excluding, 183
mandatory,
to enforce agreement to vote, 150
to enforce calling a meeting, 143
name, against use of misleading, 238
restraining
advertisement of winding up petition, 384
calls, 126, 129
disclosure of trade secrets, 254
forfeiture, 130, 345

INSOLVENCY,
company, of, a ground for winding-up, 377
director, of, meaning, 171

INSPECTION,
accounts, of, by members, 211, 212
Board of Trade, by, 213, 543 *et seq.*
books, of, 211, 212
by auditor, 219
committee of. *See* COMMITTEE OF INSPECTION.
creditor, right of, 104
director entitled virtute officii, 212
minute books, of, 233
register of members, of, 104, 232
register of mortgages, 232, 264
registered office, at, 212, 232
right of,
carries with it right to make extracts, 103, 212
ceases on voluntary winding-up, 103

INSPECTORS,
examination of affairs by, 213
power of
Board of Trade to appoint, 213, 543 *et seq.*
company to appoint, 213
report of, proceedings on, 547

INSURANCE,
third parties, rights of, 406

INSURANCE COMPANY. *See* ASSURANCE COMPANIES ACTS, 1909 AND 1946.

INTENTION,
representation of, as statement of fact, 347

INTEREST,
calls, on, 128
during construction, 208
moneys, on, paid in advance of calls, 129
payment of, on debentures, 275
winding-up, in, 404

INTERIM DIVIDEND, 206

INTERPRETATION,
Companies Act, of, 9, 11

INTERPRETATION ACT, 1889,
effect of, as to repeals, 10

INTRA VIRES ACTS, 50, 51

IRELAND,
application of Act to Northern, 669

IRREGULARITY
board meeting, of, 180
borrowing, in, 262
call, in, 127
directors' acts, in, 173
meeting, in summoning, 142
notice of, 34
seal, in affixing, 33, 247, 248
subscription of memorandum, in, 38
transfer of shares, waiver, 111

JEOPARDY,
ground for appointing receiver, 315

JOINT AND SEVERAL LIABILITY,
delinquent directors, of, 197

JOINT HOLDERS
of registered debentures, 281
order of names, 107
transfer of shares by, 112
votes of, 152

JURISDICTION,
court, of, in winding-up, 375 *et seq.*

'JUST AND EQUITABLE', 378

'KNOWINGLY ISSUING',
prospectus, meaning, 351

LACHES,
company may be guilty of, 57
right to rescind, lost by, 105, 344, 345

LANCASTER PALATINE COURT,
jurisdiction in winding-up, 375, 376

LAND,
power of company to hold, 57, 449, 479, 645

LAND CHARGES ACT,
registration under, unnecessary, 268

LANDLORD,
distraint by, 298
not a secured creditor, 401, 402

LAW OF PROPERTY ACT, 1928,
s. 40 as applied to contracts, 245
signature of chairman to minutes, 234

LEASES,
disclaimer of, 389
dissolution of company, effect on, 415

LEAVE,
action, to proceed with, after winding-up, 406
borrow, to, for receiver, 318

LEGALITY OF OBJECTS, 20

LENDING MONEY,
power in memorandum, 48

LIABILITY,
company, of, for acts of agent, 56
contributories, of, 95 *et seq.*
directors, of. *See* DIRECTORS; LIABILITY.
joint and several, of directors 197
members, of, 95 *et seq.*
secretary, of, 252
shares, on, 95 *et seq.*
statement of limited, in memorandum. *See* LIMITED LIABILITY.

LIBELLOUS STATEMENTS
at general meetings, 155

LIEN,
auditor's, 219
shares, on, 134 *et seq.*
discharge of, 134
dividends, extends to, 138
enforcement by sale, of, 137
exemption clause, force of, 134
forfeiture, enforcing by, 138
how created, 134
operation where trusts, 136
subsequent mortgagee, 134
subsequent purchasers, 134
Table A, 671
third persons, validly against, 134
transfer, refusal in case of, 108
solicitor, of, on books, 212

LIFE ASSURANCE COMPANY. *See* ASSURANCE COMPANIES ACTS, 1909 AND 1946.

LIMITATIONS,
auditors may set up, 218
calls, 128
directors
as trustees, 159
compensation for false statements, 349
dividends, as affecting, 205

LIMITATIONS—*continued*.
promoters, action against, 326
secretary may set up, 252

'LIMITED',
'ltd.' suffices, 185
part of company's name, 237, 469
penalty for improper use of word, 241, 658
prohibition of use of, 241
use of, as part of name in all bills, etc. 237, 256
when use of, dispensed with, 239, 474

LIMITED LIABILITY,
lost if less than seven (or two) members, 43
policy of legislature as to, 237
statement of, in memorandum, 18, 21

LIMITED PARTNERSHIP, 7
Bankruptcy Act, 1914, applies to, 8
powers of a limited partner, 8

LIQUIDATION ACCOUNT, 390

LIQUIDATOR IN VOLUNTARY WINDING UP,
accounts, 419
actions by, 419
appeals, 420
appointment, 418
books, 420
borrowing, 421
calls, 421
carrying on business, 421
costs, 423
court, application to, 420
disclaimer, by, 389, 390, 424, 610
duties of, 424
investment by, 424
powers of, 419, 427
purchase of property by, 428
release of, 428
removal of, 428
remuneration, 429
sales of property by, 431
security, 431
solicitor, appointing, 431
status of, 431
two or more, 428, 583
vacancies, 428
vesting orders, 432

LIQUIDATOR IN WINDING-UP BY COURT,
accounts, verifying, 586
appointment of, 388, 582, 597
control of Board of Trade over, 390
corporation cannot be, 388, 618
costs, 407
creditors, duty as to, 388
custody of company's property, 584
disclaimer, 389
disqualification for appointment, 388, 618
duties of, 388 *et seq.*
garnishee order against banking account, 390
leaseholds, covenant not to assign, 389
liability of, 410, 411, 424
liquidation account, 390, 586
misfeasance, duties, 410, 411, 424
notice of his appointment, 388
official receiver as provisional, 387
position of, 390
powers of, 387, 388
property, delivery of, to, 584
provisional appointment of, 387
release of, 414
removal of, 391
remuneration of, 391, 429
solicitor, employment of, by, 389
style of, 582
trustee, how far, 390
vacancy, 597, 601
vesting property of company in, 391

LIST,
contributories, of, 392
directors of, to registrar, 162
of members, to registrar, 100, 101
subscription, opening of, 88

LOAN,
by company for purchase of shares, 62
to directors, 169, 556
to officers, 211

LOST CERTIFICATES,
shares, renewal of, 125

'LTD.',
abbreviation for 'limited', 185

LUNATIC,
transfer of shares by, 112
voidable contract to take shares, 94

MAIN OBJECT,
rule of construction, 53

MAJORITY,
fraud on minority, cannot commit, 150, 229, 230
powers of, 228
ultra vires, cannot sanction act which is, 230

MALICIOUS PROSECUTION,
company liable for, 56

MANAGER,
accounts of, filing, 634
acting after time specified, 316
appointment and dismissal, 244, 253
receiver and, appointment of, 318 *et seq.*

MANAGING DIRECTOR,
implied authority of, 32, 33

MARRIED WOMAN,
Law Reform (Married Women, etc.) Act, 1935, 92
memorandum of association, may subscribe, 23
shares, may take, 92

MATERIAL CONTRACTS,
meaning of, 350

MAXIMUM NUMBER,
directors, of, 163

MEETINGS,
adjournment, 156
amendments, 155
annual general, 141, 525
board. *See* BOARD MEETINGS.
chairman of general, 149
declaration when conclusive, 149, 150, 226
duties and powers, 149, 150
convening, 142
court, when it may convene, 144
creditors and contributories, 388, 582
debenture holders, of, 309
defamatory speeches at, how far privileged, 155
default in holding, 140
directors of. *See* BOARD MEETINGS.
extraordinary, 142
business at, special, 145
requisition for, 142, 525
general, when to be held, 141, 525
irregularity in convening, 142, 144, 156
mandatory injunction for, 143
notice of, 144, 221, 526
construction, 146, 148
contingent, 147
deceased member, 146
every member entitled to a, 145
members abroad, 221
misleading, 146
not construed strictly, 146
omission to give, 145
resolution, 148, 221
should specify date, place and time, 145
special business, 145
Sunday, whether dies non, 145
one member may constitute, 148, 527
ordinary general, 141
poll, 152
proxies. *See* PROXIES.
quorum at, 148
requisition, convening on, 142, 143
resolutions at. *See* RESOLUTION.
show of hands, 152
special business at, 145
statutory 139, 524
votes at, 150. *See* VOTES.
who may convene, 142
winding-up, in, 388

MEMBERS,
actions in name of company by, 229
agreement to become, 81, 92
annual list, 180
bankruptcy of, rights of trustee, 119
carrying on business where less than *seven*, 43
cesser of membership, 95
company can be a member, 93
controlling company cannot become a member, 93, 477
death of, call after, 128
definition of, 81, 477
entry of, in register, 90
foreigner may be, 93
index of, 102
infant may be, 94
joint holders, order of names, 107
liability of, 95 *et seq.*, 392, 573
majority. *See* MAJORITY.
married woman, 92
minority of, action by, 156, 228, 229
number of, 43
past member,
holder of forfeited shares, 132
liability of, transferor as, 110, 117
persons who have agreed to become, 81
register of. *See* REGISTER OF MEMBERS.
resident abroad, notices to, 221
return of, 100
subscribers of memorandum, 81, 82
who are, 81

MEMORANDUM OF ASSOCIATION,
adoption by company in place of deed of settlement, 62, 640
alteration of, 55, 59, 69, 72
objects, 59 *et seq.*
scheme of arrangement by, 80
articles, relation of, to, 26
association clause, 23
capital clause, 21, 22
classes of shares, rights of, fixed by, unalterable, 22, 28, 64, 65
construction of, 53 *et seq.*
contents of, 13, 18
copies, company must supply, 476
dominant instrument, the, 26
forms of, 472
general words, effect of, 54
'limitation of liability' clause, 21
name of company, statement of in, 18, 19. *See* NAME OF COMPANY.
notice of, people *presumed to* have, 33
objects—
clause, operation of, 20
legality of, 20
clauses commonly inserted, 48 *et seq.*
extension of, 59
implied, 47, 57
incidental, 47, 54
persons dealing with company bound to *read*, 32
registered office, statement of, in, 19
registration of, 14, 472
sale of company's undertaking, provision for, in, 49
signature, 24, 469
witnessing, 24
stamp on, 14, 469
subscriber of, liability to pay for the shares, 95
subscription of, 23
witnesses as to, 24
substituted for deed of settlement, 62
unlimited company, of, 367
written or printed, may be, 13

MINIMUM,
members to preserve limited liability, 43
number of directors, 163
number of members, 43

MINIMUM SUBSCRIPTION, 84

MINORITY. *And see* MAJORITY.
expropriation of, 37
fraud on, 150, 229, 230
members, of, action by, 156, 228
oppression of, 229, 572

MINUTE BOOK,
charge on, validity of, 310, 311
directors', not liable to be inspected by members, 212
general meetings, 233 *et seq.*
inspection of, 233

MINUTES, 233 *et seq.*
altered after signature, must not be, 236
board meetings, of, 235
copies can be bought by members, 233
directors to keep, 233
evidence, when, 233
forms of, 235
general meetings, of, 233 *et seq.*, 532
loose-leaved books, 233, 657
memorandum for purposes of Law of Property Act, 234
mode of taking, 234
penalty for not keeping, 233
presumption of regularity, 234
prima facie evidence, 233
registered office, must be kept at, 233
reading and confirming, 234
secretary's duties as to, 250
signed by chairman prima facie evidence, 233

MISAPPLICATION,
company's funds, of, by directors, 190, 191

MISFEASANCE AND BREACH OF TRUST, 190, 410
allotment of shares to infant, 191
auditor, by, 218
bribe taken by director, 175, 191
directors, by, 190
liability for, 190 *et seq.*
payment of dividends out of capital, 191
proceedings for, 410
qualification received from vendor or promoter, 166, 176
rigging market, sums paid for, 191
sale by director without disclosure, 191
secret profits, 175, 191, 323
secretary, by, 252
set-off for, none, 191
wilful default, 192

MISREPRESENTATION,
calls, how far defence to action for, 129
fact of, 345
prospectus, in, 334 *et seq.*, 343 *et seq*
right of rescission,
may be lost through laches, 344
winding-up a bar to, 345

MODIFICATION OF RIGHTS, 72, 73, 80
application to court, 72, 73, 500

MONTH,
meaning of, 283

MORTGAGES AND CHARGES,
bill of sale, 268
books debts, 264, 267
by deposit of certificate, 125, 306
constructive notice of, borrowing limit, 263
debentures to secure, 264
floating charge, by way of. *See* FLOATING CHARGE.
foreign property, 260, 264
irregularly executed, 34
registration, 263 *et seq.*
shares, of,
by blank transfer, 113, 125
priorities, 114
right to vote, 150, 151
sale or foreclosure, 114
specific, after floating charge, 299
ultra vires, 262
uncalled capital, 259

MUTUAL INSURANCE COMPANIES,
registering as unlimited, 368
unregistered, illegal, 374

NAME OF COMPANY,
change of, 239, 474
charity, art, etc., companies, 239
contracts in, 184, 237
dispensing with word 'limited', 239
goods, on, 237, 238
injunction, where misleading, 19, 238
'limited',
when must be used, 18
when use of word prohibited, 241
painted or affixed outside office, must be, 237
Registration of Business Names Act, 1916, applies, 242
restraining use of deceptive, 19, 238
statement of, in memorandum of association, 18
undesirable, not to be registered, 242, 473

NATIONAL DEFENCE CONTRIBUTION, 456

NATIONAL HEALTH INSURANCE ACTS,
preferential payments under, 398

NEGLIGENCE,
directors of, 186 *et seq.*
liquidator, of, 410, 424
secretary, of, 251
what is, 186 *et seq.*

NEGOTIABILITY,
debentures to bearer, of, 291 *et seq.*
proof of, 294

NEGOTIABLE INSTRUMENTS *See* BEARER DEBENTURES.
book debts, for payment of, 265
name of company on, 237
objects clause, in, 49
power of company to issue, 255

NOMINAL CAPITAL, 21, 64

NOMINEE SHAREHOLDINGS, 103
power to Board of Trade to investigate, 103

NON-CUMULATIVE PREFERENCE SHARES, 65

NON-DISCLOSURE,
contracts with directors of, 175, 176, 191
material contracts, 350, 351
prospectus, in, 337, 339

NOTICE, 221 *et seq.*
advertisement, by,
to bearer debenture holders, 290
to shareholders, 221
allotment of, 88, 89
authentication of, 222
board meeting, of, 179
call, of, 127
company, by, 221
to, 222
construction of, 146
constructive notice, 223, 263
articles of, 32
debenture holder, to, by company, 287
directors' meeting, 179
equities, of. *See* EQUITIES.
executors of deceased members, to, 222
general meeting, of. *See* MEETINGS, notice of.
imperfect or misleading, 146
increase of share capital, 70, 496
meeting, of. *See* MEETINGS.
members, to, 221
registrar, to. *See* REGISTRAR.
service of,
on company, 222
on members, etc., 221
shareholders resident abroad, 221
'special notice', 146
special resolution, in case of, 224
Sunday not a dies non, 145, 148, 221
trust, of, 135, 518
verbal, 223

NOVATION,
in life assurance, 371

NUISANCE,
company, by, 57

NUMBER OF MEMBERS,
minimum to preserve limited liability, 43

OBJECTS OF COMPANY,
alteration, 59–62, 469
petition to court, 62
charitable, etc., 239
clause, framing, 48–49
construction of objects clause, 53
extension of, 59–62, 469
general words, effect of, 54
implied, 47
memorandum of association, statement of, in. *See* MEMORANDUM OF ASSOCIATION.
principal and ancillary, 54

OFFICE OF COMPANY. *See* REGISTERED OFFICE.

OFFICERS OF COMPANY,
appointment and dismissal, 252, 253
auditor. *See* AUDITORS.
definition of 'officer', 10
directors. *See* DIRECTORS.
'in default', 194, 658
loans to, disclosure, 211
misfeasance, claim against, 410
officer or servant, who is, 411
secretary. *See* SECRETARY.

OFFICIAL RECEIVER,
appointment of, 387, 580
bankruptcy, in, to be, for winding-up, 387, 580
petition to wind up, may present, 382
provisional liquidator, 387
report of, in winding-up, 387, 582
statement of affairs, 387, 581

OMNIA RITE ACTA,
presumption as to, 32, 234
seal presumed properly affixed, 248

ONE-MAN COMPANY,
validity of, 42, 355

OPTION,
disclosure in prospectus, 338, 339
to promoter, subscribe for shares, 325
underwriters to, 331

ORAL CONTRACTS,
company, by, 245
for shares, filing, 99

ORDERS,
wind up, to, 386

ORDINARY MEETINGS. *See* MEETINGS.

ORDINARY SHARES. *See* SHARES.

OVERDRAFTS,
on bank, a borrowing, 262

OVERSEA COMPANIES, 448 *et seq.*, 644 *et seq.* *And see* FOREIGN COMPANIES.

PALATINE COURTS,
winding-up jurisdiction, 375

PARI PASSU
clause, debenture, in, 277
creditors, payment of, in winding-up, 398

PAROL. *See* ORAL CONTRACTS and CONTRACTS.

PARTNERSHIP,
banking, exceeding ten members, prohibited, 654
company contrasted with, 42
exceeding twenty members, prohibition of, 656
limited. *See* LIMITED PARTNERSHIP.

PAST MEMBER, 392
B list, 392
forfeited shares, ex-holder of, 132. *See* MEMBERS.
liability of transferor as, 110, 117

PAUPER,
transfer to, 111

PAYMENT,
calls, in advance of, 129
for shares, otherwise than in cash, 96 *et seq.*

PENALTIES,
allotment, irregular, 87
annual returns, default in making, 101
carrying on business with less than seven members, 43
commencing business prematurely, 45
filing returns of allotments, 98
meaning of 'default fine', 194, 658

PENSIONS, 444
implied powers, 444

PERPETUAL DEBENTURES AND DEBENTURE STOCK, 301, 505

PERPETUITIES,
as affecting employees' funds, 445
restrictions on transfers of shares, 108

PERSONAL REPRESENTATIVES,
shareholder domiciled abroad, 119
shares vest in, on death of holder, 118
transfers by, 118
when may be personally liable, 118

PETITION,
reduction of capital, sanction of court to for, 78
to cancel alteration of objects, 62

PETITION TO WIND UP, 379 *et seq*
advertisement of, 384
answering, 383
contents of, 383
contributory, by, 381
costs of, 386
creditor, by, 379
debenture holders, by, 319
discretion of court at hearing, 385
disputed debt, 377
evidence in support, 384
form of, 383
hearing of, 385
Official Receiver, by, 382
presentation of, 383
service of, 384
standing over, 386
substitution of petitioner, 386
substratum gone, 381
title of, 383
verification of, 384

PLACE OF PAYMENT,
debenture, of, 287

POLICIES,
life assurance company, of, proof for, 371
valuation of, 370

POLL,
common law right, 152
demand for, 152
exclusion of voter, may invalidate a, 153
how taken, 152
member may vote at, though absent when poll demanded, 152
nullifies show of hands, 152
right to, 152, 528
right to vote determined by register, 153
scrutineers, 152
special resolution, on, 226
time of taking, 152
voting papers, whether can be, by, 153

POST,
notice of allotment by, 89
notices by, 222

POWERS OF ATTORNEY, 446
construction of, 446
inquiry as to authenticity of power, 447
stamp, 447
transfer under, 304

POWERS OF COMPANY *See* OBJECTS.

POWERS OF DIRECTORS,
articles may give all powers of company, 171, 172
court, intervention by, 172
meeting, controlled, by, 172

PREFERENCE, FRAUDULENT, 407

PREFERENCE SHARES,
alteration of articles to create, 35 *et seq*
alteration of rights, 72 *et seq.*
arrears of dividend in winding-up, 66
capital, preference as to, 66
cumulative and non-cumulative dividends, 65
definition of rights in memorandum, 23, 64
dividends on, 199
increase of capital by issue of, 70
issue, though memorandum silent, 70
redeemable, 68, 494, 496
winding up, rights, 66

PREFERENTIAL CREDITORS,
receiver must pay, 317
winding up, in, 398, 606

PREFERENTIAL RIGHTS,
alteration of, 72 *et seq.*

PRELIMINARY EXPENSES,
articles providing for payment of, 325
power of company to pay, 47
statement of, in prospectus, 339

PREMIUM ON ISSUE OF SHARES,
bonus shares may be paid up by, 202
reduction of capital provisions apply, 202, 493
to be transferred to share premium account, 202, 493
when may be treated as profits, 202

PRESENT
by company, 444
to directors from promoter, 166

PRESUMPTION OF REGULARITY
in internal matters, 32, 234

PREVENTION OF FRAUD (INVESTMENTS) ACT, 1939, 10, 351, 352

PRINCIPAL OFFICER,
meaning of, 385

PRIORITIES,
claims ranking before floating charge in winding-up, 317
debenture holders, of, 307 *et seq.*
preferential creditors, of, 398 *et seq.*
transfer of shares unregistered, 110

PRIVATE COMPANY, 355 *et seq.*
advantages of, 356 *et seq.*
annual returns, 357, 523
balance sheet, when required to be registered, 356, 522, 523
certificate to be sent with annual summary, 357, 363
commencement of business, by, 15, 356
company, when ceases to be, 358, 363
compulsory retirement of members, 362
conversion into public company, 358
definition of, in Companies Act, 355, 477
directors of, 362
exempt private company, 356
exemptions, 356 *et seq.*
formation and constitution, 361
governing or permanent director, 157, 362
number of members allowable, 355
obligations, of, 363
privileges of, 356 *et seq.*
public not appealed to, 355
shares, transfer of, 362
statutory meeting, 139, 357
transfer of shares, restrictions on, 361

PRIVATE EXAMINATION
in winding-up, 412, 413

PROBATE,
production on transmission of shares, 119

PROCEEDINGS OF DIRECTORS, 179

PROFIT AND LOSS ACCOUNT,
contents of, 209, 210, 534, 535
signature of, 210, 538

PROFITS,
agreement for remuneration, by, 208
ascertainment of, for dividend, 200 *et seq.*
capitalising, 207
debentures, arising from payment off of, below par, 202
premium on issue of shares, when, 202
secret,
by director, 177
by promoter, 323
undistributed, surtax on, 454 *et seq.*

PROMISSORY NOTES,
company's power to give, 255
form of, 256
'limited' must be inserted, 256

PROMOTERS,
acts constituting promotion, 322
articles providing for payment to, effect of, 29
bankruptcy, 326
disclosure by, 323
fiduciary relation of, 322
misfeasance, 410
preliminary expenses, recovery of, 326
prosecution of, 414
prospectus, liability in respect of, 326
public examination, in winding-up, 413
remuneration of, 325
shares, option to subscribe, 325
sale by, to company, 323
secret profit by, 323
Statute of Limitations, 326
who are, 322

PROOF,
admission of, 396
affidavit in verification of, 396
costs of, 396
creditors, by, in winding-up, 395 *et seq.*
mode of, 396

PROPERTY,
disposition of, pending winding-up, 193
dissolved company, of, to be bona vacantia, 415, 625
situated abroad, mortgage of, 260, 261

PROSECUTION,
in winding-up, 414

PROSPECTUS,
abridged prospectus, 336
ambiguous statements in, 347
basis of contract, 336
belief, statements as to, in, 346
compensation for untrue statements, 348
contracts (material) to be specified, 339, 350
contract, prospectus may be part of, 336
debentures requirements, 352
deceit, action for, on, 350
definition in Act of 1929...333
directors' interests to be disclosed, 339
disclosure in, 336 *et seq.*
exemption, certificate of, 337, 482
experts, statements by, 341
foreign company, 448, 648 *et seq.*
form of, 334
'issued', meaning of, 343
liability for statement in, 348
memorandum, contents need not be stated, 338
minimum subscription, 84
misrepresentations, in, 334 *et seq.*
non-disclosure in, 335
offer to public, 334
offers for sale, 342
opening of subscription list, 88
preliminary expenses to be stated, 339
promoter's liability for, 326
qualification of directors to be stated, 338
registration of, 333
remuneration of directors to be stated, 338
reports referred to in, 346
reports to be set out, 340, 698
signature of, 333
statement in lieu of. *See* STATEMENT IN LIEU OF PROSPECTUS.
vendors, particulars to be stated, 339
voting rights to be stated where classes of shares, 340
waiver clauses, 337, 343

PROVIDENT SOCIETY
not a company, 6

PROVISIONAL CONTRACTS, 243

PROVISIONAL LIQUIDATOR, 387. *See* LIQUIDATOR IN WINDING-UP BY THE COURT.

PROXIES,
blank, in, 154
form of, 153
no common law right to vote by, 153
poll, right to demand, 152, 528
revocation of, 154
stamp on, 154

PUBLIC,
offer of shares to, 334, 493

PUBLIC EXAMINATION,
holding of, in winding-up, 413

PURCHASE OF SHARES BY COMPANY,
financial assistance for, 52
ultra vires, is, 51, 52

QUALIFICATION,
'cease to hold', meaning of, 171
directors, of, 163 *et seq.*
fine for acting without, 164
obligation to take, 163, 164
present from promoter, 166
'in his own right', meaning, 165
share warrants not, 121

QUORUM,
directors, of, 180
general meeting, at, 148

RATES,
payment by receiver, 318
priority in winding-up, 398

RATIFICATION,
company, by, 53
directors, by, of irregular proceedings, 180
shareholder, by, of voidable contract, 344
of ultra vires acts, 53

RECEIVER,
accounts, registration of, 634
actions by, 286, 316
applications to court by, 286, 630
appointed by debenture holder, 284, 285, 313 *et seq.*
appointment by court, 315 *et seq.*
deadlock, where, 144
jeopardy, where, 315
notification of, 318, 512
officer of the court, 316
security, 315
borrowing by, 318
corporation cannot be, 313, 630
duties, 316 *et seq.*
fixtures, right to remove, 317
floating charge, effect on, 298
lease, liability on, 317
liability of, 317, 318
notice of appointment, 314, 632
power to disregard contracts, 316
preferential creditors, must pay, 317
proceedings by, 316
property abroad, 315
rates, 318
remuneration, 314
rent, liability for, 317
right to indemnity, 316
statement to, by company, 314, 632, 633
undischarged bankrupt, cannot be, 313, 630

RECEIVER AND MANAGER, 313. *And see* RECEIVER.

RECONSTRUCTION, 436 *et seq.*
arrangement, by, 439
dissentients, 436
sale,
of shares, by, 442, 570
to a foreign company, 437
to new company, under power in memorandum, 438 *et seq.*
stamp duty on 439
under section 287 437

RECTIFICATION OF REGISTER. *See* REGISTER.

REDEEMABLE PREFERENCE SHARES, 68
capital redemption reserve fund, 68, 494
premiums, bonus shares paid for, out of, 68, 202, 494

REDEMPTION,
debenture, of, 283

REDUCTION OF CAPITAL, 73 *et seq*
all-round reduction, 76
'and reduced', use of, 79
certificate of registrar, 79
creditors entitled to object, when, 79
minute as to reduction, 79
modes of reduction, 74
order confirming, 79
petition for sanction of court to, 78
reconstruction, combined with, 441
resolution for, 75
sanction of court, when required, 75, 76

REGISTER
of debenture holders, 279
right to inspect, 232, 263, 512
of directors and secretaries, 162
of members, 102
agents, when kept by, 102, 515
closing, 103
contents, 102
dominions registers, 107
entry of member in, 90 *et seq.*
index of, 102
inspection, 103, 232
loose leaf register, 233, 657
name on, effect of, 90
not conclusive, 105
prima facie evidence, to be, 104
publicity of, 104
rectification of, 105
secretary, no power of, 251
share ownership, of, 103
trusts not to be entered, 135, 136
where kept, 232
of mortgages and charges, 263 *et seq.*, 508, 512
certificate by registrar, 266
closing, 281
company must keep 263
extension of time, 269
fees, 270
inspection of, 264, 368
property acquired subject to charge, 266
rectification, 269
registrar, to be kept by, 266
right to inspect, 264, 368
to be kept at office of company, 282

REGISTER—*continued.*
of mortgages and charges—*continued.*
United Kingdom, charge created out of, 264
of shareholdings of directors, 178, 559

REGISTERED DEBENTURE. *See* DEBENTURES.

REGISTERED OFFICE, 19, 231, 513
carrying on business without, 231
change of, 231
name of company to be kept painted or affixed at, 237
register of mortgages to be kept at, 232
service of notices at, 232
situation of controlling domicile, 231

REGISTRAR OF COMPANIES,
contracts, registration of, 99
defunct companies, power to strike off register, 40
duty as to registration of companies, 14
name of new company, jurisdiction as to, 238
notice of consolidation of shares, 496
notice of increase of capital to be given to, 70
notice of resolutions, 227
returns as to allotments, 98

REGISTRATION,
bills of sale, 268
business names of, 242, 734
commission, allowance or discount—particulars, 265
company, fees on, 14
company, of, 14
debentures and debenture stock, of, 264 *et seq.*
existing companies, 17
mortgages and charges of. *See* REGISTER.
substituted security, 268
transfer of shares, of, 109
vendor of shares not bound to procure, 113

REGISTRATION OF BUSINESS NAMES ACT, 242, 734

REGULARITY,
internal proceedings, presumption of, 32, 33

REGULATIONS OF COMPANY. *See* ARTICLES OF ASSOCIATION.

RE-ISSUE,
debentures or debenture stock, of, 308

RELEASE OF LIQUIDATOR, 414, 428

RELIEF AGAINST FORFEITURE, 131

RELIGION,
association formed to promote, 239

REMEDIES,
debenture holders, of, 312 *et seq.*

REMOVAL,
directors of, 183
liquidator, of, 391, 428

REMUNERATION,
auditor's of, 215
directors of, 166 *et seq.*
action for, 166
apportionment, 168
articles, fixed by, 31, 166
company, may ratify excess, wh 167
disclosure of, 211
income tax on, 167, 556
not only payable out of profit
renunciation of right, of, 167
taking in excess misfeasance,
winding-up, can prove in, 166
promoter, 325
receiver, 314, 631
secretary, 250

RENT,
distress for,
against debenture holders, 298
in winding-up, 402
proof for, 402, 403
receiver, duty as to, 317

RE-ORGANISATION,
share capital, of, 80

REPORT,
auditors, of, 216
directors, by, 209
proceedings at meeting of, pr... 155
prospectus, referred to in, 346

REPUDIATION,
delay in, for misrepresentation, 345
transfer, of, 111

REQUISITION,
convening meeting, on, 142

RESCISSION,
cesser of membership by, 95
contract for shares, 344
losing right,
by delay, 105, 344
by voting, 345
by winding-up, 345
winding-up, a bar to, 345

RESERVE CAPITAL,
mortgaging, 260

RESERVE FUND,
payment of dividend out of, 202
secret, 220

RESIGNATION,
directors, of, 170

RESOLUTION,
amendments, 155
circulation of, 148, 529
declaration of chairman, 149, 2
directors, of, 181
extraordinary, 224, 530
general meetings, at, 151, 224
inconsistent with articles, 151,
notice of intended, 148
notice to registrar, 227
ordinary, 224

UNLIMITED COMPANY, 367
alteration of memorandum to remove unlimited liability, 61
fees on registration, 367, 724
re-registration as limited, 368
may by resolution reserve capital on, 368, 473
statutory meeting, 140

UNREGISTERED ASSOCIATIONS. *See* ILLEGAL ASSOCIATIONS.
illegality, 373
mutual insurance, 374
what are, 373
winding-up of, 376, 641
unregistered companies, 374, 641

UNTRUE STATEMENT. *See* MISREPRESENTATION.

VACANCY,
directors, in number of, 180

VARIATION OF CONTRACTS,
referred to in prospectus or statement in lieu of, 338, 484

VARIATION OF RIGHTS,
of classes of shares, 72

VENDOR,
present of qualification to director by, 166
promoter, 323
prospectus, for purpose of, who is, 341, 343
share of, not bound to procure registration, 113

VERBAL CONTRACTS. *See* ORAL CONTRACTS

VERBAL NOTICE,
to company, 223
to managing director, 223
to secretary, 223

VESTING ORDER,
of assets in liquidator, 391, 432
on dissolution of company, 415

VOIDABLE CONTRACT,
to take shares, 87, 344 *et seq.*

VOLUNTARY LIQUIDATOR. *See* LIQUIDATOR.

VOLUNTARY WINDING-UP, 416 *et seq.*
applications to court in, 420
arrangements, 420
Board of Trade, 420
books, 426
calls in, 421
commencement, 416
committee of inspection, 418, 422
compromises, 422
compulsory order, after, 433
conclusion of, 433
contributories, 423
costs, charges, and expenses, 423
creditor may apply to court, 420
creditors' voluntary winding-up, 424
declaration of solvency, 417, 596
disclaimer, 424
dissolution,
of company, 419, 433
may be declared void, 433
examinations, 428
final meeting in, 418, 433, 623
landlord's rights, 425
liquidator's duties. *See* LIQUIDATOR IN VOLUNTARY WINDING UP.
meetings, power of liquidators to call, 418 *et seq.*, 425, 598
members' voluntary winding up, 418
misfeasance, 426
not a bar to compulsory order, 433
official receiver in, 426, 433
private examination, 428
proof of debts, 428
prosecution of directors, 428
rates, 428
resolutions for, 416
restraining actions, 430
sales of property, 431
solvency, declaration of, 417, 596
stay of actions and executions, 429
staying winding-up, 432
transfers, avoidance of, after, 116, 579
undistributed assets, 432
unregistered companies cannot, 416
vesting orders, 432

VOTES,
alien enemy cannot exercise, 151
bankrupt's, 150
'collectors', 151
contract as to, 150
decision of chairman usually final, 149, 150
general meeting, at, 150
multiplying by transfer, 151
injunction as to, 150
joint holders, 151
poll, by, 152. *See* POLL.
property, a right of, 150.
proxies, 153. *See* PROXIES.
Public Trustee, 151
register evidence of right to, 150
show of hands, by, 151
special resolutions, on, 224
Table A, 676
trustees for debenture holders, 301
use of, against interest of company, 150

WAGES,
priority in winding-up, 398

WAIVER,
clause in prospectus, 337, 343
minimum subscription, as to, 85
notice of allotment, of, 90

WARRANTS,
for interest, 284
share, to bearer, 120, 503

WARRANTY OF AUTHORITY
of directors, 124, 172, 173, 263

WASTING PROPERTY,
income of, in dividends, 200, 201

WATERWORKS CLAUSES ACT, 4.

WILFUL DEFAULT, 192

WINDING-UP. *See* PETITION TO WIND UP, VOLUNTARY WINDING-UP, WINDING-UP (COMPULSORY) and WINDING-UP UNDER SUPERVISION.

WINDING-UP (COMPULSORY), 375 *et seq.*
accounts, and audit, 390
actions, staying, 404
appeals, 376
assets, collection and distribution of, 388, 389
assurance company, of, 371
avoidance of attachments, executions and distresses, 404, 405
calls, 393
commencement of, 386
committee of inspection, 391
compromise, 407
contributories. *See* CONTRIBUTORIES.
costs of, 386, 407
County Courts, jurisdiction in, 375
appeals from, 376
courts having jurisdiction in, 375
creditors,
petition by, 379
prima facie right to order, 380
proof by. *See* PROOF.
creditors and contributories, wishes of, 407
Crown debts, 398
debenture holders, petition by, 319
proof by, 401
disclaimer, 389
dispositions and transfers after, 406
dispositions by directors pending, or after, 193
disputed debt, 377
dissolution of company, 414, 594
power of court to declare void, 415
distress for rent, 402
dividends in, unclaimed, 414
ejusdem generis rule, 378
examination of officers and other persons, 412
execution creditor, 405
following trust property, 410
foreign company, of, 377, 449
fraudulent,
preference, 407
set-off, 409
trading, 409
transfer, 410
grounds for, 377
inability to pay debts, 377
injunction to restrain proceedings. *See* INJUNCTION.
interest on debts, 404
jurisdiction, 375
just and equitable, 378, 579
landlord, rights of, 402
leave to proceed with actions, etc., 406
liquidation account, 390
liquidator. *See* LIQUIDATOR.
meetings, 389
misfeasance, 410 *et seq.*
official receiver. *See* OFFICIAL RECEIVER.
order, 386
pari passu payment, 398
petition, 379 *et seq.* *See* PETITION TO WIND UP.
preferential creditors, 398 *et seq.*
private examination, in, 412
proceedings after order, 387
promoter of company, examinat 413
proofs in. *See* PROOF.
prosecution of directors and pro 414
provisional liquidator, appointme 387
public examination in, 413
rates, priority of, 398 *et seq.*
registrar, examination before, 41
release of liquidator, 414
rent, proof for, 403
restraining proceedings, 404
sale of property in, 389
secured creditors, 401
set-off, 396, 409
statement of affairs, 387, 581
stay of actions, executions, etc *et seq.*
stay of winding-up proceedings 4
substitution of creditor for peti 386
substratum gone, 378
surplus assets, 394
termination of, 415
third party insurance, 406
title of proceedings, 383
transfers of shares during, 116,
unclaimed funds and undist assets, 414, 620
unregistered companies, 376, 641
void, dissolution declared, 41
wages, priority of, 398
wishes of creditors and contribut 407

WINDING-UP UNDER SUPERVISION,
advantages, 434
commencement of, 435
costs of, 435

WINDING-UP (VOLUNTARY). *See* V WINDING-UP.

WITHDRAWAL OF APPLICATION FOR SH 83

WITNESSES,
signatures of subscribers of mem dum and articles, to, 24

WORKING CAPITAL. *See* CAPITAL

WORKMEN'S COMPENSATION ACT,
preferential payments under, 398

WRIT,
service on company, 223

WRITING,
contracts in 245
transfer of shares, when only in, 1